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California Regional Water Quality Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: Central Coast Staff New Order Proposal for the Regulation of Waste Discharge from Irrigated Lands

Dear Mr. Roger Briggs, Executive Officer;

This comment letter is submitted on behalf of myself working with many clients that are involved in agriculture and affected by the proposed action of the Central Coast Regional Water Quality Control Board in response to request from the CEQA scoping meeting. During the course of the public meeting held August 16, 2010 it became apparent that the standards recommended by staff to meet the protection of water quality in surface, storm, and ground water could have unintended consequences to everyone on the Central Coast. In order to provide solutions in one aspect of the agricultural operation you would need to migrate another aspect- in short agricultural operations are very much ever-changing large ecosystems- that are complex and "circular" in the need for constant stewardship. We as members of the community all need both water and food; we must renew an approach that is focused on true water quality solutions and not regulations that are data and documents in nature. Changes in on farm culture practices are happening on the central coast and this work must continue in a proactive approach.

As such, the Central Coast Regional Water Quality Control Board should adopt a significantly different proposal with less stringent terms and conditions than that proposed in the renewed "Conditional Waiver of Waste Discharge Requirements for Irrigated Lands" (New Order). The focus of the new order should solely on water quality solution with a "carrot and stick" (by providing proactive incentives) rather than regulations that are punitive.

As the New Order purportedly stands, it is in direct conflict with Porter-Cologne, CEQA, and the Williamson Act as well as possibly sets itself up to be preempted due to direct conflicts with the current existing codes under the California Water Codes, Food and Agriculture Codes, the Department of Fish & Game, the Department of Pesticide Regulation, NEPA and the Farmland Protection Policy Act.

Alternative revisions of the New Order should be constructed within the proper parameters set forth through the Porter-Cologne Water Quality Control Act and CEQA (California Water Code [CWC] §§'s 13000 et seq.) that are at least feasible to all present and probable future beneficial uses of water within the Central Coast. The Porter Cologne Act denotes that any water quality plans/proposals *must* consider all demands upon the water source and that each regional water board shall establish such water quality objectives in water quality control plans as in its judgment *will ensure the reasonable protection of beneficial uses of that water*. (CWC § 13241) It has been recognized through state and federal policies that agriculture is a beneficial use of water. No where does that ring more true than here in the Central Coast, where we generate $13 billion dollars worth of food products annually, growing over 200 different crops, and employing over 60,000 people. (American Farmland Trust, US Agriculture Statistics - 2007 Ag Census www.farmland.org, http://www.awqa.org/ag/statistics.html)

Water quality issues *do* exist on the Central Coast, and agricultural practices *should* continue to be amended in order to further protect our surface and ground water. The primary concern or contention with this proposal is the feasibility, reasonability, and achievability of the proposed New Order.

Agriculture is non-point source – is not a finite project

Non-Point source impacts to water quality are difficult to define and they are equally difficult to remediate. These are not engineered systems subject to formulaic approaches. Instead, non-point sources are generally dynamic and ever-changing large ecosystems that are conditions by varying degrees of management. Non-point sources are difficult to study as variables cannot be controlled, and in reality, are a discipline which is in the rudimentary stages of development.

Under CEQA Agriculture is a beneficial use of water and declared a resource, and therefore must be considered in water quality proposals/plans.

The purpose of the New Order should consider the protection of agricultural resources as a rather vital beneficial past, present and probable future use of the areas water.

It has been recognized and established that agriculture is a beneficial use of water, through state and federal policies such as CEQA, the Farmland Protection Policy Act and the National Environmental Policy Act. Agriculture is the number one industry in California, providing employment for one in ten Californians and producing a safe and reliable food and fiber source depended on throughout the world. (CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1) In this current climate of high unemployment rates, July of 2010 saw an unemployment rate of 12.3%, up from 5.1% in July of 2000, it can be argued that Agriculture, and Agricultural resources, should be preserved, sustained and maintained now more than ever. (Bureau of Labor Statistics Data, http://data.bls.gov) The Legislature has declared that a sound natural resource base of soils, water, and air must be maintained in order to preserve agriculture and ensure a healthy farming industry, and thereby a healthy(ier) economy. (Food & Agriculture Code § 802(g)) It is imperative that Agriculture's beneficial use of water be taken into account in this New Order, and that any and all alternative proposals should be looked into for less detrimental, yet still effective, plan for the beneficial use of this finite resource.

CEQA sets forth guidelines and provides direction that agencies should refer to the 1997 California Agricultural Land Valuation and Site Assessment Model as prepared by the California Department of Conservation an optimal model to use in assessing impacts on agriculture and farmland. It asks agencies to take into account whether a proposed project would:

1) Convert prime farmland, unique farmland, or farmland of state-wide importance to non-agricultural use
2) Conflict with existing zoning for agricultural use or a Williamson Act contract
3) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of farmland to non-agricultural use.

California Code of Regulations, Title 14, CEQA Guidelines Appendix G, § II, Agricultural Resources.

The CCRWQCB instead asks "interested persons" to provide information with specificity as to potentially significant environmental impacts, including unavoidable significant adverse environmental impacts associated with the means of compliance. The boards vested obligation through the Porter-Cologne Act (see below) is to "attain the highest reasonable water quality considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (US v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 116)

The CCRWQB staff does not generate this New Order proposal within the authority in which CEQA and the California Code of Regulations, title 14 sets forth. It seems, (without seeing the actual proposal), that if the New Order the Region 3 Water Quality Control Board is proposing may even be exceeding its authority and abusing it's discretion.

<u>Intent of the Porter-Cologne Water Quality Control Act</u>

The intent of the Legislature in creating the Porter-Cologne Act can best be determined by taking a plain adaptation of the wording of the statutes. The Act states

> "The people of the State [which includes the Agricultural Community] have a primary interest in the conservation, control and utilization of the water resources of the state and that quality shall be protected for the use and enjoyment… activities and factors which affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."
> CWC §§'s 13000 et. seq.

I would request that staff responds to the comments provided by the public at the hearing on August 16th and to evaluative as having impacts that cannot be mitigated.

Another rather pertinent CEQA related concern, as was requested to be brought forth by "interested individuals" in response letters regarding the CEQA scoping meeting held on August 16th, 2010, brings about Water Code § 13241. While the Region 3 Water Quality Control Board *does* follow § 13242 in that an implementation plan must contain a description of the nature of specific action that are needed to achieve the water quality objectives, a time schedule, and a plan for monitoring compliance, they *do not* follow 13241, which states that statutory considerations are set forth that must be considered when establishing water quality objectives –

- **Past, present, and probable future beneficial uses of water**
- Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto
- Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area
- **Economic considerations**
- The need to develop and use recycled water.

Economic considerations

As stated in the letter dated March 1, 2010 from James W. Bogart President & General Counsel, the Grower-Shipper Association of Central California has reviewed the "Preliminary Draft Staff Recommendations for an Agricultural Order" prepared by the Central Coast Regional Water Quality Control Board staff (hereafter referred to as "Staff") dated February 1, 2010. Please review and response to the issues raised in this letter. As acknowledged in the document, this region is one of the largest agricultural regions in the U.S., "reflecting a gross production value of more than six billion dollars in 2008, contributing 14 percent of California's agricultural economy." On behalf of our more than 300 members throughout the Central Coast we are writing to express our immense concern with this proposed document, specifically with the economic consequences that are sure to follow if it is implemented.

Due to the short time frame, we were unable to conduct a statistically relevant survey of our members to determine the economic costs of implementing the draft waiver as proposed by staff. However, we have conducted surveys of growers throughout the seven counties to gauge the costs implementation on a per acre basis and determined costs to range from $354 to $445 for wine grapes and $250 to $916 for cool season vegetables per acre. Based on conversations with growers and a review of 2008 crop reports published by agricultural commissioner's in the seven affected counties we have determined costs for implementation by region. The numbers are staggering. For wine grape production the costs for the entire seven county region range from $36 Million to more than $45 Million. For cool season vegetables, the costs are a drastic $48 Million to more than $176 Million. After years of profit margin decline an agricultural waiver that costs industry hundreds of millions to implement has the potential to destroy numerous farms on the Central Coast.

After including these overlooked factors, not only will the Ag industry be adversely affected in a significant economic fashion, it is highly probable that entire commodities will fall vulnerable due to this imposition – in conflict with the Food & Agr. Code § 802 (a), Farmland Protection Policy Act, and the California Code of Regulations title 14, Appendix G, § II, regarding Agricultural resources. Castroville alone could stand to lose the ability to farm artichokes, when Castroville accounts for more than 80% of the world's artichoke production. An additional example of another specialty crop primarily in this region would be brussels sprouts. There are acres planted in coastal areas of San Mateo, Santa Cruz, and Monterey Counties of California, most of the United States production is in California.

In closing, it is urged that the board keep in mind the various possible conflicts that the staff's proposal could bring about in the New Order. An alternative proposal should be drafted to reflect the concerns with the adverse economic and environmental effect that these policy considerations that would likely be brought about by this New Order. The (new) New Order should be drawn with heed to the dozens of competent, relevant and meaningful responses to the February 1, 2010 Preliminary Draft Staff Recommendations, with special consideration spent on:

- Preliminary Alternative Agricultural Proposal provided by the California Farm Bureau Federation, April 1, 2010 Group 1, FB6
- Somach, Simmons & Dunn, April 1, 2010 Group 4, A21
- Central Coast Agriculture Water Quality Coalition, Group 4, A24
- Western Growers, April 17, 2010 Group 13, A29
- Best, Best & Kreiger, March 31, 2010 Group 4, FB6
- William Elliot, dated April 1, 2010, Group 6 F47

After considerable effort has been made in the preparation of these responses containing possible alternative plans as well as various areas of concern, be they economic or environmental, as well as possible conflict with local, state and federal laws that would be brought about in the adoption of the staff recommendations. The production of these letters should not be in vain, they should be read, reviewed, and responded to as according to CEQA, Porter-Cologne, and the California Code of Regulations, in order to form a more reasonable, attainable, and feasible water quality management plan.

Sincerely

Darlene Din

cc: Russell M. Jefferies Vice Chair
Monica S. Hunter, Board Member
Gary C. Shallcross, Board Member
David T. Hodgin, Board Member
John H. Hayashi, Board Member