GROWER-SHIPPER
ASSOCIATION
of Central California
Since 1930

January 3, 2011

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

Dear Chairman Young,

Thank you for the opportunity to provide comments on the Staff Draft Agricultural Order dated November 19, 2010. As a trade association representing almost 100 growers and shippers on the Central Coast and a signor of the Draft Central Coast Agriculture's Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands (Ag Proposal), we have been actively involved in the development of a renewed "Conditional Waiver" for discharges from irrigated lands. We believe the Ag Proposal created by agricultural groups and submitted to you on December 3, 2010 is a strong, accountable proposal and we are very concerned with the sustainability of staff's most recent proposed draft Ag Order (Staff Draft Proposal).

We agree that improvements should be made to water quality. Over the last five years the Cooperative Monitoring Program (Central Coast Water Quality Preservation, Inc.) has demonstrated water quality impairment and enlightened many about the problem. However, we don't have a strong characterization of what sources are contributing to impairment and exactly when or where it is occurring. Without knowing that we can't know what needs to be done without more science and more cooperative monitoring data. Conversely, the on-farm data collection proposed of Tier 3 growers in the Staff Draft Proposal is a waste of resources. Let growers instead use those funds to work with a Coalition focused on actual on-farm management changes to show improvement, not simply monitor the problem.

Accountability is a necessary segment of any regulation. The challenge with the staff approach as it is currently written lies in the fact that agriculture is a non-point source discharger, which makes it very difficult to make a conclusion for either fault or improvement based upon one data set, at one point in time, on one farm. Solid research and development are required to find an actual solution and make improvement.

We also have some major concerns with the Staff Draft Proposal, including the short comment period given, a 45-day span in which three major holidays occurred. The Ag Proposal is the best solution for all. It will provide accountability to the Board, staff and public while simultaneously linking growers with resources, feedback and technology so that they may update growing practices to achieve significant milestones related to diazinon and chlorpyrifos water quality objectives, a decrease in sediment loads by 20 percent at CMP sites; and a decrease in nitrate loads from current CMP sites by 10 percent. Here are a handful of reasons the Ag Proposal is stronger than the Staff Draft Proposal:

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1. Jurisdictional Challenges: The Staff Draft Proposal is attempting to influence land use, riparian area and wetland habitat, over which they have (at best) questionable oversight, but more likely, no jurisdiction. The Coalition approach instead allows for a reasoned, collaborative system for sharing research, technology and ideas without confusing multi-agency jurisdiction.
2. Research & Technology-Based Ag Proposal: The Staff Draft Proposal is a point-source solution applied to a non-point source problem and it makes assumptions based on faulty reasoning. Instead of the punitive approach the Staff Draft Proposal recommends, the Ag Proposal will align growers with research, technology, and assistance so that they can take steps toward making actual improvements to water quality.
3. Effectiveness: Instead of making assumptions about impairment and tying up resources with individualized data collection, the Ag Proposal focuses on tools for actual improvement to water quality. More aggregated data, combined with a coalition-approach focused on on-farm improvements, will provide a coordinated, effective solution.
4. Ingenuity: Improvements should be made to water quality and growers are the ones to do it through innovation in the field, not individualized monitoring. Growers in the Salinas Valley have spent decades fine-tuning their practices to achieve goals (i.e. yields, food safety standards, etc.). Ingenuity only exists when creativity and opportunity merge. This Staff Draft Proposal doesn't allow for either. The Coalition does so by aligning growers with new ideas, agronomists and researchers that can synergize to create new solutions.
5. Focus on Impaired Areas, Not Acreage: Acreage size should not be a trigger for assumed impairment. We have five years of data showing us where the most affected sub-watersheds sit. Use the Coalition approach to focus on these instead of arbitrarily and ineffectively focusing on the biggest growers who likely have already invested enormous financial capital in making improvements to benefit water quality.
6. Industry-Funded: The Coalition approach pays for itself, providing the Regional Board information it needs to show improvement without costing taxpayers.
7. Triple-Bottom-Line Achieved: The Staff Draft Proposal mentions the importance of the triple-bottom-line of financial, social and environmental priorities. The unfortunate reality about the Staff Draft Proposal is that its compliance costs would likely unfairly target small, family-owned farms, some of which are organic, or owned by disenfranchised growers. There are growers in the region that have indicated that they would elect to go out of the farming business if the current Staff Draft Proposal became their water quality regulation.

ECONOMICS

The Grower-Shipper Association has initiated a thorough economic analysis of the November 19, 2010 Staff Draft Proposal, working with Brad Barbeau at California State University, Monterey Bay. Professor Barbeau will conduct a more in-depth study than the analysis we presented at the May 12 meeting, including a careful statistical analysis of the Staff Draft Proposal and the Ag Proposal.

On a related note, we have some concerns regarding the Staff Draft Proposal Cost Analysis Appendix F, including:

1. EQIP is mentioned as a funding resource for growers. However, it's important the Board understands that the EQIP program oversees a limited amount of money. Not every grower that would need funding would be able to participate in the program and there are income limitations in some situations. Please do not consider EQIP to be an across-the-board offset of grower costs.

2. We are concerned that Appendix F does not factor in lost acreage and/or customers due to extended riparian buffers. While the costs of installing such buffers is included in staff's analysis, the cost of buffering out further acreage (besides the 30 or 50 foot riparian buffer) for food safety purposes is not addressed. We ask that the board consider the tremendous costs of installing new vegetation that creates a major food safety complication, potentially eliminating some customers, and definitely eliminating usable land.
3. In Appendix F, 2.2.2.4.3 the staff refers to Management Cost Estimates from the Central Valley Region. Please do not use these cost estimates to determine Central Coast costs. The Central Valley has significantly lower acreage rent and mostly grows crops not under the purview of the Leafy Green Handlers Marketing Agreement. Comparing grower costs in the Central Valley are related to land use, buffers, inputs, and more is like comparing apples and oranges.
4. The staff state: "Therefore, Tier 3 dischargers will most likely incur higher costs than Tier 1 or Tier 2 dischargers and a greater increase in costs compared to the cost of complying with the 2004." We don't dispute that Tier 3 dischargers will have higher costs. We however are appalled at the arbitrary triggers used to determine which operations sit in Tier 3. Specifically, acreage that sits within a 1,000-foot distance from an impaired water body does not automatically mean it drains into said waterbody. There are instances within the Salinas Valley where a ranch literally drains away from the waterbody it backs against, or where the water would have to flow up a hill and across a levy to drain into the impaired waterbody. In these cases, it doesn't matter if you're 1,000 feet or two feet from the waterbody, you're not contributing to its impairment through irrigated water runoff. Additionally, a 1,000-acre trigger by organization is irrational. If you operate 1,000 acres you have likely already invested in management practices that benefit water quality. Why are those who are already focused on this issue being given a disincentive to do more by mandating on-farm monitoring, thereby pulling resources out of improvements to pay for on-farm data collection?
5. In our calculation of the February Staff Draft we learned that lost tax revenue is between $19,624,441 and $25,326,816 with 2,572 to 3,320 jobs lost. Staff's findings in the November 19, 2010 Staff Draft Proposal of "A range of approximately $774K to $2.2M of gross value would be lost to riparian buffers region-wide, based on this analysis" is considerable. Our economic analysis will look to equate staff's findings and our own to lost tax revenue and lost jobs. Staff's finding that "Lost income to an individual grower, while not known, is a fraction of gross value lost, since the grower avoids costs of farming areas no longer in production" does not look at the bigger question, being: how much lost tax revenue for our local governments and how many jobs are lost due to these substantial buffers? We believe our analysis will show each of these losses to be considerable.
6. The Staff Draft Proposal MRP document, Appendix B, Page 12, item 3 requires Dischargers, as part of the Groundwater Report, to submit laboratory data in a format compatible with the GAMA program's Electronic Deliverable Format. This is a requirement for fairly sophisticated and time-consuming data formatting. The staff has estimated in Appendix F, page 33 that the costs of having a contractor collect the samples, assess depth to groundwater and deliver the results to be approximately $1,260/test for a Tier 3 grower and $690 for a Tier 1 or 2 grower. We suspect the costs for doing so will be much more than staff estimates, being that this is a much more difficult data formatting challenge than they substantiate in their economic findings. In our estimation, it would require someone with a strong understanding of this data system to spend at least 30 hours (at a conservative hourly rate of $100) to complete this requirement. For someone who needs to learn this system anew (e.g. a current staff member), our estimate would be 40 hours minimum. The minimum cost for complying with this requirement will likely

be at least $3,000 just for staff/consultant time, much higher than the $500 estimated by staff. More information on these data formatting requirements may be found here: http://www.swrcb.ca.gov/ust/electronic_submittal/docs/faq.pdf.

FOOD SAFETY

Also disconcerting are the riparian vegetation mandates that contradict nationally- recognized and customer-required food safety practices. This waiver will reverse some of the major food safety improvements we've worked hard for over the past five years.

Major concerns include:

- That operators are prohibited from having bare soils vulnerable to erosion that contribute to an exceedance of sediment run-off.
- That operators must protect existing aquatic habitat by maintaining riparian functions such as streambank shading, aquatic and wildlife support and maintain naturally occurring mixed vegetative cover in aquatic habitat areas
- That by October 1, 2012 Tier 2 and 3 dischargers with operations adjacent to or containing an impaired waterbody for sediment, temperature or turbidity must conduct photo monitoring to document the condition of the waterbody including the estimated widths of vegetative filter strips and management practices or measures to address impairment
- That by October 1, 2015, Tier 3 dischargers with operations adjacent to or containing an impaired waterbody (listed in Table 1) must submit a Water Quality Buffer Plan that protects the waterbody and its associated perennial and intermittent tributaries that includes a minimum 30 foot buffer measured horizontally from the top of bank on either side of the waterway, vegetated zones within the buffer to control temperature, reduce velocity, control sediment deposition, provide treatment through infiltration.

Each of these bulleted concerns directly contradict a grower's ability to meet food safety standards, thereby creating an untenable situation in which growers will be unable to make a decision without breaking a contract, rule or regulation. We would strongly encourage the Central Coast Regional Water Quality Control Board and staff to consider the proposed agricultural alternative as a more pragmatic solution to improving water quality in the region. The Ag Alternative encourages growers to work in concert to reduce the discharge of waste in reasonable time frames using practical and proven solutions. The Ag Alternative enjoys broad consensus amongst agriculturalists in the region and if viewed as a baseline could provide a strong starting point for continued or expanded collaboration between the CCRWQB and growers to collaborate on the common goal of improved regional water quality.

Faulty Nitrate Data Presentation

In response to a November 15, 2010 presentation to the Sustainable Agriculture Expo by CCRWQCB staff member Lisa McCann, a literature review titled "Anomalies in Data Supporting Proposed Regulations Offered by the Central Coast Regional Water Quality Control Board: A Critical Analysis — November-December 2010" was conducted by Robert Dolezal on behalf of our colleagues at the California Strawberry Commission. This analysis of the staff's November presentation found a **"**Distortion of statistics, omission of critical facts, and ignoring alternative causation possibilities that favor one's own conclusions." It was the finding of the author that "Data represented in the maps and narrative presented by CCRWQCB fails to meet minimal standards for accuracy and fails to avoid statistical bias due to the choice of presentation. In addition, a number of well clusters were omitted entirely, further falsifying the ratio of exceeding wells to the total population of wells. It is impossible to reconcile the

data depicted by the Board staff with the actual data in the State Water Resources Control Board's GeoTracker GAMA database for the sampled cluster areas described here." The conclusion stated that "Substantial evidence impeaches the conclusions reached by the Central Coast Regional Water Quality Board's staff in justifying the draft Ag Waiver Order as it pertains to nitrate contamination in the areas sampled."

The analysis verified that much more research needs to be conducted to fully understand agriculture's role in the nitrate discussion. It cited a definitive study from 1995, "Wellhead Protection for Rural Communities Facing Threats from Nonpoint Source Nitrate Contamination, Case Study, King City, Salinas Valley, California" (Monterey County Water Resources Agency), that provides consummate understanding of the various aspects of King City area's nitrate contamination of groundwater. The study states, *"All of the small rural communities in the Salinas Valley are supported by ground water. … The nitrate contamination of the Salinas valley ground water supplies is a cumulative problem that has been evolving over time. The sources of nitrate contamination are widely dispersed throughout the Salinas Valley, and are the result of long standing management practices used by both agriculture and municipal entities. As a result, the historic nitrate contribution and origins of the nitrate problem are difficult to quantify."*

We implore the Board to take these concerns into consideration and use the ag alternative's approach of using the next Ag Waiver period to better understand nitrate contamination data while instituting a region-wide Nutrient Management Plan system for all growers to use all available research and understanding to address this valid and important concern in our community.

Appeals Process

We were pleased to meet with staff on December 15, 2010 to discuss our Ag Proposal and the Staff Draft Proposal. However, we were concerned when each time we cited a concern with the Tier triggers the response by staff was that a grower could appeal the concern to the Executive Officer. Statements have been made by some of your executive staff that growers should consider not growing crops with high nitrate loading potential any longer on the Central Coast. With that concern in mind, how would an executive staff that has a perceived bias against a commodity be able to make a fair, unbiased recommendation to allow a grower to move from Tier 3 to Tier 2 or Tier 1, no matter how compelling the argument?

The Staff Draft Proposal does not foster collaboration, provides no incentives for growers to participate in water quality best management practices and will be difficult to comply with and enforce. It is a punitive proposal that stifles collaboration and innovation. The "tiering" mechanism embodied in the Staff Draft Proposal is an example of an arbitrary and punitive approach in that it assigns select operations to high risk Tiers based on size, proximity to surface water and/or crops grown regardless of the actual risk those operations may present.

We urge you to base the new Conditional Ag Order for the Central Coast on the Ag Proposal . An Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that encourages agricultural stakeholders – as they are uniquely positioned to provide innovative solutions to enhance the region's water quality. The failure to constructively engage growers and landowners will be counterproductive to short and long-term efforts to improve water quality.

Thank you for considering our views.

Sincerely,

James W. Bogart
President and General Counsel
Grower-Shipper Association of Central California

Abby Taylor-Silva
Vice President, Policy & Communications
Grower-Shipper Association of Central California

cc:
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United States Senator Barbara Boxer
United States Senator Dianne Feinstein
United States Congressman Sam Farr
United States Congresswoman Anna Eschoo
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