



January 3, 2011

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

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

Dear Board Members:

The Environmental Defense Center (EDC), Monterey Coastkeeper (MCK), Santa Barbara Channelkeeper (SBCK) and San Luis Obispo Coastkeeper (SLOCK) offer these comments on the November 19, 2010, Draft Order (November Draft Order), which revises the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver), and on the related Draft Subsequent Environmental Impact Report (SEIR) prepared under the California Environmental Quality Act (CEQA). In general, we support a conditional waiver program that contains robust regulatory provisions to ensure that our waters are protected from agricultural discharges and which ensures that agriculture remains sustainable and productive.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. MCK serves Monterey and Santa Cruz Counties as a program of the Otter Project, and protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. SBCK is a non-profit environmental organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through citizen action, education, field work and enforcement. SBCK has extensive experience in conducting citizen water quality monitoring in agricultural watersheds. SLOCK, a program of Environment in the Public Interest, is dedicated to the protection of water quality, watershed and coastal regulations in San Luis Obispo and northern Santa Barbara Counties and has consistently participated in water pollution, environmental impact and endangered species permit processes via comments on particular permits, and when necessary has initiated citizen enforcement actions.

The November Draft Order improves upon some facets of the existing Conditional Waiver, which was promulgated in 2004 and renewed in July 2009 and again in July 2010.

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The November Draft Order does not, however, contain adequate mechanisms to address the degraded state of our central coast waterways, which in some ways are worse than they were in 2004. In particular, the November Draft Order falls short of the previous Draft Order released in February 2010 (February Draft Order). The February Draft Order does comply with state and federal laws and is adequate to protect water quality. We therefore urge your Board to simply adopt the February Draft Order. In the alternative, the November Draft Order should be revised to incorporate necessary provisions of the February Draft Order. It is well past time to move forward with a revised Conditional Waiver for the Central Coast Region.

In comments that were provided to your Board in April 2010, we offered additional suggestions to make the February Draft Order even more protective of water quality, drinking water standards, associated public trust resources and the wider range of beneficial uses. Those comments are attached and incorporated herein, by reference, in their entirety. Below, we offer comments on the November Draft Order and accompanying CEQA documents, including, where appropriate, suggestions for harmonizing the November and February drafts.

I. Background

EDC, MCK and SBCK participated in multiple stakeholder processes which informed the existing Conditional Waiver, starting in 2003. In 2008, Central Coast Regional Water Quality Control Board (RWQCB) staff reconvened the Agricultural Advisory Panel (AAP), with fifteen individuals and organizations representing agricultural interests, a representative of the Monterey Bay National Marine Sanctuary, a representative from UC Davis, and representatives from our environmental organizations. Although the AAP did not reach consensus on recommendations for a new Conditional Waiver, the February Draft Order contained many of the elements discussed during 2009, including:

- A focus on dischargers with tailwater;
- A focus on dischargers in sub-watersheds with impairments;
- A common understanding of the value of individual monitoring (although there was no consensus on reporting of individual monitoring);
- Agreement that toxicity was more easily addressed than nitrate pollution;
- Agreement that nitrate groundwater pollution was a pervasive problem that would take more time to address;
- Agreement that growers did not want “one size fits all” management practices dictated to them; and
- Agreement that the RWQCB should actively enforce the Order.

The February Draft Order includes components that are necessary for the waiver to be consistent with California Water Code Section 13269, including enumerated water quality standards, explicit and liberal timelines for compliance with the Order, riparian setbacks and vegetated buffers, individual discharge monitoring and protections for drinking water. These

provisions are also consistent with proposed updates to the 2004 Order that staff discussed with the second AAP.

In a staff report accompanying the February Draft Order, staff set forth overwhelming evidence that the existing Conditional Waiver is now out of date and is inconsistent with water quality plans and standards, and is not in the public interest. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010.) The existing Conditional Waiver was intended to “regulate discharges from irrigated lands to ensure that such dischargers are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.” (*Id.* at p. 8.) Six years after it was adopted, however, there is “no direct evidence that water quality is improving due to the 2004 Conditional Waiver.” (*Id.* at p. 7.) In fact, many water segments throughout the region are listed as impaired under Clean Water Act Section 303(d), nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain “well documented, severe, and widespread” despite the fact that a number of dischargers have enrolled under the 2004 Order. (*Id.* at p. 4.) For this reason, staff concluded that “[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.” (*Id.*)

Specific deficiencies in the existing Conditional Waiver are described in our April 1, 2010, letter and below.

II. The Existing Conditional Waiver

The AAP reviewed the existing waiver on numerous occasions. Several themes consistently emerged.

Water Quality

Results from both the Cooperative Monitoring Program (CMP) and Central Coast Ambient Monitoring Program (CCAMP) water quality testing are contained in the February 1, 2010, report, “Preliminary Draft Report on Water Quality Conditions in the Central Coast Region Related to Agricultural Discharges.” These findings indicate:

- In the Central Coast Region, thousands of people are drinking water contaminated with unsafe levels of nitrate or are drinking replacement water to avoid drinking contaminated water. The cost to society for treating and/or avoiding polluted drinking water is estimated to be in the hundreds of millions of dollars.
- While some positive reductions in nitrate pollution are occurring in the Santa Barbara region, additional improvement is possible.
- Endemic aquatic organisms in large stretches of rivers in the region’s major watersheds have been severely impaired or completely destroyed by severe toxicity from pesticides.
- Agricultural water quality impairments are widespread. For example, the 2010 Clean Water Act Section 303(d) List of Impaired Waterbodies for the Central Coast Region (Impaired Waters List) identified surface water impairments for approximately 182

water quality limited segments related to a variety of pollutants (for example, salts, nutrients, pesticides/toxicity, and sediment/turbidity). Sixty percent of the surface water listings identified agriculture as one of the potential sources of water quality impairment.

- Nitrate concentrations in areas that are most heavily impacted are not improving in a significant or widespread manner and a number of sites in the lower Salinas and Santa Maria watersheds appear to have become more polluted over the past five years.

The Preliminary Draft Report on Water Quality Conditions finds that there is enough high quality data to make the above findings with statistical certainty. In short, conditions have not improved generally, and conditions in bad areas are becoming worse. We acknowledge that some areas – notably areas with less intense row crop agriculture – are showing some signs of water quality improvement.

Enrollment

While enrollment numbers are high, there are significant numbers of growers and operations that are not enrolled in the existing Conditional Waiver. For the program to be ultimately successful there must be a higher rate of participation. It is far too easy for a small number of bad actors to spoil an otherwise productive regulatory program. It is inaccurate to state that any percentage of the dischargers or any percentage of the land is enrolled. The reality is that we don't really know. Without better data, it is impossible to identify the gaps.

Water Quality Monitoring

While the CMP has produced useful data, a critical weakness in the existing Conditional Waiver is a lack of individual discharge monitoring. Ambient data produced through the CMP does allow the RWQCB and stakeholders to identify general long-term water quality trends; however the data does not allow anyone to identify specific sources of pollution.

In addition, some CMP methodologies are flawed. For example, the CMP currently collects dissolved oxygen measurements in the middle of the day. Due to diurnal fluctuations in dissolved oxygen, measurements collected in the middle of the day do not accurately diagnose potential anoxic conditions and are actually misleading. In order for such measurements to be valid they must occur during periods when dissolved oxygen can be expected to be at a minimum, usually before dawn. Ideally, such measurements would be collected continuously throughout the day to capture the extent of diurnal fluctuation.

There is also a widespread gap in the availability of groundwater quality data throughout the region. Groundwater is directly linked to surface water quality through surface-to-groundwater interactions and through tail water discharges. Without groundwater data, the RWQCB and stakeholders are unable to evaluate whether the current program is improving groundwater quality over time. Without groundwater data, it is also impossible for growers to make certain informed decisions regarding nutrient management.

Reporting

Water quality data that is received by Central Coast Region staff is not always complete or available in a useful format. Part of this problem stems from a lack of on-farm data. The information also has not been made generally available to the public.

Enforcement

A serious problem under the existing Conditional Waiver is a lack of adequate enforcement on both enrolled and non-enrolled growers. Currently, there is no database of growers and the actual plots they farm.

The current program requires that Best Management Practices (BMPs) be implemented on-site to minimize the quantity and improve the quality of agricultural discharges. BMP implementation, however, varies from site to site by necessity depending on site-specific concerns. As a result, without defined water quality standards for discharges to surface and groundwater, it is impossible to determine whether or not agricultural operations are contributing to exceedances of basin plan objectives in surface water bodies.

Stormwater

The current program lacks standards and mechanisms pertaining to stormwater discharges. Crops such as strawberries are especially problematic, as ground is covered with impervious plastic during the rainy season which increases water volumes and velocities running through furrows and ditches – especially on steeper slopes. Grapes are also difficult, as rows are planted with little regard to slope.

There is particularly a gap in the current program when it comes to stormwater discharges from fallow agricultural fields. BMPs are frequently not implemented when agricultural fields are not in operation. From a stormwater quality perspective, fallow agricultural fields present a similar risk to surface water quality as would a large construction site.

Vegetated Buffers

The existing Conditional Waiver expresses no vision for maintenance of vegetated buffer areas between farm fields and aquatic habits, despite the fact that such buffers help filter pollutants from entering waterways. In fact, with the current focus on ‘food safety’ there are documented cases of removal of riparian vegetation. The riparian corridor along our creeks and rivers is the ultimate vegetated buffer before runoff enters our open waters. These riparian areas offer many public benefits including improvement of water quality.

III. The February Draft Order Improved Upon the Existing Conditional Waiver

We support an emphasis on clear standards and timelines, as opposed to an emphasis on training and education. The RWQCB is a regulatory agency, bound by the requirements of the Clean Water Act; there are multiple agencies and organizations – such as the Natural Resources Conservation Service (NRCS) and UC Davis – offering practical advice to growers. The RWQCB should set standards and targets and let the growers decide how to meet them. In the February Draft Order, water quality standards were enumerated for discharges to surface water and groundwater, including stormwater.

The February Draft Order also included new provisions that require “Individual Discharge Characterization Monitoring” and provisions related to groundwater monitoring. This recommendation is consistent with the AAP recommendation that “every grower should know what is in their water.”

In the February Draft Order, timelines for compliance were explicit and liberal:

- Elimination of tailwater within two years if near impaired waterbody. Growers have been informed by their peers that elimination of tailwater was an essential practice and irrigation management and use of tailwater ponds is standard procedure for most growers.
- Elimination of toxicity within three years. Toxic discharge is illegal, and modern pesticides degrade quickly.
- Eliminate sediment runoff within three years. Reducing soil loss and erosion is a common and accepted practice.
- Eliminate nitrate and salt in runoff above water quality standards within four years.
- Eliminate discharge of nitrate and salt to groundwater above water quality standards within six years.

In areas with high levels of contaminants in groundwater where growers continue to discharge waste, the staff draft recognizes the authority of Water Code Section 13304 that states the RWQCB can require clean up, remediation or abatement. Pollution of groundwater by agriculture represents a transfer of costs from agricultural to urban users who share the groundwater. The February Draft Order recognized both the seriousness of the problem and the length of time needed to see improvement. The February Draft Order required growers to discharge below the drinking water standard within six years, and also recognized that the drinking water standard is not entirely protective of aquatic life. This approach is reasonable and balanced.

IV. The November Draft Order Is Not Adequate To Protect Water Quality Or Associated Public Trust Resources

The citizens of the Central Coast deserve clean water, and your Board is required by law to draft an Order that is protective of water quality and associated public trust resources.

[T]he health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state [and] the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation

[T]he state board and each regional board shall be the principle state agencies with primary responsibility for the coordination and control of water quality.

(Cal. Water Code §§ 13000, 13001.)

In particular, the RWQCB regulates both point and non-point sources of water pollution. “Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state” must file a report of the discharge to the RWQCB. (Cal. Water Code § 13260.) The Board must then “prescribe requirements as to the nature of any proposed discharge [or] existing discharge.” The requirements shall take into consideration “beneficial uses to be protected,” “water quality objectives reasonably required for that purpose,” “other waste discharges,” and “the need to prevent nuisance.” (Cal. Water Code § 13263.)

Beneficial uses are described by the Central Coast Region Basin Plan and include: agricultural supply, cold fresh water habitat, preservation of biological habitats of special significance and migration of aquatic organisms. Surface water bodies that do not have designated beneficial uses are protected for both “municipal and domestic water supply” and “protection of both recreation and aquatic life.” (Central Coast Region Basin Plan, Chapter 2, “Present and Potential Beneficial Uses.”)

Section 13269 provides that the requirements of Sections 13260 and 13263 “may be waived by the state board or a regional board as to a specific discharge or type of discharge if [it is determined] that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.” According to Subsection 13269(a)(2), waivers may not exceed five years in duration and must be conditional. Conditions include “the performance of individual, group, or watershed based monitoring Monitoring results shall be made available to the public.”

The November Draft Order does not comply with the requirements described above.

Tile Drains

Surface and groundwater in areas drained by “tile drains” are sometimes heavily polluted with both nutrients and toxic chemicals. The February Draft Order addressed tile drains. However, Table 5 of the November Draft Order (Additional Time Schedule for Key Compliance Dates for Tier 2 and Tier 3 Dischargers) appears to exempt tile drains from having to comply with nutrient water quality standards by stating: “Demonstrate that discharge (*not including subsurface drainage to tile drains*) is not causing or contributing to exceedances of nutrient water quality standards in waters of the State or United States.” The

parenthetical should be removed, and the November Draft Order should be revised to be consistent with the February Draft Order.

The Salinas Watershed provides an unfortunate example. The Blanco Drain consistently has nitrate levels five-times greater than the drinking water standard. The Blanco Drain discharges very significant volumes of water with nitrate levels high enough to impact salmonids directly into the Salinas River – a river with endangered steelhead. The Santa Maria River is another unfortunate example where agricultural operations have degraded areas designated as Critical Habitat for endangered steelhead. It is critical that the new Order address farms with tile drains along with all other dischargers.

Tiering

The February Draft Order applied evenly to all dischargers and provided certainty to both regulators and the regulated community. The November Draft Order includes a tiering structure which may prove cumbersome. If tiering is applied properly, to prioritize efforts to work with high threat dischargers in areas with impaired waters, a more nuanced approach could be effective. We are concerned, however, that the proposed tiering structure is not scaled appropriately to address water quality issues on the Central Coast. In essence, very little is required of Tier 1 and Tier 2 operators. We believe every enrolled farm (in every tier) should document and report riparian habitat in year one, as a condition of enrollment.

The November Draft Order also fails by defining Tier 3 too narrowly. Tier 3 is defined as large farms (1000 or more acres) growing crops with high nitrate loading potential *or* large farms applying chlorpyrifos or Diazinon *or* farms adjacent to impaired waters and applying chlorpyrifos or Diazinon. Most operators can avoid being in Tier 3 simply by switching from Diazinon (a brand name) or chlorpyrifos to any of the other thousands of pesticides.

The Draft Order should address “toxicity” both generally and specifically. We understand that research indicates that Diazinon and chlorpyrifos are serious problems, and that the RWQCB has designated certain waterways as impaired for these specific chemicals. However, most toxicity on the Central coast is of an unknown chemical origin. Further, the synergistic impacts of various chemicals have not been studied. We believe that a focus on generic “toxicity” is most protective of human and aquatic health. Little will have been achieved if Diazinon and chlorpyrifos are eliminated but toxicity still exists. If the Conditional Waiver includes a tiering system, the tiers should be based on general toxicity and not unduly limited to specific pesticides.

According to data provided by staff, only 33 operators enrolled in the 2004 waiver were farming more than 1000 acres. In 2008, Monterey Coastkeeper identified, researched, and contacted many of the unenrolled large farms and found that at least some of them were cattle ranches not growing crops with high nitrate loading potential, and therefore we believe that the number of large operations that would fall into Tier 3 is lower than 33. Tier 3 seems to cast a very narrow (and inadequate) regulatory net.

In order for the Conditional Waiver to be effective, the new order must deal with all or a very high percentage of the highest threat dischargers using toxic chemicals or high amounts of nitrates. We suggest that, for Tier 3, the pesticide criteria be edited to state, “applies any pesticide that can cause toxicity in water or sediment” and the acreage criteria be edited to state, “total irrigated acreage greater than or equal to 100 acres.”

In addition, the November Draft Order considers proximity to 303(d) listed water bodies as a discharger tiering criteria. The specific threshold distance proposed is 1000 feet. 1000 feet is an inadequate and arbitrary distance to base tier categorization on. If hydrologic connectivity is present, it should be assumed that impacts to water quality may occur. These impacts may affect both 303(d) listed water bodies and their tributary streams. There are two problems with using the 1000 foot criteria.

- 1) 1000 feet is far too short. At a conservatively low stream velocity of one foot per second, it would take just over 16 minutes for a polluted discharge to travel 1000 feet. It is highly likely that polluted discharges to tributary streams occurring more than 1000 feet from 303(d) listed water bodies will still significantly impact the listed water body.
- 2) This criteria ignores impacts to tributary streams themselves, which may be polluted but may not be 303(d) listed due to lack of reported monitoring data

If the RWQCB wishes to use proximity to 303(d) listed water bodies as a tiering criteria, we recommend that the proposed threshold distance be increased to at least one mile. Alternatively, the RWQCB could consider utilizing a “stream order” approach. For example, a criterion could be that an operation does not discharge into a water body which is more than two stream orders higher than a 303(d) listed water body.

Water Quality Buffer Plans

The February Draft Order included protections for riparian areas adjacent to any discharger. The November Draft Order proposes that Water Quality Buffer Plans only be required for farms immediately “adjacent” to temperature, sediment and turbidity 303(d) listed water bodies. This criterion unreasonably limits protections granted to and by riparian buffers. Riparian buffers offer water quality benefits to all water bodies and not only those that are 303(d) listed. Beneficial uses are described by the Central Coast Region Basin Plan and include cold fresh water habitat and preservation of biological habitats of special significance. Surface water bodies that do not have designated beneficial uses are protected for both “municipal and domestic water supply” and “protection of both recreation and aquatic life.” Riparian buffer protections for all water bodies are necessary for the Conditional Waiver to be consistent with the Central Coast Region Basin Plan and for the Conditional Waiver to be “in the public interest.”

In addition, existing regional monitoring programs collecting data used to determine whether water bodies are impaired by sediment and temperature are inadequate for the reasons described below, and therefore the criteria may not be adequately inclusive.

- 1) Neither the CCAMP nor CMP water quality monitoring programs collect “peak” temperature measurements. Monitoring for these programs may occur early in the morning or late in the afternoon when peak temperatures would not be expected to occur. Since the Central Coast Region has relied heavily on CCAMP and CMP monitoring to make 303(d) listing decisions, it is likely that many existing temperature water quality impairments remain undocumented.
- 2) Turbidity measurements only apply to the water column at the moment of sample collection and do not necessarily reflect existing stream bed conditions. It is highly likely that sediment polluted discharges occurring during storms or other sporadic discharge events often result in turbid conditions that do not persist long enough to be captured during monthly sampling events; however, these discharges may still result in sedimentation of the stream bed that impairs beneficial uses. Neither CCAMP nor CMP water quality monitoring programs currently collect measurements (other than turbidity) that are directly used to evaluate for sediment or sedimentation impairments. Therefore it is highly likely that many sediment impaired water bodies are not listed on the 303(d) list, and there is currently no plan in place to improve their detection.

Due to these inaccuracies in the State’s current assessment of sediment and temperature 303(d) water bodies, the RWQCB’s proposed limitations of riparian buffer protections will result in the continued degradation of aquatic and riparian life and habitat. Finally, many smaller tributary streams contain aquatic and riparian habitat, but are not monitored, and therefore are not included on the 303(d) list.

The proposed limitations would provide no protection to these water bodies. Consequently, Water Quality Buffer Plans should be required for *all* growers in *all* tiers. Alternatively, at an absolute minimum, “toxicity” should be added to the list of impairments where vegetated buffers should be required. The State Water Resources Control Board has released a summary report showing that Central Coast waters are the most toxic in California, and vegetated buffer strips have been found to be highly effective at removing pesticides from surface waters.¹

New Listings and Delistings

The Draft Order should specify how new listings and delistings from the List of Impaired Waterbodies will be handled. Within the five-year term of the Order there will be

¹ Zhang, X. 2010. Mitigation Efficacy of Vegetated Buffers in Reducing Non-Point Source Pollution: A critical review and meta-analysis. Presented at the 239th Annual ACS National Meeting San Francisco, CA. March 22, 2010.

two new lists. New listings should require adjacent growers to comply with appropriate sections of the Order. Likewise, growers who improve their water quality and who are adjacent to delisted waterbodies should be rewarded for their efforts and should be relieved of appropriate requirements.

Point of Compliance to Numeric and Narrative Standards

The February Draft Order was very clear that the point of compliance to standards was where tailwater leaves a property (a double asterisk in Table 1A indicated that the criteria must be met in irrigation runoff). This appears to have been significantly changed in the November Draft Order. The November Draft Order does not include individual discharge "limits" or requirement for owners/operators to demonstrate compliance with numeric water quality standards in individual discharge at the point where water leaves the farm (but requires monitoring and reporting at this point for Tier 3 dischargers). Instead, the November Draft Order relies too heavily on ambient water quality. This application of standards is subjective and essentially unenforceable.

If there is a hydrological connection between tailwater and a water of the State, narrative and numeric standards should be applied at the point where the tailwater leaves the property. The November Draft Order may simply mean to indicate that water could be moved *within* a property without being considered a discharge. However, the Conditional Waiver must clearly indicate that the point of compliance is where the discharge leaves the farm property. It should be made clear that in most cases, the tailwater monitoring point and the point of compliance are the same. Our support of any Order is dependent upon the Order being enforceable through the application of numeric and narrative standards at a specific point of compliance.

“Sample” and “Sampling” Versus “Monitor” and “Monitoring”

At least one area of the Draft Order (pg 15, items 44 and 45) appears to use the words “sample” and “monitor” interchangeably. “Sample” and “sampling” should be changed to “monitor” and “monitoring” throughout the document.

Transparency and the CMP

We believe a true third party should be contracted to conduct CMP water quality monitoring, and an independent consultant should provide interpretation of the results. At the very least, as was required in the February Draft Order, the CMP should be carried out transparently, and data should be delivered on time. The board and management of the third party should not be dominated by any stakeholder group. Guidelines should specify that data be publicly available within 30 days of the end of the quarterly reporting schedule. Guidelines should also specify that any follow-up monitoring be publicly available within a similar timeframe.

Enforcement

The Draft Order must set forth clear guidelines on how RWQCB will enforce the Conditional Waiver. The November Draft Order is weak in outlining how a clear chain of evidence that would lead to effective enforcement will be gathered. The enforcement clause in the Conditional Waiver should be the same or very similar to that found in individual Waste Discharge Requirements (WDRs).

V. CEQA Process

The conditional waiver program described in the November Draft Order, while not adequately protective of water quality, would result in some beneficial environmental impacts and would not result in negative impacts to the environment. We appreciate that several potential impacts are analyzed in the Draft SEIR, and we agree that none of these potential impacts could rise to a level of significance.

The RWQCB approved a Negative Declaration when it adopted Order No. R3-2004-0117 in July 2004. In doing so, the RWQCB noted that the 2004 Order was “designed to reduce discharges of agricultural pollutants and improve water quality.” The Draft Order would “not require or allow any changes in practices that could degrade the quality of the environment or have environmental effects that could cause substantial indirect or direct adverse effects on human beings.” (2004 Negative Declaration, at p. 34.) The same finding holds true today, with respect to the November Draft Order.

Impacts to Agricultural Resources

The 2004 Negative Declaration provides guidance for analysis of farmland conversion:

Many [best management practices] may actually improve agricultural resources by reducing the loss of topsoil or improving soil quality

Conservation practices that could affect the amount of land used for producing crops include vegetating farm roads, installing vegetated filter strips along creeks and at the ends of field rows, planting cover crops, and installing sediment detention basins. The Regional Board has reviewed the potential cost of some commonly used practices that might be employed by growers. Practices vary widely in both their initial installation costs and in long-term costs associated with maintenance and reduced cropping area. In some cases practices can result in improved productivity that will offset costs associated with taking some land out of production for conservation practices. Some practices, such as improved irrigation efficiency and nutrient management, can result in cost savings over time.

(2004 Negative Declaration, at p. 29-30.) The Draft SEIR provides numeric support for a conclusion that agricultural resources will not be significantly affected.

Alternatives

In our August 27 scoping letter, we urged staff to examine an alternative that only implements WDRs, and a separate alternative that utilizes a combination of WDRs, waiver(s) and other tools at the RWQCB's disposal.

Page 26 of the Draft SEIR briefly discusses a WDR alternative and concludes that it would function similarly to the proposed Conditional Waiver. We do not wish to bog the CEQA process down in perpetual delay; as noted above, as it is far past time for an updated Conditional Waiver. However, we respectfully disagree with the assessment that individual WDRs would function almost identically to a Conditional Waiver program. For example, while individual monitoring *should* be an integral part of any Conditional Waiver, under a WDR program more site-specific monitoring would be required, and individual, on-site accountability would be much greater.

Any alternative examined by the Regional Board must meet objectives described in the Porter-Cologne Water Quality Control Act, the federal Clean Water Act and other statutes and regulations designed to protect water quality in the State of California.² It is possible that the waiver approach will no longer be sufficient, either wholly or in part, to meet the objectives described in our clean water laws. While potentially cumbersome, a WDR approach guarantees a finer-grain inspection of the root causes of water quality degradation.

If, for some reason, the Draft SEIR is revised before March 2011, this alternative must be analyzed in greater detail.

VI. Conclusion

It is clear that some, largely "industrial," agricultural operations cause "widespread and serious impacts on people and aquatic life" on a regular and ongoing basis. Domestic and public water supplies have been significantly contaminated with nitrates and other agricultural pollutants, in many cases at levels that far exceed applicable drinking water standards. Similarly, toxic surface water discharges from irrigation ditches continue to regularly violate water quality standards, despite claims of significant enrollment under the existing Conditional Waiver. And trends in the use of riparian vegetation buffers to protect against sedimentation, nutrient loading, and temperature increases are going in exactly the wrong direction. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010, *supra*, at p. 16.)

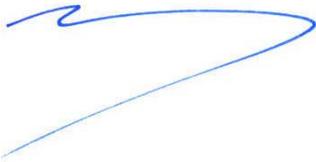
The severity of the problem is demonstrated by the existing Section 303(d) impaired waterbodies list for the Central Coast region and by the RWQCB's July 2009

² CEQA Guidelines section 15126.6 states that an EIR must describe a reasonable range of alternatives to a proposed project. Alternatives must feasibly attain most (but not all) project objectives and must avoid or substantially lessen any significant effects of the proposed project.

recommendations for updating that list. This Draft Order represents an opportunity for your Board to take an active leadership role in fixing the problems on our Central Coast and making sure that we all have water for drinking, for agriculture and for habitat, for the long and foreseeable future.

We appreciate this opportunity to comment on the November Draft Order. If you have any questions about our recommendations, please do not hesitate to contact any of our organizations.

Sincerely,



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