



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
*Acting Secretary for
Environmental Protection*

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Edmund G. Brown Jr.
Governor

Draft Agricultural Order

Public Comments

for
March 17, 2011 Board Meeting

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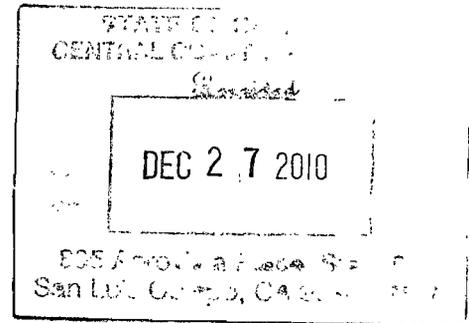
P.O.Box 56
Salinas, CA 93308
Phone: (831) 384-1300 Fax: (831) 422-0755

December 23, 2010

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

RE: Comments on Ag Waiver Order

Dear Chairman Young:



It is very demoralizing to be writing you today regarding the Staffs' Draft of the Conditional Waiver of Discharges from Irrigated Agricultural Lands for Region 3. I previously wrote to you informing you that we were appalled at the recommendations of the Region 3 Staff and take it as a personal jab against our family and our operation.

In addition to myself, April England-Mackie, our Food Safety and Water Quality Manager has been involved in the Ag Waiver process and has been working diligently with the Ag Working Group in developing a proposed industry document that we term the "Ag Alternative Waiver".

Part of the successes of our business as well as other agriculture businesses in the area is that we stay abreast and flexible to change within our industry and in our operation. We understand the need for changes and improvements, but most often these tweaks are exactly that, "tweaks" not leaps. I highly encourage you and your Board to review the Ag Alternative Waiver that has been created regarding this process and consider the robust industry-wide changes being proposed by the ag industry rather than the "inconsistent, arbitrary leaps" that are being dictated by Region 3 Staff.

I am listing some examples of only a few of the issues that as a grower such as I will NOT be able to comply with in regards to staff's proposal. Below in red are selected details put forth by the Ag Working Group in the "Ag Alternative Waiver".

- 1) A huge concern we have is regarding the multiple references in the document to riparian area, wetland habitat and buffers. These are NOT in the jurisdiction of the Regional Water Quality Control Board and we are already heavily regulated by the Department of Fish and Game, US Fish and Wildlife Services, the Leafy Greens Marketing Agreement, and other such agencies. There are heavy regulations already in these areas and the

proposed rules in the new-ag waiver do NOT provide any scientific proof that they would provide any benefit to water quality.

Agriculture's Alternative Proposal instead brings research, technology, and people with a strong agronomy and/or farming background together to make appropriate recommendations to growers on management practices with will ACTUALLY CONTRIBUTE TO WATER QUALITY IMPROVEMENT. Let the regulators that already oversee these processes continue to do their jobs within their own jurisdictions and allow a Coalition(s) to work with strong science as their baseline.

- 2) We are heavily concerned with the enforcement aspect of the new waiver. It was evident from the prior years that the RWQCB was unable to staff itself with personnel with an understanding of agriculture or delegate the time to staff to actually regulate the process. It is extremely unfair to "threaten" regulation, ask growers to comply and pay money into an inadequately maintained process (including a mismanaged database) as well as conduct actual regulatory procedures. The economics of this entire process do not make a bit of sense, especially now in the troubled economic climate of our nation, state and industry.

The Ag Alternative includes the Coalition Concept and allows for random audits of priority areas so that resources are spent in productive ways to define issues of importance, challenges and forge an understanding of solutions available to a grower. A grower's investment in the Coalition system will do much more to benefit water quality than any of the requirements set forth in staff's proposal will.

- 3) Large investments have been made by the industry over the past five years by investing into the monitoring program that Preservation, Inc. conducts. It has been scientifically proven that 10 years worth of data is just the STARTING point of a valid set of water quality data. Why change this, discourage this or re-invent the program and procedures. There is no need!

The Ag Alternative includes continuation the current monitoring program with some updates based on our findings over the past five years. On-Farm Sampling will be suggested to the grower so that they have a strong understanding of their water quality situation. These sample tests will be kept in the Farm Plan.

- 4) One of the most bothersome portions of the staff proposal is the submission of a grower's Farm Water Quality Plan. Any type of farming data that becomes PUBLIC RECORD IS RIDICULOUS! Even though we as growers work together within our industry groups to protect agriculture, we each have our own "recipe" for success in order to maintain our competitive edge. If we were required to submit information regarding our day to day farming practices to the public, it would kill the industry, eliminating the entire structure of agriculture on the Central Coast. There is a portion in the ag-waiver requiring a nutrient management plan to be prepared and approved by and Certified Crop Advisor

(CCA). I pose this question for you; do you know how many CCA's are qualified to prepare something like this in the state or our region? Hardly any!

The Ag Alternative states that Proprietary Nutrient Management Plan (NMP) will be kept in the Farm Plan and will be a portion of the audit process. The Coalition(s) will likely have a committee of growers, agronomists and researchers that work together to help growers understand how to fill out, update and remain consistent with their NMP. That activity alone will do more to protect water quality on the Central Coast than any number of mandated, reported well tests will ever do.

- 5) Regulations regarding pesticide application buffers and requirements are onerous and already exist through the regulatory channels of the Department of Pesticide Regulations and safeguarded by the County Ag Commissioner. This entire section of the Staff's draft is redundant to existing regulations.

Audits under the Coalition(s) will likely focus on Chlorpyrifos and Diazinon use on acreage with irrigated water runoff to dovetail with current DPR and County Agricultural Commissioner jurisdiction. This is meant to help educate growers, not confuse the jurisdictions of current regulation.

- 6) Lastly, the most ridiculous "concept" in the Staff's version is regarding the "conceptual plan for groundwater monitoring"; the timelines associated with elimination of irrigation runoff and the sediment and turbidity standards. Are they for real? The timeline proposed is preposterous; not containing any scientific reasoning behind it and creating a no-win situation for the industry and fostering a negative image that will be placed on the RWQCB when these standards cannot be achieved. Then, the RWQCB will be charged with the truth that they have literally flushed the leading industry out of the Central Coast.

The Ag Alternative creates a start with the coalition approach in resolving issues on a watershed level which is a much more achievable concept. Additionally, it focuses resources on groundwater education in the Coalition, as well as proposing a groundwater quality data review of historical data, annual groundwater sampling by dischargers, a farm plan that includes a Proprietary Nutrient Management Plan, and a commitment by agriculture to work with other stakeholder groups on the SWRCB Ground Water Basin Management Planning process through 2017.

It will be absurd if the RWQCB and the State Board approve the document that is presented by the Staff because it will directly affect an industry and a way of life that has been providing healthy, wholesome, safe food for multiple generations. The rules and regulations that are proposed will literally run farmers and ranchers out of business in this state; creating fallow ground which will further increase any sedimentation issues that exist and create a loss of tax revenue to the state of California and our local communities.

The Ag Alternative was created by many educated and qualified individuals who deal with the day-in and day-out details of farming, agriculture and stewardship of the land. It was developed as a realistic approach to improving water quality and the Ag Discharge Waiver in which farmers and landowners within Region 3 to which we can comply.

I challenge you to:

- 1) Adopt the Ag Alternative.
- 2) Analyze the "STAFF" at the Region 3 Water Quality Control Board. Any regulator or staff member, who does not understand that agriculturalists have maintained stewardship of the land to the best of their ability utilizing the best science and technology for multiple generations, deserves to STARVE!

We look forward to collaborating with you in finding a workable Ag Waiver. There is most likely no PERFECT solution however utilizing economics, science and reality the Ag Alternative is the closest solution to addressing Agriculture's portion of the water quality concerns on the Central Coast. I wish you the best of luck with making the best and difficult decision and we really hope that you will be able to enjoy the fresh fruits, vegetables, meats and flowers that California producers pride themselves in producing; or else, enjoy it from lightly regulated countries such as Mexico or China!

Thank you for your time on this matter,



Benny Jefferson
Owner/Farm Manager



April England-Mackie
Food Safety, Water Quality and Organic Products Manager



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
*Secretary for
Environmental Protection*

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Edmund G. Brown Jr.
Governor

Public Comments to

Draft Agricultural Order, released 11/19/2010

12: Form Letter - this letter was received from the following 52 individuals:

Name	Date Received
Becky Barlogio	2/23/2010
Bernard Horton	2/29/2010
Brian Driscoll	1/03/2011
Bryan Gresser	1/03/2011
Caitlin Lewis-Soto	2/30/2010
Colby Rubbo	2/27/2010
Cynthia Mathiesen	2/28/2010
Dane Scurich	2/30/2010
Dee Anna Schrefler	2/20/2010
Dennis Lebow	1/03/2011
Dirk Giannini	1/03/2011
Ed Van Wingerden	2/30/2010
Gary Black	1/03/2011
Gordon Bennett	1/03/2011
Jackie Crabb	1/03/2011
Jeff Lundberg	1/03/2011
Jennifer Clarke	2/27/2010
John Eiskamp	2/29/2010
John Falcone	2/31/2010
June Van Wingerden	2/29/2010
La Hacienda Farms	1/03/2011
Lawrence Ricca	1/03/2011
Los Altos Farms	1/03/2011
Lynn Miller	1/02/2011
Manuel Mercado	2/30/2010
Mark Teixeira	2/31/2010
Mistie Bainer	2/29/3010
Mitchella Winery	1/03/2011
Nancy Kawaguchi	1/03/2011
Neil Panziera	1/03/2011
Nick Guriel	1/01/2011
Norm Groot	2/22/2010
Olivia Gonzales	2/30/2010
Paul Van Leer	2/22/2010
Ptarmigan Berry	1/03/2011
Rancho Paraiso	1/03/2011
Ric Fuller	2/29/2011

Robdon Properties, LLC.	1/03/2011
Robert Silva	2/30/2010
Robert Wegis	1/03/2011
Ryan Hoffman	1/03/2011
Sam Frye	2/22/2010
Sandy Jekel	2/29/2010
Steve Arnold	2/29/2010
Steve Garrett	2/31/2010
Steve Gill	2/29/2010
Teri Bontrager	2/23/2010
Thomas Gibbons	2.23.2010
Tim Borel	2/31/2010
Tim Frahm	2/29/2010
Tom Ikeda	1/02/2011
Tom Nunes	12/31/2010

From: <tng2155@aol.com>
To: <aschroeter@waterboards.ca.gov>
Date: 12/23/2010 9:18 AM
Subject: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Thomas Gibbons
Production Manager
3918 Silver Leaf Drive
Santa Maria, CA 93455-3245

December 23, 2010

Angela Schroeter
Agricultural Regulatory Program Manager
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Ste 101
San Luis Obispo, CA 93401-7906

Dear Ms Schroeter:

I have been following the progress of this Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with staff's draft Ag Order.

The draft Ag Order will negatively impact my ability to continue producing. The draft Ag Order contains many undefined and potentially highly impractical requirements for agricultural operations.

The threshold of 1,000 acres for inclusion in the Tier 3 level is too generic and does not provide enough flexibility for situations unique to agricultural tenant practices.

The appeal process to be removed from Tier 2 or Tier 3 is undefined and has no clear time frame for decision. For example, a farmer who has no discharge into any 303(d) waterbody and does not apply the chemicals listed in the order would be classified as Tier 3 if their land is within the 1,000 feet setback specified from that waterbody.

There is no science developed to support the assertion that nitrate levels can be reduced to a compliance level within a 4 year time frame. Most tile drains were installed decades ago and many current landowners and tenants may not be aware of their exact location and flow rates; unless specific science is developed to confirm that nitrate loads can be reduced through a best management practice, this time frame is arbitrary.

There is no mention of any geology or soil types related to well nitrate loads or groundwater percolation. Water tables are generally fluid in nature and water percolating from one farm may not directly attribute to the underlying water table nitrate load.

Baseline legacy nitrates are not defined or known. Baseline legacy nitrate loads are necessary prior to measuring possible nitrate loads from farming practices. Further, differing soil types, percolate rates, water table levels, and manner of surface nitrate irrigation application must be

considered prior to determining possible nitrate loads due to farming practices.

The draft Ag Order does not include any incentives for growers to participate in water quality best management practices; the language seems punitive towards growers and does not provide incentives to participate in additional BMP, monitoring, or load reduction activities.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

Thomas N. Gibbons
805-331-4398
Production Manager

From: <jclarke@steinbeckproduce.com>
To: <agorder@waterboards.ca.gov>
Date: 12/27/2010 11:28 AM
Subject: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Jennifer Clarke
18939 Vierra Canyon Rd.
Prunedale, CA 93907-1343

December 27, 2010

Jeffery Young
Chairman of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Dear Mr. Young:

I am writing to you to voice my concern with the Central Coast Regional Water Quality Control Board's proposed Ag Order. It is disappointing to have witnessed a process that has been so hostile towards Agriculture when California's income and success rests on the success of Agriculture in this State. It is clear that these proposed rules are completely unrealistic, unworkable, and burdensome for the agricultural industry. I believe that these new rules would add major costs to all agricultural operations without benefiting water quality.

The health of the land we farm, the water we use, and the environment that we live and work in has always been a priority in the farming community as a whole. If the proposed Ag Order is adopted as it is currently written many productive farm acres will be lost along the central coast and growers will be forced to change practices and spend money on monitoring and reporting that will have no impact on improving water quality. This will equate to a loss of yield, revenue, and eventually a loss of jobs in our Central Coast communities.

I am in strong support of the Ag Alternative Draft Waiver submitted on December 3, 2010. I believe that to truly improve water quality we must work with researchers and the UC Davis Agricultural Cooperative Extension to utilize the newest technologies. It is with science and research that we will best be able to find practices that work to improve water quality without harming the viability of Agriculture.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

Jennifer Clarke



BEST BEST & KRIEGER
ATTORNEYS AT LAW

William J. Thomas
(916) 551-2858
William.Thomas@bbklaw.com

400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Phone: (916) 325-4000
Fax: (916) 325-4010
bbklaw.com

December 28, 2010

Howard Kolb, Agricultural Order Project Lead Staff
Lisa McCann, Supervisor, Watershed Planning & Protection Section
Roger Briggs, Executive Officer
Jeffrey Young, Chairman
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

Re: Central Coast Ag Waiver - Comments on Behalf of Ocean Mist Farms and RC Farms in
Response to Staff Proposal

Dear Mr. Kolb, Ms. McCann, Mr. Briggs and Chairman Young:

The following comments are advanced by Ocean Mist Farms and RC Farms, leading artichoke and vegetable farmers in Monterey and neighboring counties within the Central Coast Region 3. Ocean Mist Farms and RC Farms and their related operations are major farm operations based in the Salinas/Watsonville areas and hereby submit the following comments to the Central Coast Regional Board concerning draft amendments to the agricultural waiver ("ag waiver") proposed by Central Coast Regional Board ("Regional Board") staff. The farming operations identified above have actively participated in efforts to improve water quality in the region during the course of the existing ag waiver. They have participated in regional monitoring programs as well as on-the-farm management practices to improve water quality and, more recently, in the collaborative effort to develop a reasonable and practical amendment to the ag waiver. These efforts have led to the development of reasonable and practical general amendments to the ag waiver known as the "ag alternative" which has been submitted to the Regional Board staff, and is believed to be a superior alternative.

The Central Coast staff draft waiver is a very lengthy document. It contains a notice and a staff report of 43 pages, the proposed waiver and findings of 87 pages (Appendix A), Monitoring Requirements (Appendix B), Milestone Time Schedule (Appendix C), Options (Appendix D), Response to Comments (Appendix E), Economic Analysis (Appendix F), Water Quality Conditions (Appendix G), CEQA Analysis (Appendix H), Background (Appendix I), and References (Appendix J), for a total of 490 pages, or two reams of paper.

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The Order, Findings and MRP alone exceed 110 pages, containing 173 findings, 9 pages of Water Quality Standards, 147 terms and conditions along with 67 definitions. The documents also include 10 tables, including a list of Impaired Water Bodies, the newly advanced Nitrate Hazard Index Rating; Ground Water and Surface Water Monitoring Parameters and an incredibly aggressive Time Schedule of Milestone Compliance Dates.

These extensive materials contain totally new regulatory concepts which make complete understanding difficult and the ability to focus comments nearly impossible. At this point, Ocean Mist Farms and RC Farms respond principally to the staff draft waiver itself (Section I) and the monitoring and reporting portions of the proposed regulatory package. Section II raises legal problems associated with the staff proposal and Section III briefly comments on the unquestionably superior alternative recently advanced by the agricultural community.

I. Response to Staff Draft

1. The proposed waiver covers all irrigated lands growing commercial crops and expressly addresses all tail water discharges to surface waters or to groundwater, including tile drains and storm water. The expansion of this waiver to commence the regulation of tile drains is very problematic to our operations.

Tile drains are widely used to remove excessive and problem water from the crop root zone. The drains have been relied on by California agriculture for decades and have been responsible to make otherwise unproductive areas productive. Restricting the use of the tile drains would limit the productivity of land where they are used and likely require significant land to be taken out of production altogether. The Regional Board's authority covers the issue of water quality not the control of irrigation infrastructure improvements.

Tile drains are absolutely required for much of California agriculture. To restrict tile drains would not just eliminate agricultural productivity on an immediate basis, but could also render the farm land virtually unproductive and worthless forever. Instead of trying to regulate tile drains and thereby taking this land out of production, the Regional Boards, universities and agriculture should collectively focus research on how to effectively reclaim tile drainage for particular uses.

2. The staff draft inadequately recognizes the importance of the region's agriculture and the limits on what individual farmers can actually control.

The Regional Board's waiver should expressly recognize the importance of agriculture as the dominant and most important economic engine in the region and that these extensive regulatory efforts to control irrigation and drain water constitutes a major undertaking. The Board should further recognize that reasonable phase-in periods and a high level of coordination and cooperation between the agriculture community and the Regional Board is necessary to facilitate effective waiver implementation.

The Regional Board must recognize that farm operators only have the capacity to deal with their own operational inputs or influences on water. Agriculture receives its irrigation water from different

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sources, some of which enter farm properties with impairments. The Regional Board must further recognize the importance of tile drainage, particularly in certain areas of this region with historically high water tables, salt build-up, or salt water intrusion and the landmark efforts which have been employed around the mouth of the Salinas River where agriculture has effectively taken urban reclaimed water and, through irrigation, improves that water quality from the point at which it is received to the point that it is discharged.

3. All commercial farm operations will have to file a new NOI (Notice of Intent) to operate consistent with the waiver requirements within 30 days of adoption. These extensive NOIs will, among other purposes, attempt to characterize our farm operations and thereby place our total farm lands into one of three "Tiers" based on four factors which are alleged to determine water quality risk. This new regulatory system and these four factors are of particular concern as these criteria involve 1) size of operation (i.e., 1000 acres), 2) crop types, 3) proximity to 303d listed water courses (i.e., 1000 feet), and 4) whether we use chlorpyrifos or diazinon. (¶¶ 9-16)

A. Even though the waiver advances the notion that "good farmers" could qualify for Tier 1 (¶ 10) and therefore have only moderate regulatory interference to their operations, the criteria are actually set up to make this a false premise as all farms which are over 1,000 acres or if they need to use the important organophosphate pesticides (i.e., chlorpyrifos or diazinon), or if they are within 1000 feet of a 303d listed watercourse, they are thrust into Tier 3. The tiering structure is therefore arbitrary, and results in the region's most significant farm operations having to determine if they can possibly comply with these regulatory restrictions or if they must bifurcate their operations and accept the risk of unabated pestilence. (¶¶ 9-16)

B. We submit that merely the size of the farm operation and the use of certain individual pest control agents should not automatically subject the farm to the unprecedentedly strict Tier 3 regulatory regime. Mere acres or use of a particular agricultural management product does not necessarily equate to a discharge problem. The regulatory criteria should instead focus on identified discharge problems. The larger sized operations may actually increase a farm operation's ability to implement management strategies to eliminate or control discharge. Similarly, good farm practices coupled with irrigation controls can avoid problems even if a large farm responsibly relies on chlorpyrifos, diazinon or any other crop protection pesticide.

C. The regulatory impact of these regulations should therefore focus on properties offering drainage problems – not on all operations merely selected by size or the use of certain management tools, which farms may actually not be responsible for problems. Similarly, the waiver imposes its impacting regulatory burdens on entire categories of crops, several of which we produce (i.e., cole crops, lettuce) without any specific information linking our particular crops to creating water quality problems.

D. One of the major factors which the Regional Board seeks in the NOI is to determine which tier of regulation would be advanced on that property is whether the property controls pests by use of chlorpyrifos or diazinon. Most of the staff alternative in dealing with pesticides focuses exclusively on organophosphate pesticides, chlorpyrifos and diazinon. The draft waiver seems to totally

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lose sight of the fact that if pests cannot be controlled by one of these organophosphate pesticides, alternative pesticides will have to be used. Many alternatives are themselves toxic at low dosage and may also result in sediment toxicity, which has been particularly problematic to some sensitive aquatic species. The Regional Board has not yet recognized what the Department of Pesticide Regulation fully understands. When you target regulations on a particular pesticide, it will shift utilization to other products which may have equal or different toxic results. Consequently, this waiver is over-simplified and does not come to grips with the reality of pesticide shifting.

E. This arbitrary tier system as advanced does not allow a farmer to identify those portions of his operations that a) do not discharge at all, b) may discharge, but does not contribute to exceedance issues, and c) may have the potential of contributing to water quality issues. (¶ 8) This is a major shortcoming of this staff draft, and needs to be modified. A farm operation should be able to respond in the NOI such as to identify specific farms or portions of such farms which (1) do not have a potential to drain to waters of the state, (2) are not within 1000 feet (if maintained as a program standard) of an impaired watercourse, or (3) do not use specified chemicals (if this remains a program element).

F. Paragraphs 50c and 53 allow farmers to identify their specific tiers, but, as pointed out above, this appears to be a single tier for all one's lands; however, ¶ 81 allows farmers to "split" their lands for the specific purpose of nitrate risk. This same opportunity should also be available for tier (i.e., risk) classification.

G. The severe Tier 3 factors (i.e., 1000 feet to impaired waters and 1000 acres) are not only arbitrary they have no direct bearing on water quality and, moreover, they are factors over which a farmer cannot control or change so as to either improve water quality or to attain regulatory relief. The general reference to the 1000 feet from a 303d listing is too broad. It should be narrowed to only those water bodies listed for pesticides or nitrates.

H. These extensive regulatory impairments are so impacting to Tier 3 lands that those farmers will seriously consider applying for an individual WDR rather than be subject to this extreme regulatory program. The Regional Board cannot administer these programs with all farmers individually dealing with the Board, therefore the waiver program must be reasonable.

4. The staff waiver directs this regulatory program to apply both the landowner and the annual lessee (described as the operator). (¶ 52) The ultimate legal responsibility lies with the landowner, and the Regional Board's enforcement capacity is limited to the discharging landowner. Therefore, landowners should be the target of the waiver. It offers no problem to clarify that the target is the landowner as the landowner is expressly responsible to have his lessee compliant with the waiver requirements. (¶¶ 8 and 15) It is also the landowner that can make the major improvement, such as the construction of retention / recirculation systems, cap abandoned wells, etc. Splitting this responsibility raises confusion and creates an opportunity for people to point to the other as the real responsible party.

5. The proposed staff waiver requires farmers to have 15 hours of water quality education within the first 18 months. (¶¶ 75-77) We have no objection to this requirement.

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6. The proposed waiver also requires each farm to have an individual farm water management plan identifying the implementation of management practices in five areas: 1) irrigation management, 2) pesticide management, 3) nutrient management, 4) sediment control, and 6) aquatic habitat protection. (¶¶ 73-74) These are the correct areas of focus.

A. The pesticide management component of these proposed farm plans will be greatly enhanced as soon as the California Department of Pesticide Regulation (DPR) (having exclusive jurisdiction over pesticides as set forth below) completes both 1) the chlorpyrifos risk assessment which will soon be finalized and 2) when they conclude the promulgation of their new regulations designed to protect the state's water from pesticide use and discharge problems. (These important DPR actions are referenced in ¶ 62.) Until these major regulatory features are soon completed, these pesticide plans should focus on proper and limited use in accordance with Integrated Pest Management (IPM) principles.

1. Pesticides are regulated by DPR. (Food & Agr. Code, § 11454.) Among DPR's purposes are (1) protecting public health and safety; (2) protecting the environment; (3) assuring that pesticides are properly labeled; and (4) encouraging the implementation of biological and cultural pest control techniques when appropriate. (Food & Agr. Code, § 1502.) The California Legislature has expressly declared that, "matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration." (Stats. 1984, ch. 1386.)

The Central Coast Water Board is not vested with the authority to regulate or restrict pesticide use. As the Food and Agriculture Code indicates, the DPR is vested with the authority to regulate and restrict the use of pesticides in California. The Central Coast Water Board's authority is limited to matters that pertain to water quality. (Wat. Code, § 13225.) It does not include the authority to direct growers with regard to pesticide applications.

B. The irrigation management component of the farm plans is an important feature as in other regions it has been demonstrated that controlling the discharge is perhaps the most effective means to control harmful discharges – more than regulating farm inputs.

C. Sediment control is also of importance mostly to address pesticide residue discharges (particularly pyrethroids), however, this draft waiver is overly focused on the O-P pesticides, chlorpyrifos and diazinon. The staff draft waiver's efforts to discourage the use of these two O-P pesticides will automatically shift usage to other chemistries which may likely direct water quality toxicity impacts in sediments. These simplified regulatory approaches often have these types of unintended consequences.

D. We point out that there is not a lot of detail in the draft waiver as to the actual content of these components of the farm plans, and the Regional staff should work with the ag community and university in developing these components of the farm plans. (¶ 73)

7. Growers are compelled to select either individual farm monitoring or participate in a regional cooperative monitoring program. (¶ 45) Our past experience with this Region's and other water

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monitoring efforts throughout the state compels our support of an organized region-wide monitoring program. Only thereby do we get the benefit of a region-wide data set which allows the assessment of the actual watercourses as well as allowing the tracking back to identify the source of any problems. A scatter data set taken and input by individual farmers in accordance with inconsistent monitoring protocols will not assess the watercourse, will not be part of a disciplined monitoring database, and will not be scientifically useful. This concern also relates to the unreasonable requirement that all Tier 3 farms would be required to do on-farm monitoring.

8. As to the groundwater protection components of the proposed waiver, we understand the provisions concerning well casings, back flow prevention, and abandoned wells. These provisions, however, must only attach to the landowner. Therefore, this entire waiver should be limited to directly regulating the landowner. (¶ 64)

9. The proposed nitrogen application limits per crop type raise significant legal issues. The Regional Board's authority commences at the discharge point, and the Regional Board getting "into the field" to dictate specific elements of the farm's management practices raises both jurisdictional authority, and legal issues. The Regional Boards cannot tell PGE how to run a utility or Chevron how to operate a refinery – only what and how much they can discharge. The same is true and of even greater importance relative to the region's agriculture. The extensive provisions as to nitrate controls (¶¶ 79-91) are extreme and will significantly impede farmers management and crop performance.

A. In that the Regional Board's jurisdiction commences only when there has been a discharge to waters of the state (a more difficult premise as to groundwater than it is as to surface water), the Regional Board must offer some supportable authority on where that discharge point occurs for purposes of this regulation. Clearly, the position advanced in ¶ 31 that the quality of water is measured at where irrigation water enters the ground is legally and factually incorrect. This issue is important, generally, but also has direct bearing on the proposed requirement that irrigation containment structures must take steps to avoid percolation to groundwater. The Board has been focused on growers controlling field discharge and to specifically protect surface water. Therefore, these types of management practices (containment, ponds, berms, etc.) are encouraged, and should not now be discouraged by this waiver provision. The waiver should not be inconsistent within itself. Therefore, clarity must be provided to growers on this jurisdictional issue, and this particular feature should be eliminated. (¶ 34)

B. In dealing with groundwater, ¶40, indicates that Tier 3 farms would be required to sample their domestic and agricultural wells. This, as discussed further below, is significant enough, however, there is another provision suggesting that dischargers may be compelled to supply alternative drinking water to those relying on groundwater with high nitrates. This is wholly beyond the appropriate scope of the waiver. Such a remedy would only be appropriate by an enforcement action.

C. This provision which threatens growers by stating that the Central Coast Water Board may require growers to provide alternative water supplies pursuant to Water Code section 13304. Regulatory authority for such action is, however, lacking. How would the Central Coast Water Board require growers to provide alternative water supplies? Water Code section 13304 is an enforcement mechanism which allows regional boards to issue Cleanup and Abatement Orders. Only by use of a

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Cleanup and Abatement Order, may a regional board require replacement water to be provided. To issue a Cleanup and Abatement Order, however, the Central Coast Water Board will need to provide substantial evidence that the grower in question was directly causing the condition of pollution or nuisance. It is not an authority that the Central Coast Water Board may use without appropriate due process, and is not to be a part of a regulatory notice. It is an exclusively enforcement action.

It could also be ordered per a court order, but only after full factual evidence hearing showing that there is a water quality exceedance, proving a direct relationship by the particular discharger's actions, and a direct connection to the specific aquifer utilized by the domestic user.

10. The staff draft is confusing and inconsistent as in some places increased regulation is imposed, where a farm is within "1000 feet of a listed waterway" and at other points does so when it is "adjacent to" an impaired waterway. ¶¶ 92, 93)

11. Paragraph 44 requires all three tiers to monitor both their domestic and ag wells and to target those with the greatest risk and highest nitrate loads. Domestic wells are within the authority of local communities and public health authorities. This is an agricultural order and should focus on ag wells.

12. Paragraphs 48 and 96 require Tier 3 farms to engage individual discharge monitoring. This is not only a severe and impacting requirement – without prior precedence, it is intentionally slipped in this paragraph at the end of Part D, which predominantly deals with groundwater. The cooperative monitoring program will be more than sufficient to identify where problems exist and inform as to the source of problems. Therefore, it is unnecessary to selectively impose this extreme and burdensome obligation on the region's most significant farms.

A. In regards to monitoring, and as stated above, we embrace Regional monitoring, but have concerns as to requiring Tier 3 farmers to monitor at least 80% of their farm discharges twice during the irrigation season and once during the storm water season is required by the MRP. Also, tail water ponds would have to be monitored four times per year, which is excessive. (MRP, P II A 6) The reference to 80% of discharge makes no sense. It should be changed to require only “monitor a representative sample of drainage.”

B. There are several concerns as to the monitoring requirements of the MRP, and we fully support and reference hereby the testimony submittal of Preservation, Inc. submitted to Chairman Young on August 27, 2010 which remain relevant as to this staff draft.

13. We also note the importance of tile drains and tail water ponds to much of the region's agriculture, and suggest that such importance be acknowledged in the waiver. Moreover, the waiver needs to not only recognize, but be sure not to impact the region's important water reclamation projects involving the use and cleansing of recycled urban water. The use of recycled water has reached widespread acclaim from municipal users, regulators, environmentalists, and those interested in water conservation and reuse. For purposes of this discussion, agriculture in Monterey County has taken low quality municipal discharges that would otherwise have gone directly into the ocean and have used them

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for irrigation and improved the quality of the water as it returns to the environment. Consequently, not only are we 1) conserving water, 2) reusing water, and 3) taking problem discharges from municipalities, but we are discharging far cleaner water than what would have been discharged by the municipalities. It is for those reasons that these programs have reached widespread acclaim.

The Regional staff proposal must take care not to impact these programs. California Water Code section 13241(F) expressly encourages the use of recycled water. This staff proposal could put this highly acclaimed water re-use program in jeopardy.

14. Paragraph 58 requires monitoring data to be submitted by a state registered engineer or similar licensee. This is improper and needless as there are many qualified water managers and others who, in accordance with specified protocols, can reliably monitor, report and analyze data.

15. As to the monitoring and reporting provisions, we have reservations as to requiring Tier 3 (most all of the Region's significant operations) farms to also impose individual monitoring of nutrients and to impose a nitrate standard of 1 mg/l which is tenfold less than the national drinking water standard. Likewise, the four-year time line to achieve such new standard is unreasonable.

16. Table 2 advances a completely new nitrate loading risk factor criteria based on specific crops, specific irrigation systems and irrigation water nitrate concentration ratings. The table references the UC Riverside Nitrate Hazard Index as the basis for the criteria.

First, the table has added a criterion that was not part of the original index, the irrigation water nitrate concentration rating. There is no reference or data justifying the addition of this criterion.

Second, the table has omitted a criterion that was part of the original index, a soil type rating. The omission of this factor is indicative of a lack of knowledge about the critical fact that soil texture and clay content play a very important role in affecting hydraulic conductivity and denitrification, factors that significantly affect nitrate movement and availability in the soil profile. There is no reference or data justifying the omission of this criterion.

Third, the hazard index is not based on a comprehensive data set. A single 3 year study in the Eastern San Joaquin Valley is the "supporting document" that the model is validated. This limited data set is not comparable to the variability of soils, topography, hydro geologic properties, cropping patterns, and climate of the Central Coast of California.

Fourth, other key factors affecting nitrate movement have been ignored in the development of this approach. The variable slope of the irrigated lands in some areas of the Central Coast which is a critical factor influencing water and sediment run-off is not mentioned. The total amount of irrigation water used during the entire growing season is another critical factor influencing nitrate movement that is omitted.

The proposed nitrate loading risk factor criteria are a poorly devised, over simplified, and non data validated model. It is based on an old model that was never validated and then has been modified without reference to supporting data.

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Further, this approach is not predicated on actual risk presented by a particular property (which may not actually be discharging), but is merely converting a new academic formula into a severe regulation. (See also Section 16, below)

17. The waiver has several provisions relative to aquatic habitat, riparian areas, and vegetative cover. We recognize that vegetative buffers have importance in controlling residue run off. We therefore have had concerns relative to the food-safety restrictions which have resulted in the mandated removal of vegetation from many of these buffer areas. We therefore do not challenge reasonable efforts to provide such effective buffers. We stress, however, that this Board does not have the authority to compel what a farmer plants in any particular area of his farm, therefore, this waiver must be amended to reward and encourage such buffer vegetation rather than trying to regulatorily compel it of farmers. (¶¶ 25, 66-68, 92-94) This Regional Board must understand the dominant influence produce wholesalers and retailers have over agricultural production.

The attempt to exercise land use authority and crop control authority by mandating what growers must grow in certain locations of their fields is illegal. The Regional Board has no authority to require certain vegetation to be planted in certain areas, or to compel the removal of certain vegetation.

A. There is no question that regulatory efforts can occasionally result in unintended consequences, and it sometimes takes a year or two for things to come into balance. Some buyers in the produce industry sought to control how produce growers grow their commodities, and, in reaction to the leafy green public health issue, required in some locations a “clean farm” order of management. This is not something that production agriculture has brought on itself. This situation now seems to be coming back into balance. There may, however, be some legitimate water quality issues resulting from this situation, but they appear temporary in nature. However, this does not give the Regional Board jurisdiction to become a land use agency. Other regulators such as Department of Fish and Game, Fish and Wildlife Service, County Planning Commissions, and Department of Food and Agriculture, all have some responsibilities in this area. These agencies would be attentive to water quality issues advanced by the Regional Board; however, nothing has changed the jurisdictional limitations of the Porter-Cologne statutes to make the Regional Board the agricultural or plant and wildlife agency, or to give them authority over production or land use.

B. The staff proposal attempts to turn this Board into the regional land use authority by requiring these 30 foot vegetative buffer zones not only raises legal liability issues, but would take tens of thousands of productive ground out of production. This would constitute a regulatory taking of private property and is well beyond the agency’s authority. Merely one argument as to the inappropriateness of the 30 foot vegetative buffer is that there is no requirement or guarantee that any of the irrigation run off water would even transit the buffer area. This alone clarifies that the staff is more interested in land control than improving water quality.

C. Further, the buffer restrictions advanced violate Water Code section 13360. Section 13360 prohibits the Central Coast Water Board from dictating the manner of compliance. In this case, the waiver proposes to set forth specific prescriptions for which growers would need to engage. As

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such, these specific vegetative buffer requirements dictate the manner of compliance and are not, therefore, lawful.

18. Commencing in ¶ 80 there are more than six pages of complex and severely imposing sets of regulatory obligations dealing with nitrate restrictions. These regulations require calculation of nitrate risk by crop, by irrigation system and water nitrates based on a university paper. Among the duties imposed (¶ 88) are nitrate uptake, nitrate needs of the crop, nitrate in the water and nitrate in the soil – all to calculate a supposed nitrate risk. Paragraph 88h also requires the monitoring of nitrate in tile drains, and ¶ 90 goes completely off the chart by requiring that in three years, farmers would be restricted in fertilization of their crop by imposition of "nitrogen balance" limits, which in annual crops would be 100% of the calculated crop needs, and in perennial crops 120%. (See also, prior discussion as to tile drains.)

A. The Nitrate Hazard Index is referenced as being a UC Riverside document, however, we do not seem to find it as a product of UCR. Further, if it is a University document it would be rare that it would be designed for or intended to be used for a regulatory purpose as UC materials are more often guidance documents that are intended to be used in concert with other "field" information. In this case, that would likely be soil conditions, compaction, depth, slope, etc. Therefore, turning this paper to a prescriptive enforceable regulation seems improper. Moreover, the University paper relies on three factors: crop, irrigation and soil information. This draft totally eliminated any reference to soil types/structure and instead inserted groundwater nitrate as a factor. This insertion is totally a product of the Regional Board staff and not a product of the University paper. Both the omission and the addition totally depart from this University paper.

B. The attempt to rely on this recently embraced nitrogen risk university paper to control the amount of fertilizer use is completely beyond the Board's authority. The simple formula advanced is an attempt to limit a farmer's management of his crops' nutrition is completely void of any consideration of soil types, soil compaction, or amount of organic material. Also, there is no consideration of the crop nutritional needs, or the differences as a result of microclimate or demand difference due to the growing season (there are large differences in crop demands from summer to winter).

19. The milestones advanced in the waiver are completely unrealistic. Agriculture cannot meet all water quality standards (pesticides in two years, sediment in three years). We, however, believe it is possible to reduce toxicity exceedances by 50% within four years and sediment toxicity by 20% in five years. (¶¶ 98-101)

The draft waiver also requires that within four years, Tier 3 dischargers must demonstrate that they are not causing or contributing to exceedances of water quality standards for nutrients and salts in surface waters of the state or of the United States. This could be read as inconsistent with Table 5 (page 38) which in relevant part clarifies that the farmer must "demonstrate that discharge (not including subsurface drainage to tile drains) is not causing or contributing to exceedances of nutrient water quality standards in the waters of the state."

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20. The economic analysis is hopelessly inadequate to capture the dramatic impact this staff alternative will have on the region's farms and the ripple effect throughout the region's communities. This inadequate economic analysis is insufficient for compliance with either the California Water Code or CEQA.

Table 4 advances only a few "conservation practices" and demonstrates that many of these practices will cost over \$1,000 per acre. The table, however, attempts to mitigate the costs by asserting a grower would have a net return by planting grass strips, grass roads, row crops, and underground outlets, etc. These are completely untrue and the additional costs are prohibitive.

Table 5 lists many additional management practices which would be mandated by the staff draft and any number of them would also run thousands of dollars per acre. Table 7 projects that a farmer's year-one cost would be \$71,000 to implement the prescribed management practices.

In Tables 9 and 10, the staff tries to justify such massive costs by comparing these new costs to the total ag gross value of crops in each county. This is a false analysis as gross value has no bearing on each farm's disposable profit.

Table 12 asserts that there are only 2,373 acres of farm ground within 50 feet of a watercourse. That seems very unlikely unless this is to apply to only a few major watercourses. Twenty-four hundred acres of important farm land is significant enough impact, however, this does not seem to square with the total of all of the 303d listed waterways which are the basis throughout the regulation. Simple math would indicate that such a 50 foot band of land would idle around 10,000 productive acres.

Finally, the chart on monitoring costs also seems to seriously undervalue the monitoring costs for virtually all significant farms (Tier 3) individually engaging surface and groundwater monitoring. It is believed this \$5 million figure is understated by several fold.

On balance, the economic analysis is inadequate and the evaluation of the major economic impact on the farms and the regional community are understated and unjustified.

II. Legal Impairments Related to the Staff Draft

1. California Environmental Quality Act (CEQA). Findings 29 through 31 of the staff draft regarding CEQA attempts to avoid any responsibility to do a complete environmental evaluation. This staff draft proposes to avoid a full CEQA and environmental analysis by utilizing the negative declaration process.

The staff draft alternative is by far the most rigorous and thereby regulatorily impacting program even advanced dealing with water quality. The Regional Board staff held a CEQA scoping hearing in San Luis Obispo where the public presented dozens of examples of how this alternative would have significant environmental impacts and economic impacts. There were only a few modest amendments made to that previous version to the staff draft, and in large part these changes increased the environmental impact rather than mitigated the environmental impact of this regulation.

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Clearly, therefore, the record does not support the position that the Regional Board can declare that this program would have a negative environmental impact. The Regional Board cannot casually take such a position merely because the far lesser regulation that was advanced some five years prior were subject only to the negative declaration (and those were never challenged) because this proposed waiver is of an entirely different level of environmental consequence.

Furthermore, when the existing waiver was originally promulgated and supported by a declaration of negative environmental impact other regional boards had used that same approach concerning their respective waivers. That is now no longer the case as the Central Valley Regional Board is engaging a full NEPA environmental review on amending its ag waiver even though all of the five alternatives being discussed do not even come close to the significant environmental impact advanced by this proposed Central Coast waiver.

Consequently, the Regional Board should pull back this proposed waiver and engage a proper environmental CEQA review with this alternative being one of the several considered alternatives.

2. The draft waiver includes discharge prohibitions that exceed relevant provisions in Porter-Cologne. Porter-Cologne provides that "[a] regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted." (Wat. Code, § 13243.) The Porter-Cologne waiver authority in Cal. Wat. Code § 13269 is, however, more narrow and does not authorize a regional board to do blanket prohibitions of discharges as part of a waiver.

The staff waiver draft also contains discharge prohibitions which are unlawful because they are outside the Central Coast Water Board's authority to regulate and protect water quality. Provisions such as those which would prohibit the use of fertilizers in excess of crop needs are without authority. The Water Board has no authority to dictate or control the amount of fertilizer used by any grower. The Central Coast Water Board also has no expertise to determine if fertilizer application is in fact in excess of crop needs, and no capability to administer such prohibition. The Central Coast Water Board is also attempting to control planting of vegetation which also exceeds the Central Coast Water Board's authority, and would constitute a regulatory taking.

3. The waiver proposes minimum riparian buffer widths of 30 feet and mandate that growers maintain vegetation in the buffer zones, and would prohibit the removal of vegetation undertaken to protect food safety. These aquatic habitat requirements are regulations that deprive agricultural landowners of the economic benefit of their private property. Deprivation in this manner constitutes a taking under the State and Federal Constitutions. (*See Penn Central Transp. Co. v. City of New York* (1978) 438 U.S. 104 and its subsequent series of cases.) Pursuant to current regulatory takings cases, in making this determination courts examine the economic impact on the land in question, the investment-backed expectations of the landowner, and the character of the government action. This aquatic habitat provision would meet the legal test to constitute a compensable taking of private property.

4. The Central Coast Water Board proposes to dictate that vegetative buffers must be maintained, clearing of vegetation is prohibited, and creating bare dirt is prohibited. All of these

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requirements clearly dictate how to comply with the general requirement to protect aquatic habitat. These are unlawful restrictions because they describe how a grower must operate which is inconsistent with section 13360 of the Water Code.

5. The Central Coast Water Board has no authority to require the total elimination of tail water discharges. Further, discharge prohibitions must be adopted as part of a water quality control plan or waste discharge requirements, and are limited in scope and area. Many of the provisions of this waiver go beyond the Basin Plan and are therefore without authority.

6. The Central Coast Water Board is requiring various technical reports pursuant to Water Code section 13267. The Central Coast Water Board's legal ability to require reports pursuant to 13267 has considerable constraints. To issue a lawful section 13267 request, the Central Coast Water Board has the burden of explaining the need for the information and for identifying factual evidence that supports requiring the reports. Unsupported assertions that such a nexus exists are insufficient to support a section 13267 request. Most of the technical report requests fail in whole or part to meet the Central Coast Water Board's statutory authority.

III. Brief Comparison of the Ag Alternative to the Staff Draft Waiver

The agricultural alternative waiver that was advanced to the Regional Board is not just an equivalent approach to water quality regulation, it (a) is responsive to the requested points indicated by the Regional Board staff, (b) avoids the several legal shortcomings of the staff draft, and (c) offers several features not included in the staff draft. Therefore, it offers the superior alternative.

The ag alternative waiver was the product of meetings with the Regional Board staff and significant amendments were made to accommodate points raised by the Regional Board staff. Therefore, the ag alternative is of a very similar structure to the staff draft with filing NOIs, monitoring/reporting of the region's waters, developing farm plans with the same components as the staff draft, and has additional important features such as completion of water quality surveys, verification monitoring and other provisions that assure even further protection of the region's waters.

The ag alternative proposal regulates discharges from irrigated agricultural lands as authorized by Water Code section 13269, which requires farm dischargers to:

1. Participate in a region-wide monitoring program that will conduct monitoring and report annually on monitoring results, including the identification of water quality benchmark exceedances;
2. Develop a proprietary farm water quality management plan (Farm Plan), which identifies management practices in a) irrigation, b) pesticides, c) nutrients, and d) sediment that will address water quality benchmark exceedances;
3. Complete a Farm Water Quality Survey and submit it to the Regional Board;
4. Implement the Farm Plan and management practices to improve water quality;

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5. Be subject to a verification review of a statistically significant sample of Farm Water Quality Surveys per year by a third-party entity or the Regional Board to confirm compliance and determine where educational and management practice implementation efforts should be focused;
6. Assess the effectiveness of implemented agricultural management practices in attaining water quality benchmarks and identify any necessary upgrades to management practices.
7. Either participate in the Ag Water Quality Coalition to review by audit if management practices are adequate or be required to conduct individual on-farm monitoring.

This ag alternative waiver proposal calls for individual farms to submit new notices of intent (NOIs) to participate in the agricultural waiver, and to identify which of their lands have the potential of irrigation run off to waters of the state. It advances a representative surface water monitoring program to further characterize the water quality in the region's principal water courses, and enable parties to evaluate improved water quality. The watershed monitoring plan would be conducted by a third party monitoring group in accordance with an agreed monitoring protocol. Over time, monitoring locations may need to be readjusted to respond to problems, identify sources, or to respond to data gaps. Monitoring will focus on water quality constituents that have shown to be most prevalent in the region with particular focus on organophosphate and pyrethroid pesticide classes, and nitrates.

The ag alternative waiver also calls for each farm to craft and maintain an individualized Farm Plan which would identify their farm lands' associated watercourses and outline relevant management practices to reduce irrigation return flows and the runoff of contaminants. It would also contain components on grower training/education. Farm Plans may be required to include as components: pesticide management practices and nutrient management practices, both of which would indicate management considerations to reduce discharges of problematic pesticides, and in addition to balancing the application of fertilizers to crop needs.

The groundwater provisions of the two proposals are similar in having well monitoring (one well per property in the ag proposal) measurement of nitrate in the soil and water and incorporating that information into management decisions on the amount of nitrate fertilizer to apply. (The ag proposal does this by encouraging proper management decisions, whereas the staff proposal tries to regulate it by prescription.)

The ag alternative would employ a multi-phase verification program whereby farm plans would be reviewed for completeness and adequacy. This would be enhanced by a 3-stage farm audit (pre-audit, preliminary audit, and second audit), whereby the Farm Plan would be reviewed in association with review of water quality data to determine adequacy. Internal farm monitoring, i.e., SMART Sampling may be required. SMART Sampling is a management practice that includes on-farm sampling of surface irrigation water that allows individual farmers to establish a baseline of farm practices to determine effectiveness of individual farm measures. SMART Sampling data is confidential to the grower.

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The required audit review of management practices would be conducted by an approved coalition and is unique to the ag alternative. If a grower would not participate in such coalition audit efforts, he would be required to engage in individual on-farm monitoring.

These important provisions of the ag alternative make it even more responsive to water quality than the staff alternative.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Thomas", with a long horizontal flourish extending to the right.

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

Cc: Board Members
Ocean Mist Farms
RC Farms



December 29, 2010

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

Electronically Submitted to: AgOrder@waterboards.ca.gov , with a Hard Copy mailed and postmarked, no later than Jan. 3rd, 2011.

Dear Mr. Young,

We appreciate the opportunity to comment directly to your Board with regard to the Ag Waiver. My firm manages several thousand acres for 20+ property owners in Santa Barbara, San Luis Obispo and Monterey Counties. Additionally, we own a 120 acre property on which our family vineyard, winery and tasting room operates near Templeton, CA. Our family has been farming in this region for eight generations and we have a deep love for the land and are supportive of efforts to maintain its health and viability.

Having farmed many crops beyond winegrapes, I agree with making a distinction between levels of risk posed to waterways. This distinction can come from the crop itself, the irrigation method and the proximity to impacted waterways. Winegrapes are drip irrigated, low users of nitrogen fertilizers and also more recently planted ---- in some cases newer by 75 years or more ---which means that the risk posed is much lower than many other crops. Technology and knowledge has improved greatly in recent years and winegrape acreage, along with its aquifers and fertilization techniques are much more considerate of current pollution concerns as a result.

The prior Waiver provided that those who followed the Central Coast Vineyard Team (CCVT) Positive Points System protocol (PPS) would satisfy some requirements. That should remain for vineyard acreage as it positively encourages change. It is superior to enforcement in terms of effectiveness. Drip irrigated winegrapes participating in the CCVT program should be exempt from further compliance requirements, especially if they are 500 feet or more away from an impaired waterway (impaired from pesticides or fertilizers used on these vineyards).

A single listing of Impaired Waterways as relates to the Ag Waiver process is also needed. Growers should not have to survey multiple listings and figure out which impairments matter and which do not.

Any well water quality monitoring should be of a limited nature and what is to be sampled should be clearly stated. Having to sample for every component that a regulator can think up is not logical.

In the end, having a program that is supported by those who farm the land is critical for its success. Collecting more data than can be interpreted and putting regulations in place that will require enforcement actions to carry out makes no sense and will actually be detrimental to water quality improvements.

Thanks for the chance to comment. The goals of the program we support, it is the mandates to reach the goals that we are concerned about.

Sincerely,

Dana M. Merrill, President and Owner
Mesa Vineyard Management, Inc. and Pomar Junction Vineyard and Winery

From: <chilibob@riofarms.com>
To: <agorder@waterboards.ca.gov>
Date: 12/29/2010 10:48 AM
Subject: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Bob Martin
General Manager
Rio Farms
239 Rio Vista Drive
King City, CA 93930-3516

December 29, 2010

Jeffery Young
Chairman of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Dear Mr. Young:

Please forgive me. This is my second letter. I overlooked commenting on several important topics. Under the Staff's General Groundwater Protection Requirements, it is mentioned that if we choose to use containment structures such as retention ponds that they must be lined to avoid percolation. Three points here: 1) That's mainly what they were built for, to keep any possible tailwater on our property and not allow it to escape to waters of the State. 2) We catch most of our storm water within these containments. Along with that water comes sediment. How does staff propose we do our annual maintenance of removing the sediment from these ponds? We normally use a wide track bulldozer to push the sediment out and take it back to the fields. We can't do that with an expensive liner in there. 3) Staff is assuming a couple of things here, one that the water entering these ponds is carrying excess nitrates with it, also that the water in these ponds will percolate enough to become a problem. I submit that there is very little science utilized in the assumption that all percolated water will eventually be received into the aquifers carrying the same quality factor as when it was in the pond.

Baseline legacy nitrates are not defined or known. Baseline legacy nitrate loads are necessary prior to measuring possible nitrate loads from farming practices. Further, differing soil types, percolate rates, water table levels, and manner of surface nitrate irrigation application must be considered prior to determining possible nitrate loads due to farming practices.

Another issue I question in Staff's proposal is the use of the phrase "1000 feet to an impaired water body." A detailed explanation of this definition is required. Are we referring to a riparian habitat, or to the actual running water of that site? None of our land slopes in a way to drain into the Salinas River, although we farm along a relatively long stretch of it. Why does staff assume that all farmland adjacent to this or any river is automatically going to drain into it?

Last but not least, I am appalled with the assumption that since our operation farms over 1000 acres that we are considered more suspect to impair waters of the State than a smaller grower. This classification is based on assumptions of size being the determining factor of ability to impair. What possible science could be cited for this reference? Operation size should NOT be used in the tiering methodology. Ag's proposal will allow farmers to approach many of these issues with affordable and attainable methods.

I urge the Board to listen to growers' feedback and suggestions, including mine, and incorporate that feedback into the draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a transparent and collaborative process that utilizes agricultural stakeholders. Loss of grower cooperation will be counterproductive to improving water quality.

Thank you for considering my views.

Sincerely,

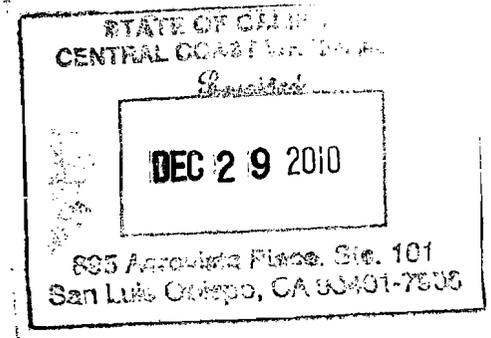
Bob Martin
831-385-6225
General Manager
Rio Farms



Region 3 Water Quality Control Board

Jeffrey Young, Chair

Angela Schroeter, Agricultural Regulatory Program Manager



I am writing this letter hoping to convince Region 3 Board members to accept Agriculture's proposal for the next 5 year waiver of irrigated discharge as opposed to staff's proposed order. Staff's proposal contains many unexplained provisions that could possibly force valuable resources into areas that may only create mountains of costly and unnecessary paperwork while minimizing positive impacts on water quality. Those "costly and valuable" resources must be directed to avenues that will continue to provide for a constant trend towards improvement, not bankrupting operators in the wake of strict regulatory actions. Ag's proposal does just that.

I am currently contracting with 15 Salinas Valley growers who are producing onions for our annual needs from Soledad in the North to San Ardo in the South. I have worked out a program that minimizes the input of nitrate fertilizer while maximizing yields and quality using drip irrigation and spoon feeding nutrients to the crop at the precise time it is needed with a minimum of water. I am currently contracting 1500 acres of onions to these growers. They have all learned the value of smart scientific farming while saving money on inputs and decreasing their impact on the environment and water quality.

Onions that have an excess of nitrogen at harvest, similar to all other crops, do not have a good shelf life and don't store well. With our improved feeding and watering program we have accomplished, what I believe is the goal of Regional Water Quality staff, eliminating degradation of surface and groundwater quality. These are, for the most part, growers who have over 1000 acres of farmland in their operations and grow cool season vegetables. They have also taken this perception into their other vegetable growing operations, as we have. These operators are much more in tune with improved scientific aspects of farming as opposed to smaller growers who simply don't believe they can afford to invest in technologies like drip irrigation. With many of them it is business as usual. This is what I see and it bothers me to see regulators treat operations of varying sizes differently.

Our operation totals 6000 acres in the King City area of the Salinas Valley and we have been using the quick nitrate soil testing program for over 15 years. I challenge staff to question smaller growers on their use of this technology. I have been an outspoken advocate for the use of the quick nitrate testing

program for many years and am convinced that it can and will accomplish a minimum of two important goals: (1) eliminating wasted applications of nitrate, (which will improve water quality) and (2) saving the grower input costs.

It is very difficult and costly to document changes in groundwater quality based on the improved methods we have been using over recent years. We feel we are doing the right thing for water quality improvement, but it will take many years to realize the positive impacts of our efforts. According to Dr. Thomas Harter, it may have taken upwards of 50 years to attain current nitrate levels in our groundwater and it will most likely take that long to clean it up. That, of course, is based on many factors, such as depth to groundwater and soil types above those aquifers.

We are constantly searching for improved scientific methods for maximizing yields and quality while eliminating negative impacts on water quality and the environment. It is a relatively slow process, but the point is that we are constantly moving in the right direction. I understand staff's concerns that they must be vigilant in their efforts to improve water quality. I am asking staff to visit our operations and experience firsthand what we are doing to justify our claims that we are the true stewards of the land.



Bob Martin



General Manager

P.O. Box 605

King City, CA 93930

Off: 831-385-6225 ext 112

Fax: 831-385-0133

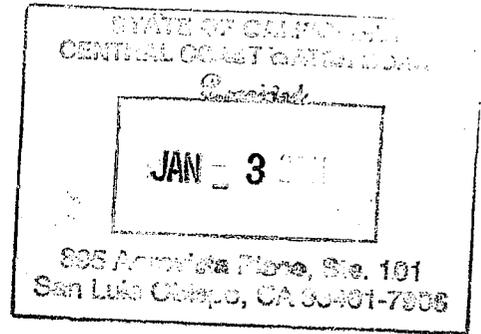
Mobile: 831-595-1554

E-Mail: chilibob@riofarms.com

Via email to AgOrder@waterboards.ca.gov

December 29, 2010

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



Re: Draft Ag Order (dated November, 2010)

Mr. Young,

My husband and I are both engineers with 60 years of combined experience. Karl is a registered Mechanical Engineer and I am an environmental engineer. We recently retired after owning an environmental engineering and compliance consulting firm for 24 years. Additionally, we managed a mutual water company in the past which served 23 homes, including our own. Therefore, we have a considerable amount of experience with water quality issues.

Currently we own and farm a small vineyard that is Sustainability in Practice (SIP™) certified and is subject to the Irrigated Ag Waiver. Our comments on the proposed Draft Ag Order follow. The main focus of our comments is on Tier 1 since we believe that our operation would fall under Tier 1. We are also providing some general comments. These comments represent our personal thoughts after a review of the Draft Ag Order as well as our basic knowledge of these issues.

General Comments

The Draft Ag Order is poorly written, extremely confusing and open for significant interpretation. We spent several days trying to understand the requirements of these documents. We know several other folks who are fairly well educated (mostly scientists) and deeply involved in these issues who have also spent an inordinate amount of time trying to decipher the requirements. No regulatory process needs to be this complicated.

The basic premise of this Order is incorrect. The staff appears to have started with the basis that farmers cannot be trusted. Those of us who work hard to produce a marketable product with the least impact on the environment feel demeaned and frustrated by this approach.

We ask that comments that are submitted after January 3rd be taken into account. By having a public comment period within the holidays, the Water Board staff has in effect limited public comment.

The new Ag Order should focus on the problems identified through the current Ag Waiver, with priority given to the locations with the most impaired water quality. Instead of applying the Ag Order to all irrigated farmland and causing all growers to pay fees and do costly monitoring, the Ag Order should be staged in over a few years with the priority locations addressed first.

Incentives and education go farther than regulation. The Water Board should revise the focus of the proposed Ag Order to instead emphasize education and provide incentives for water quality improvements.

Growers below a certain size (possible 10 acres) should be exempt from most of the requirements of the Ag Order. The costs of compliance with the Ag Order for a small operation are inordinately high.

Tiers and Impaired Waterbodies

We appreciate that the staff has proposed tiering. This is a good step forward. However, the tiers need to be presented more clearly and they need to incorporate some incentives for moving to a lower tier by reducing the risk to water quality. A grower cannot control whether their property is within 1,000 feet of an impacted waterbody nor can they control the size of the operation.

There are inconsistencies between the tier charts and the definitions. It is difficult for a grower to determine which tier is applicable to their operation. A particularly confusing part is the lists of impaired waterbodies.

The Draft Ag Order contains two tables of 2010 Clean Water Act Section 303(d) lists of impaired waterbodies – one for temperature, turbidity or sediment and one for toxicity, pesticides. These lists appear to only be subsets of the 2010 303(d) list for the Central Coast Region. The Ag Order should clearly define the impaired waterbodies that are subject to the Ag Order.

Why are the waterbodies that are impaired for temperature included in the Draft Ag Order when the tiering definitions only refer to waterbodies which are impaired for toxicity, pesticides, nutrients, or sediment? Since water temperature can only be dealt with on a watershed basis and may well not have anything to do with agricultural discharges, temperature should not be included. Where in the Order is the list for those waterbodies impaired for nutrients? Rather than including the pollutant category “nutrient”, the specific pollutant “nitrate” should be used since this is the contaminant of concern. Similarly, chlorpyrifos and diazinon should be considered since these are the pesticides of concern in the proposed Draft Ag Order.

In order to utilize all of our resources most efficiently, it would be logical to prioritize the waterbodies with impairments due to the constituents of concern. A single list of those impaired waterbodies should be referenced in and used for the life of the Ag Order.

SIP Certification should be eligible for lowest tier

We support the comments provided by the Central Coast Vineyard Team (CCVT). We would like to re-iterate that SIP Certification *requires* several practices that directly relate to protecting water quality. These practices are verified by an independent inspector to confirm the grower is meeting the strict eligibility requirements:

- Prohibits the use of chlorpyrifos and diazinon
- Requires the use of soil and plant measurements to determine irrigation scheduling to reduce deep percolation of irrigation water
- Requires the use of a nutrient budget to minimize inputs and maximize nutrient efficiency
- Requires the use of vegetation and additional practices during rainy season to protect the soils, minimize erosion, reduce stormwater runoff, and filter the stormwater
- Complete records and on-site inspection of operations by independent inspector
- Final certification is granted by an independent advisory committee – free from conflict of interest – consisting of industry representatives, university experts and agency staff (Ag Department and RWQCB staff)

Requirements for Tier 1 Growers

It appears that our vineyard would fall into Tier 1. Most of the Tier 1 requirements make sense from a water quality perspective. Many of these requirements should apply to all landowners within the Central Coast region, not just those in irrigated agriculture.

The requirements that all abandoned groundwater wells be destroyed and that backflow prevention devices be installed should be applied throughout the region. Minimizing the presence of bare soil vulnerable to erosion and soil runoff to surface waters and maintaining riparian functions and naturally occurring mixed vegetation cover are practices which are required by SIP. These are reasonable best management practices for vineyards.

Updating the Farm Plan is a reasonable requirement. However, the Water Board should develop clear guidelines and provide grants to organizations to assist growers with the proper development of updated Farm Plans and the associated practices.

Obtaining 15 hours of farm water quality education is probably reasonable for vineyard operations since a fair amount of classes / seminars are generally available through industry associations. However, grants to organizations may be necessary to ensure this education continues to be provided. For non-viticultural operations, grant funding will be needed to enable the development of the necessary educational programs.

Most growers participate in the Cooperative Monitoring Program through Central Coast Water Quality Preservation, Inc. (Preservation, Inc.). As long as Preservation, Inc. can meet the deadlines and requirements, this approach makes sense. However, we do not know whether Preservation, Inc. can meet the deadlines and the new requirements or whether the costs to the growers will increase.

Groundwater Sampling and Reporting

The groundwater sampling requirements are the most costly part of the proposed Draft Ag Order for Tier 1 growers. Water Board staff did not clearly define their objectives or identify how they can manage such an enormous amount of data.

One question that must be asked is whether the concern being addressed is drinking water quality or of the potential contamination of groundwater aquifers by agricultural use of nitrogen-based fertilizers. The first issue is the purview of the California Department of Public Health and County Environmental Health Departments. Data on groundwater quality from drinking water wells has been submitted to local Environmental Health Departments for all new residences for the past several decades, and should be utilized. If the concern is potential contamination of groundwater aquifers, the Water Board should evaluate the data which has already been obtained under the current Ag Waiver and develop a plan to address those impacted locations.

The entire groundwater testing regime should be coordinated with the respective County Environmental Health Departments and local groundwater monitoring programs. Data is already gathered through these programs and should be utilized. After this data is incorporated into a database and mapped, the Water Board along with the other involved agencies can evaluate the data gaps. Then, groundwater could be sampled from representative locations, whether those wells sites are associated with irrigated agriculture or with other land uses. Until that point, it makes little sense to have growers obtain groundwater data that may not be of use.

If the Water Board chooses to head down the path of requiring groundwater data which may be redundant or otherwise unnecessary, the following revisions should be made to the groundwater monitoring requirements.

Although the groundwater constituents that are to be sampled are of interest to growers, several of the constituents do not present a water quality concern. The groundwater testing should be limited to nitrate, chloride, sodium and electrical conductivity.

The purpose of the groundwater monitoring must be established before a proper monitoring program can be developed. The Water Board should provide financial assistance to entities who are already involved with groundwater monitoring programs rather than starting a new program.

If groundwater sampling is to be performed, the well owner should be allowed to obtain the well sample. A professional engineer or professional geologist is not needed or appropriate to perform well sampling and is an unnecessary expense to the well owner. Any conscientious person can obtain a well sample with the minimal instructions provided by the laboratory that provides the sampling containers. By signing the chain of custody documentation, the sampler certifies that they obtained the sample and transferred custody.

Groundwater depths should be tracked as part of groundwater monitoring programs that are developed on the local level (e.g., the Paso Robles Groundwater Basin Management Plan efforts). The Water Board should provide financial assistance to such programs rather than duplicating these efforts. Groundwater level data is only useful if it is obtained on a regular basis (for example, semi-annually) and is input into a database / GIS system and evaluated within a reasonable period of time. A single water level from each well as proposed by the Draft Ag Order would be of little value; however, that data is already available through the well logs that are submitted to the local County Environmental Health Departments.

The cost of obtaining well level data can be quite high for a well owner whose well is not equipped with a permanent sounding device. The grower would have to purchase or rent a sounding device. They would have to ensure that the well has no obstructions that prevent the use of a sounding device. Such obstructions are common and may make determining the well depth impossible without pulling the well pump, which is very costly.

The proposed annual groundwater report is one more item that should be part of a local groundwater monitoring program, not the responsibility of individual growers. Many farmers not do use or do not have internet access. The Water Board is assuming that growers have certain technical skills that many do not have. We need to encourage folks to enter farming, not burden them with unnecessary requirements.

Fees

In addition to the costs of meeting all of the proposed requirements of the Draft Ag Order, growers will be required to pay some unreasonable fees, particularly for the higher tiers.

Conclusion

Our collective dollars as a society would be better spent in efforts which are protective of water quality. These efforts include education of growers and financial assistance to organizations that can help provide this education.

Based on the USDA statistics at <http://www.ers.usda.gov/statefacts/ca.htm>, 47% of California farmers have gross sales of \$10,000 per year or less. Farmers generally work long hours for a relatively low wage. The costs of the proposed Draft Ag Order may be prohibitive for many operations. A full cost / benefit analysis of the Ag Order is needed to fully understand the

impacts on our local growers. Farmers are important to our local economy and supply the food that sustains us.

My husband and I have spent a large amount of time reviewing the proposed Draft Ag Order. However, we are still confused about many of the requirements. Please keep in mind that a lack of comments by many growers should not be considered by the Water Board as an indication of approval or disinterest. The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe.

We ask that your Board provide further direction to staff to revise the proposed Ag Order so that it is less burdensome to farmers while being protective of water quality.

Thank you.

A handwritten signature in cursive script, appearing to read "A. Sue Luft", with a long horizontal flourish extending to the right.

A. Sue Luft

A handwritten signature in cursive script, appearing to read "Karl W. Luft", with a long horizontal flourish extending to the right.

Karl W. Luft

Templeton, CA 93465



Karl & She Luft
4561 Almond Dr
Templeton, CA 93465-8681

STARBUCKS
CENTRAL CALIFORNIA
DEC 3 1 2010
935 P. O. BOX 101
SAN LUIS OBISPO, CA 93101-7899

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Jeffrey S. Young
Chairman of the Board

~~Handwritten signature~~

CRW&CB Central

895 Aero Vista

SLO, CA 9340

Dragon Spring Farm

Mike & Carol Broadhurst, Owners
6115 Santa Rosa Creek Road
Cambria, CA 93428
(805) 924-1260
email: mdbroadhurst@att.net
www.dragonspringfarm.com

December 29, 2010

California Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
Attn: Howard Kolb, Agricultural Order Project Lead Staff

Dear Mr. Kolb,

My wife and I own and operate Dragon Spring Farm, a small farm approximately 5 miles east of Cambria. We make our living farming about twenty acres and selling directly to the public or restaurants.

I therefore read the proposed Ag Order R3-2011-0006 (the Order) with interest and have a number of specific comments.

As a general summary of these comments, the proposed Order unfairly penalizes small growers by adding inappropriate cost without basis – re: staff's inexplicable contention that cost should not be a consideration. Guilt is assumed without the possibility of proving innocence, i.e. all farmers are dischargers with many notorious allegations. Smaller operations in general will not be able to pass on these costs, because food companies will simply move on to lower cost growers, many of these offshore. Furthermore, the basis for requiring more information already adequately available in the public domain, such as groundwater sampling and analysis, is equivocal, even deceptive, with results that will be of no practical use in the majority of cases. I'm sure that the proposals in the Order, if implemented, will lead to testing in the courts, a poor use of government resources.

If you want to drive away what remains of traditional agriculture in this state, just keep going on this tack.

Specific Comments:

- Your intent in publishing such an overpowering draft for comment during the holidays is questionable at best.
- The step of introducing tiers to represent the relative risk associated with different operations is positive. Though Santa Rosa Creek, not listed in the report tables, flows through our property, we drip irrigate, and do not use pesticides, so I assume our farm will likely be listed as Tier 1. However, the report is very ambiguous on the precise requirements for each tier. Specific examples rather than generalities would be helpful.
- Nonetheless, tier 1 status still requires growers to go to considerable expense to meet the requirements of the Order. With two wells on my property, I can estimate out of pocket expenses of \$2,000 – 3,000 in the first year, based solely on groundwater sampling requirements proposed for the Order, using the figures presented in Appendix F. In addition, there are extensive paperwork requirements, requiring many hours of time not spent farming, to mention only some of the requirements for a group of non-polluters.
- The requirement for third party sampling of wells adds considerable cost, while much more cost effective methods to allow farmer sampling could be made available.
- There are six farms of similar size to mine within a one-mile radius, all of which use well water pumped from the same aquifer. Therefore, the total bill to this group of farmers will be approximately \$10,000 to generate data for well water that will no doubt be identical from well to well. This considerable expense for duplicate data generated on a non-impacted waterbody will end up in a file cabinet, because no one will question the water quality in Santa Rosa Creek nor have the time to analyze the information, when staff should be concentrating on

- problem areas. Besides, information on the water quality of Santa Rosa Creek is a matter of public record. Several new wells have been drilled in recent years in our valley alone. The county Health Department has records of analyses of the water from these wells.
- In addition, the monitoring data requirements found in the Order appear excessive. Requiring analyses for pH, calcium, magnesium and potassium, for instance, data and elements not even found on the lists of primary or secondary drinking water standards, appear to add cost without value. Perhaps staff would like to explain.
 - My evaluation of cost also assumes that Preservation, Inc. will continue to manage the information required for receiving water to minimize cost. The assumption aside, their cost to growers will no doubt rise because of additional requirements.
 - I also question the Order's one-size fits all approach to farmers. Why should I, a small farmer who practices state of the art drip irrigation and has no runoff to the adjacent creek known for the high quality of its water, be required to meet many of the same requirements as growers who flood irrigate in areas with water quality issues? Small growers are already an endangered species in the SLO County farming community. The proposed regulations will certainly impact us more than larger operations and put yet more out of business.
 - The requirements of the existing Ag Waiver, though demanding, were also educational, and as a consequence we have put in place several practices that have improved the way we farm. I believe this demonstrates the effectiveness of a more cooperative approach and that tier 1 farmers should be allowed to continue to operate under the existing waiver.
 - I further question why the Board's staff singles out farmers for water quality problems. Yes, nitrate in most cases comes from fertilizer, but are the fertilizer manufacturers also culpable? How about the dealer that sells the chemicals? And the list could go on, finally ending with the people that benefit from the food that is grown? There is no way for most small growers to pass on additional cost associated with the Orders new requirements. Big food companies only worry about profit and will just go somewhere else to purchase the produce you find in supermarkets. But then, staff probably shops at supermarkets and are very well aware of industrial food's offering.
 - The vast majority of us who farm know that groundwater quality is important and take extensive and costly measures to ensure we don't contaminate it. The considerable knowledge in the agricultural community and their trust has been lost because of staff's indifference. But then...

I have kept this letter short in the interest of getting it read and am happy to provide more detail behind any of these comments, should there be interest.

Sincerely yours,

Michael Broadhurst
Owner, Dragon Spring Farm

cc: Bruce Gibson, District 2 Supervisor



5878 EDNA ROAD • SAN LUIS OBISPO, CA 93401 • 805-597-8700

December 29, 2010

Renewal of Conditional Ag Waiver
California Regional Water Quality Control Board

Attention: Jeffrey Young, Chairman of the Board
Angela Schroeter, Agricultural Regulatory Program Manager

Pacific Vineyard Co operates as a Vineyard Management company providing a service to landowners including vineyard and land management along with Farm Labor. We provide this service to several landowners, or more than 2000 total acres. Individually, each client's ranch ranges from 2 acres to 900 acres. All of the acres are farmed Sustainable within the SIP certification from the Central Coast Vineyard Team.

I have been following the progress of the Water Board's renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Ag Order") and am concerned with staff's draft Ag Order. The draft Ag Order will negatively impact my ability to continue producing a marketable crop. The draft Ag Order contains many undefined and potentially highly impractical requirements for agricultural operations.

The threshold of 1,000 acres for inclusion in the Tier 3 level is too generic and does not provide enough flexibility for situations unique to agricultural tenant or professional land management practices.

The draft Ag Order that your staff is proposing for Agriculture is not a workable plan for our Sustainable business model. The original Irrigated Agricultural Waiver was a workable plan that encouraged and provided education, suggested management practices, in-house evaluations, and workable time periods to complete the new practices. The draft Ag Order will be cost prohibitive to implement, has time limits that are not achievable, and adds additional large burdens to the landowner and grower.

Pacific Vineyard farms using the Sustainable Farming model that the Central Coast Vineyard Team has developed for Central Coast property owners. Working with the Vineyard Team, we have developed many positive improvements to the land we farm and have developed and implemented many Best Management Practices to improve water quality. The draft Ag Order does not include any incentives for growers to participate in water quality best management practices, and the language seems punitive towards growers and does not provide incentives to participate in additional BMP, monitoring, or load reduction activities.

I urge the Board to listen to all growers along with grower organizations for feedback and suggestions and incorporate these ideas into a workable draft Ag Order. Any future Ag Order must be designed with achievable objectives and must be a collaborative process that utilizes Agricultural stakeholders. Loss of grower cooperation would be counter productive to water quality.

Thank you,

George Donati
General Manager
www.pacificvineyard.com

Lindsay Ringer - FW: AgWaiverComment

From: Richard Smith <rrsmith@paraisovineyards.com>
To: "AgOrder@waterboards.ca.gov" <AgOrder@waterboards.ca.gov>
Date: 12/29/2010 4:37 PM
Subject: FW: AgWaiverComment
CC: "norm@montereycfb.com" <'norm@montereycfb.com'>

A couple of typos corrected after the 4:18 transmission.



Richard R. Smith
President
Valley Farm Management, Inc
831-678-1592 office
831-678-2584 fax
831-970-1127 mobile

From: Richard Smith
Sent: Wednesday, December 29, 2010 4:18 PM
To: 'AgOrder@waterboards.ca.gov'
Cc: 'norm@montereycfb.com'
Subject: AgWaiverComment

December 28, 2010

California State Water Resources Control Board
Chairman Charles R. Hoppin
Executive Director Dorothy Rice
P.O. Box 100
Sacramento, CA 95812-0100

Region 3: Central Coast Regional Water Quality Control Board

Chairman Jeffrey Young
Vice Chairman Russell Jeffries
Roger Briggs, Executive Officer
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

Re: Comments on Proposed Ag Waiver

DRAFT ORDER NO. R3-2011-0006 CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

To Whom It May Concern:

As I read the SEIR for the new proposed Conditional Waiver, I believe that a cavalier attitude of the staff is revealed in their remarks. From the perspective of the law, the Draft Order includes everything legitimately and therefore we, agricultural operators, have little recourse. They have a strong argument in that regard.

However, the problem is that they do not evaluate or address how to improve the quality of water discharges and they do not propose a system that will improve the development and use of improved BMPs ^[1]. They do require adherence to standards that are not always appropriate. They require practices—setbacks, buffer strips, habitats, reduced pumping, modified nutrition programs or many of their other proposals—that have not been verified as beneficial to the water discharges in the Central Coast Region 3.

They act as messengers who do not have the responsibility to evaluate the content of their message—no translation, no interpretation, no verification of the utility or achievability of the standards or methods that are contained within the message. They also require changes in the environment (monitoring results) that are not achievable.

Central Coast Water Quality Preservation, Inc and their technical contractors as well as some technical resource agencies have been engaged in a 6-year discussion with growers about how to address the sites (and sources) of non-compliant water discharges. Various ideas have been developed ^[2] and many farmers have engaged in trials. We have measurably reduced runoff volumes and chemical applications. We have more ideas for diversions and treatment and/or remediation. We have more growers who want to incorporate work similar to some of the trials that were conducted in 2010.

The 2004 Conditional Waiver provided for change through monitoring, research of new practices in trouble areas and outreach. I do not see how this new proposed order is going to improve that process. In fact, it appears that the increase in documentation and the compliance requirements and costs are likely to result in resistance to changes that have not yet been presented as proven practices—no one wants to be forced to try new practices (that they do not understand) if what they are currently doing has proven to be successful.

We can assume that some farm operators are slow to change and that better technology is absolutely available to them. But, we can also assume that some regulators and administrators have no idea what they are talking about; they would lead growers down the wrong path without careful proof of where their new ‘technology’ works and where it needs to be modified to address local environmental conditions! Successful farmers have not persevered for 20, 30 or 40 years by making bad decisions about how to manage the natural resources that support their livelihood—nevertheless, they do look forward to always making better decisions in the future. Mother Nature is a full time teacher that does not tolerate any lessons unlearned. The only issue is that growers want to make changes based on proof of the new concepts. We can appear to be slow to change.

So, my comment is that even though the Region 3 Staff has proposed a legal Conditional Waiver, they have not proposed an effective Conditional Waiver. The CCRWQCB and the Agricultural Community should agree upon a Conditional Waiver that is focused on achieving improved water discharge to “waters of the state”. The Ag working group has proposed an alternative Conditional Waiver that is more appropriate than the one proposed by Region 3 staff. It continues the overall monitoring required in the current Conditional Waiver **and** it requires additional evaluation of practices, measurement of individual site conditions and incorporation of improved practices. It allows the development, testing and application of practices appropriate to specific conditions; it provides opportunity for practices to be proven by application. It requires that measurement of changes be documented.

Work with the Agricultural Community to develop an **effective** Conditional Waiver. Make the proposals of the staff and the proposals of the agricultural community stand the test of scientific review. The standards and the practices adopted in the Conditional Waiver have to be based on achievable science; we cannot achieve improvement with wishful thinking! Region 3 can make local “runoff

water” and “water of the state” achieve the highest quality standards in the state if we work cooperatively to achieve improved conditions.

Sincerely,

Richard R. Smith

President

Valley Farm Management, Inc

Soledad, CA

^[1] Best Management Practices is a term that I do not like to use--Beneficial Management Practices is a better term that implies that some practices are better in a given situation--but not necessarily in every situation

^[2] The physical design of farm properties--basins, ditches, irrigated 'natural habitats', percolation ponds for tail water, ambient vegetative remediation of discharges with nutrient and chemical problems, diversion of discharges to treatment and reuse as irrigation water.

From: <shrefler@prodigy.net>
To: <agorder@waterboards.ca.gov>
Date: 12/30/2010 9:53 AM
Subject: 500 avocado trees

Dee Anna Shrefler
owner
avocados
777 Duntov Dr.
Arroyo Grande, CA 93420-5976

December 30, 2010

Jeffery Young
Chairman of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Dear Mr. Young:

To whom it may concern,
If these latest regulations go into law, I will not be able to produce avocados any more and will take out my trees. Due to the weather, last year was the first in the last 4 years I was able to have a crop large enough to commercially pick. The cost of putting in a "montering" well here would be about \$10,000 to \$14,000. That coupled with the increase in cost of liquid Fertilizer, employee payroll costs,etc is just impossible to do for us. As it is I have taken out about 100 trees in Sept. 2010 that did not produce over 1/2 to 1 bin total. The costs are too much We have our remaining trees on about 4.5 to 5 acres. There needs to be an exemption for small farmers that meet the existing regs. I would be glad to discuss this further. Thank you for your time, Dee Anna Shrefler

Sincerely,

Dee Anna Shrefler
8054733182
owner
avocados

Employer Name: Canyon Realty
Employer City: Arroyo Grande, Calif
Position: Broker/owner
Are you a registered voter?: Yes
Did you vote in the last election?: Yes
Age: 68 yrs
Gender: Female
Organization: NAR, CAR
Would you like your elected official(s) to reply to your message?: Yes
Have you visited their website(s)?: No

Lindsay Ringer - Fwd: Proposed Staff Ag Order (Ag Order Email Received)

From: AgOrder
To: Steve Saiz
Date: 12/30/2010 2:37 PM
Subject: Fwd: Proposed Staff Ag Order (Ag Order Email Received)
CC: Lindsay Ringer
Attachments: Proposed Staff Ag Order

I would like to comment on the Proposed Staff Ag Order. While the goal of protecting our valuable water resources is certainly appropriate, implementing a blanket "one size fits all" program is not. After reading through the proposed order, it appears the assumption is that all covered ag operations are large scale.

Our own operation consists of a 7 acre vineyard that is sustainably farmed utilizing drip irrigation. The irrigation practices utilize a controlled deficit program, wherein we provide less water to the vines throughout the irrigation season than they actually use. We do this by monitoring the water status in the soil, and start irrigation only after the soil moisture drops to the point that irrigation is required. We then monitor the daily evapotranspiration for the vines utilizing on site sensors and then irrigate to a reduced percentage of their actual water use.

Our vine nutrition status is monitored and needed nutrition is provided by green manure from our cover crop being reincorporated in the soil. Additional fertilizer is not applied. We also do not use chlorpyrifos or diazinon. We utilize minimal rates of pesticides, and extend our application intervals for fungicide utilizing the "Gubler Index" which typically allows for one to two fewer applications throughout the year. Careful attention is paid to sprayer calibration and environmental conditions to minimize possibility of drift or over application of materials.

Since developing the vineyard in 1998 there has been no off site storm runoff, including during the recent December rains. Even if there were to be runoff, there should be no residual chemical materials since all applications of pesticides occur during the dry growing season. Also, since we maintain a cover crop in and adjacent to the vineyard, that vegetation would act as a buffer/filter to contain any sediment that might be in the runoff.

In our case the requirement to monitor and test our well water would not provide any meaningful information on the source of possible contaminants. Our well is adjacent to our property line, and the adjoining properties are not covered by the Proposed Staff Order since they are not using irrigation for crops. The order does not include horse or other livestock operations as a possible source of groundwater contamination and the fact the water within aquifers travels laterally. In our case the property immediately adjacent to our well is a commercial horse boarding operation that disposes of the horse waste onsite. There are also several other high density horse operations nearby that do little to keep their corrals clean of waste.

Even though our vineyard should qualify as Tier 1 the small size of our total operation makes it hard to justify the additional costs of testing and reporting requirements utilizing a cost/benefit analysis. Even if the well tests indicated a problem with the sample, there is no way of determining the source of the contamination due to our small surface size and the water movement throughout the underlying aquifer. The additional costs for complying with the Proposed Staff Ag Order will certainly not help with our vineyard's economic sustainability and not do anything meaningful to help preserve or improve the local water quality. As I mentioned above, water quality protection is certainly appropriate, but the Proposed Staff Ag Order should be more focused to the individual situation of covered properties.

Sincerely,

John Jones,
Faith Vineyard
Los Olivos

Dear Sirs,

12-30-2010

I want to react to the newest Ag Waiver being proposed by the staff of the CCWQCB. I appreciate the opportunity to have further input into the process whereby you are considering the adoption of a new Ag Waiver. I realize that there are concerns pertaining to water quality that are valid and need to be addressed. I also wish to assert that there are concerns from the nursery industry that also need to be addressed.

I am a native Californian. I was raised in Orange County and later came to Cal Poly SLO where I graduated with a B.Sc. in Horticulture in 1984. I moved back to the central coast in 1990 and have been here ever since. I currently own and operate Mesa Ranch nursery. We are a wholesale nursery that primarily raises rare South African and Australian native plants. Because of the nature of what we raise, we already use minimal fertilizer and sprays. Most nitrogen used in our nursery is applied in the form of organic cottonseed meal directly into each container. Our current nitrogen water footprint is negligible. We do not use organophosphates. The future water footprint of our plants in gardens and landscapes around the state will also be greatly reduced as compared to typical plantings in California. It could be said that what we raise is very environmentally friendly.

The newest waiver, as it is being proposed, will greatly hinder and hamper farming and nurseries for several reasons. Why? It seems to me that the Water Board staff is reaching far too far. In effect, your passage of the waiver as it is will criminalize the usage of fertilizer and pesticides, thereby throwing the agribusiness industry in California into disarray. In addition, the rules proposed are vague and contradictory. Why should the Water Board consider limiting the size and scope of farming operations? Isn't the real question, who is farming in a responsible and environmentally sensitive way, and who is not? What if a large farm over 10,000 acres is farming exactly the way the Water Board wants? Why should that farm be forced into down sizing? This request seems to be a gross and unconstitutional intrusion of government into the private sector. Also, I do not see in the proposal a proper focus on the real problem: How to monitor and reduce ongoing pollution (loading) from agriculture in to the environment. This might surprise you that I say this. Here is what I mean.

What the staff proposes does not seem to consider that farming must continue in California. We feed the nation. By insisting that the water footprint must cease to exceed drinking water standards within the 3-5 year time frame, you are thereby forcing a radical and sudden shift in the way things are done. This shows the impatience and intolerance of the environmentalists within the water board toward agriculture within the state. A more reasonable and realistic approach should do several things. First, it should work with existing operations, not against them. Do not assume that all farmers are polluters. Second, real science and improved farming techniques should be implemented and rewarded whenever possible. Your approach is punitive. Third, higher accountability as required by the water board should be clearly outlined and equally applied. No special deals for certain groups! Fourth, all human activity will leave a footprint in water. It is the size and scope of that footprint that should be agreed upon using reasonable and

mutually beneficial criteria. Your criteria is not realistic. Lastly, the ground water requirements in the newest ag waiver are ridiculous. No outdoor farm or nursery can guarantee the ground water quality standards you propose.

No one can live without affecting water quality. No one can farm without affecting water quality. The degree to which it is affected should be addressed. It is certain that there are individuals and operations that are polluting the environment in an unacceptable way. But what you are proposing calls for such draconian changes that all farming and all human activity will be in violation of the law. I believe that farming is not the enemy of the people of California. In fact it is the life's blood of our economy and our way of life.

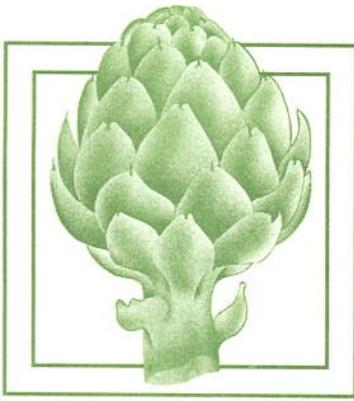
To have water of drinking quality or better for everyone is a worthy goal that everyone can get behind. But in reality, to require farmers and nurseries to have a footprint equal to drinking water quality is not a reasonable goal. It is a radical one. A better goal would and should be to improve water quality over time, in effect to move toward having cleaner water. The goal of pure water as the CCWQCB is framing it is an unattainable goal unless the activities of large sectors are shut down, not just altered. California will be thrown into disarray.

The lives of millions of Californians will be negatively affected by adopting the measure you are considering. I ask that you would reconsider what you are doing and take into account the needs of Californians' to make a living. Everyone wants clean water to drink. Everyone wants a cleaner environment. Let's work together in order to achieve cleaner water both in our glasses and in our streams, lakes, and ocean. But working together means affecting change over time that is based on knowledge and empirical data. Becoming impatient because progress has not been seen in certain areas and ramming through a new law that will destroy farming in California is not the way to change our course. That is the way to drastically alter millions of lives and countless businesses. The consequences of those changes cannot be foreseen by anyone. And if farming is shut down, where will our food and plants come from? In addition, if land is suddenly left fallow, what will be done with the land? Isn't more development the inevitable consequence of barren land? And that will lead to more cities and more pollution? Is that going to fix the problem? I don't think so.

Let's pursue cleaner water, not pure water. Do you really expect to be able to walk to the nearest stream or well and dip your glass for a safe drink? Cleaner water is a workable and worthy goal. Pure water is a radical and potentially catastrophic goal.

Thank you,

Chris Chaney
Mesa Ranch Nursery
Arroyo Grande, Ca.



Sea Mist Farms

December 29, 2010

Mr. Jeffrey S. Young
Board Chair
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

Dear Chairman Young,

I am writing to make comments on the new Region 3 discharge waiver that The Regional Water Quality Control Board will be discussing over the next several months.

Sea Mist Farms farms approximately 5,000 acres of artichokes and vegetable crops from San Jon Road north of Salinas to the southwest end of Beach Road in the Pajaro Valley. We employ 71 men and women year a round, and during our peak harvest season in the spring that number jumps to several hundred for nearly 12 weeks of intense harvest time.

Sea Mist Farms has always been a leader in water conservation and water reuse. The original Monterey Wastewater Reclamation Study for Agriculture was done on lands provided by Sea Mist Farms and its ownership. Sea Mist Farms has been using recycled water for 12 years in the Castroville Sea Water Intrusion Project and going onto two years in the Pajaro Valley Water Management District's Recycled Water Project.

The use of recycled water to irrigate our crops is supported by agriculture, leading government officials, and environmental support groups. We take treated wastewater and reuse it instead of sending it out to the Monterey Bay. However, "recycled" water is high in salts, especially Sodium, Chloride, and the water contains Nitrates higher than drinking water standards. The use of tile drains to take these irrigation water leachates away from our crop root zone is absolutely essential in maintaining the productivity of our prime farm lands. Without it we would not be able to continue to farm these properties. Through the use of recycled water, we have helped the Salinas Valley and the Pajaro Valley in their efforts to slow the rate of Sea Water Intrusion into the underground aquifers. With our investment in the Recycled Water Projects in both the Salinas and Pajaro Valleys, it seems that we are being penalized for being on the forefront of these water reuse technologies by the Regional Board Staff. The Staff document waffles when it comes to the subject of tile drains. First, we were told that they were excluded, and then we were told that we would have to purify the discharges within a few years. We would like to challenge the Regional Board to help us come up with methodologies that would work – cost effectively – in purifying tile drain discharges. Without these tile drainage systems, it is only a matter of time before the high levels of salt in our recycled water will make our soils

unfarmable. Nevertheless, we are proud that we have been actively involved in keeping our farming properties, the Salinas Valley, and Pajaro Valley sustainable through our use of recycled water and advanced irrigation practices.

For over 20 years, Sea Mist Farms has made the transition to drip irrigation wherever possible. We no longer furrow or flood irrigate, and we farm approximately 75% of our acreage on drip. The balance of our acreage is irrigated with sprinklers or a combination of sprinkler and drip irrigation. The costs are high – up to \$6,000 per acre which includes irrigation system design changes, energy efficient pumps and motors, land leveling, land based assessment fees to pay for the recycled water projects, and drip irrigation equipment – like filtration, and drip tape. We are committed to maintaining our farming properties productive and sustainable for the future of our families.

Fertility: we simply can not afford to *not monitor* our input costs closely. Fertilizer costs tripled around the time the recession started. We sample our soils before planting and then determine how much fertilizer we will need for the crop. We have halved our fertilizer inputs by doing so and we intend to continue to monitor our fertility before each crop planted. However, growing a vegetable crop of any kind is an art, and within the same field - soil types and drainage may not be uniform. Understanding how best to manage the inputs (whether fertilizer or irrigation) on your particular farming properties is key to a successful crop. These are factors that the Regional Board and its staff can not appreciate or understand.

After reading the Regional Board Staff's "Recommendations for Water Code Waiver for Agricultural Discharges, and all the supporting materials" we were completely overwhelmed with the regulation that the Regional Board is preparing to burden us with. The document is very complex, and in many cases, like the Nitrate Hazard Index is not based on sound science. For example, Table 2 has omitted criterion that was part of the original index, a soil type rating. The omission of this factor is indicative of a lack of knowledge about the fact that soil texture and clay content play a very important role in affecting hydraulic conductivity and denitrification, factors that significantly affect nitrate movement and availability in the soil profile. There is no reference or data justifying the omission of this criterion. This index should be used as one tool in the effort to reduce the use of nitrate on our crops.

The Staff admits in their document that it does not have the bodies or resources to properly follow up with site visits and grower outreach. In fact, Preservation Inc has reported to Staff that at least 26 growers have not paid their CMP fees. The names of the operations have been given to the Regional Board with no follow up or penalties against them taken. Why should we expect otherwise from this draft proposal? Once again, the growers who are doing their best to do what's right will be penalized, whereby the others will continue to do what they have been doing.

The Staff's document does not take into account that the average grower will not understand how to implement the waiver. The grower will be lost in a sea of regulation that is hopelessly flawed by its own complexity and lack of understanding of what growing crops entails. The document ignores the risk both personal and financial that the growers undertake when investing in growing a crop – like head lettuce (\$4,000 per acre per crop, and artichokes (\$5,200 per acre per crop). Finally, in reading the staff's recommendations, they underestimate the costs that will be associated with the implementation of a flawed piece of regulation. We are evaluating whether we will have to hire an individual (\$150,000.00 annually) just to understand and help us follow and implement the regulation. The estimated costs are much greater than the

staff is estimating. We estimate that sampling and lab costs could run well into the 10's of thousands of dollars annually for an operation our size.

The tiered structure of the staff's proposal is most concerning. The acreage number of 1,000 acres and 1,000 feet, growing certain crops and using certain pesticides, to be thrust into tier 3 is purely arbitrary and has no scientific foundation. We farm properties that are not adjacent to impacted waterways yet are still apart of the acreage equation. And, we farm properties that have high levees bordering between ourselves and an impacted waterway, and there is no way that waters from our ranches reach the water way. We suggest that the Regional Board look at where the sediment runoff is highest and focus their efforts there first with grower education.

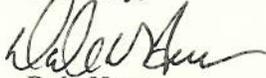
One strategy we've given consideration to would be to divide our ranches into smaller farmed parcels and seek WDR's instead of trying to comply with the Staff proposal. Should we divide our farming properties to lower our net farmed acres? I would not think that would be in the best interest of the Regional Board's mission!

Agriculture has proven that it can regulate itself with the California Leafy Greens Marketing Agreement. That is why Sea Mist Farms supports Agriculture's Alternative Discharge Proposal. We believe that Agriculture's alternative waiver will achieve the goals on water quality faster for the following reasons: 1. It takes all dischargers – no matter how large or small the acreage component and holds them accountable; 2. Growers will be audited for compliance; 3. Growers can elect to participate in the CMP or do individual monitoring, but every grower will have to participate; 4. With a grower group coalition as the auditing entity, all growers will have to participate, or face penalties by the Regional Board; and 5. Given the complexity of soils, crop diversity in the Region, and the Regional Board's lack of ability to do follow up visits and audits, the Grower based coalition will make more progress towards reducing discharge issues than the Regional Board's staff's proposal.

Sea Mist Farms grows artichokes and fresh vegetables for Ocean Mist Farms. We support the comments on the Staff draft waiver submitted on behalf of Ocean Mist Farms and RC Farms by attorney William Thomas of Best, Best, and Krieger LLP.

Finally, we would like to thank you for allowing us to comment on this very important issue. Please take into consideration how difficult it is going to be to monitor every grower/landowner in the Region to ensure they are in compliance with the Regional Board Staff's proposal. It will be nearly impossible. For that reason alone, the Ag alternative discharge waiver proposal is the superior alternative.

Sincerely,



Dale Huss

General Manager
Sea Mist Farms

AgOrder - Cass Vineyard Comments on Draft order No. R3-2011-0006

From: Stephen Cass <steve@casswines.com>
To: <AgOrder@waterboards.ca.gov>
Date: 12/31/2010 8:24 AM
Subject: Cass Vineyard Comments on Draft order No. R3-2011-0006

December 31, 2010

Electronically Submitted to: AgOrder@waterboards.ca.gov
Hard Copy to Follow

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

My name is Steve Cass, I am the owner of Cass Vineyard and Winery in Paso Robles. We are located on 146 acres of alluvial soils along the Huer Huero dry riverbed, 6 miles east of the Paso Robles city limit.

I have reviewed the comments submitted by Lisa Bodrogi of the PRWCA.. I believe her comments are sensible and represent the needs of our industry in mine in particular.

Several of her comments apply very directly to my farm.

For Example;

#1 Tiered approach

Our vineyard is 146 very flat acres. We are in the driest part of the Paso Robles appellation.

We practice sustainable agriculture with a cover crop, erosion control, deficit drip irrigation and many other sustainable practices. The consequence is that there is no runoff in any but the very wettest of years and certainly less than when the property was grazing land.

#3 Well Monitoring

Pulling a motor in order to determine well depth is not a minor expense, and many

vineyards have had a very difficult time making money in recent years. 2007 & 2008 presented frost and freeze issues limiting production to about half of normal, and the past 2 years grapes have been hard to sell as wineries cut production. Don't assume because in the whole we are a large industry that means everyone is financially healthy. Please be respectful of the limited resources of many of our small family owned businesses.

Thank you for taking the time to read my comments and I wish you the very best in dealing with this important and difficult issue.

Respectfully,

Stephen Cass
Cass Vineyard and Winery

Stephen Cass

Cass Vineyard & Winery
868 Camino Vina
Paso Robles, CA 93446
www.casswines.com
805 239-0873

AgOrder - Ag Order Comment

From: Craig Reade <craig@bonipak.com>
To: <AgOrder@waterboards.ca.gov>
Date: 12/31/2010 4:00 PM
Subject: Ag Order Comment

Jeffery S. Young, Chairman of the Board

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101

San Luis Obispo, Ca 93401

Dear Mr. Young:

Please allow me to introduce myself. My name is Craig Reade and I am a managing partner with Bettervia Farms and Bonipak Produce headquartered in Santa Maria California. The purpose of this letter is not to review each and every concern that I have with the new proposed Draft Order rather the "Spirit" of the working arrangement that I thought we had with our Regional Board and their staff members. I have had the opportunity to participate in many of the working groups going back as far as Una Doogan (forgive me if I have misspelled the name) in an effort to minimize runoff and erosion into the Oso Flaco Lake. I have also served as a board member on the CCWQPI since its inception.

We as farmers and the Ag. Industry as a whole want more than anyone to protect our water supply not only for ourselves but also for future generations. You have a captive audience with us and we want to do our part to improve water quality but we are not the only ones using water. To this point it seems as though Agriculture is the only one that has been called to the table and I feel the entire burden and blame is being placed on us.

I have farmed near Santa Maria's sewage treatment plant for many years and have monitored our water wells near this site and can easily say that this facility has negatively affected ground water quality. Now additional acreage has been purchased just east of this plant and acres of additional settling ponds are to be installed for expansion of the sewage treatment facility. Laguna Sanitation just down the road a few miles uses a reverse osmosis process that is much easier on the environment and groundwater due to the fact that the RO treated water can be applied to pastures and other plant life because all the salts and heavy metals are separated and pumped down an injection well. Explain to me in this day and age how we can let facilities like Santa Maria's sewage treatment plant continue to operate this way.

I remember you clearly stating in the December 2009 Regional Board meeting in San Luis Obispo that I attended, telling your staff and those of us in the audience that your board would not move forward with a new draft that did not work for both parties. (both parties being Regional Board and the Ag. Industry). I felt very good hearing this come from the Chairman of

the Board as it gave me the sense that a collective effort to improve water quality was underway. What I am feeling today is very different. I don't feel that our input has been sincerely taken into consideration and the direct and immediate effects of this draft if adopted by your board will jeopardize the future of agriculture.

Much of what we are dealing with today regarding water quality is a result of "everyone's" use of water over the past many years. It is going to take some time to work through this and we all have to do our part. I don't want this to become a battle between water users and a regulatory agency. Nothing good will come out of that!

Sincerely,

Craig Reade

John Eiskamp
J. E. Farms, Inc
PO Box 1869
Freedom, CA 95019-1869

December 29, 2010

Jeffery Young
Chairman of the Board
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Re: CCRWQB Request for Public Comments on Draft Agricultural Order dated November 19, 2010

Dear Mr. Young:

I have serious concerns regarding the proposed Staff Draft of the Ag. Waiver. The proposed changes will have a major impact on the future of my farming operation as well as that of many other growers in the region.

I am a raspberry and blackberry grower in the Pajaro Valley with an operation of approximately 225 acres. I grow on 8 different ranches, some of those within 1000 feet of either the Pajaro River or Corralitos Creek, both 303(d) listed waterways. I don't use chlorpyrifos and, although have used diazinon in the past, I can farm without it. But because one of my landlords owns more than 1000 acres throughout the region and although it is only one of my ranches, as the proposed order is written, I would find my total operation forced to operate under the Tier 3 requirements, even though the crops I grow are considered in the proposed order to be lower risk for nitrate loading of ground and surface water. I also use drip irrigation exclusively in my operation and have no irrigation tailwater, a factor the proposed order does not take into account. There are many other growers who are in the same situation as I would be under the proposed standards.

The 1000 acre standard appears to be totally arbitrary and has nothing to do with the risk to water quality a growing operation may pose. In addition, many ranches adjacent to waterways do not discharge surface water into those waterways as they are graded to drain away from it. Growers long ago realized to potential problems associated with discharging into rivers and streams and leveled their ranches to avoid direct discharge into them. Thus, the 1000 acre and 1000 feet from an impaired waterway standards appear to have nothing to do with the risk a growing operation poses to water quality. Growers who find themselves in Tier 3 with no hope of improving their position will not be motivated to making changes that result in true improvements to water quality.

The Staff Draft of the Ag Waiver does not take into account baseline levels of both nutrient and toxicity levels in either ground or surface water. These levels have been reached due to decades of inputs, both agricultural and otherwise. The impact of practices long ago abandoned by the agricultural industry because of their impact on water quality are still being manifested in background levels in both ground and surface water. Undoubtedly, some of these levels are due to agriculture and these is certainly room for growers to improve practices that impact water quality, but to set timelines and milestones for improvement in a matter of a few years to problems that were caused many years ago is unrealistic and impossible for the industry to achieve. Nobody who I have worked with in trying to understand these issues and create a workable alternative deny that changes need to be made in the years to come, and that some growers do a better job than others, but achieving real improvements to water quality in our region required standards have realistic goals and focus on where the problems truly lie.

Because of these and other problems and inconsistencies in the Staff Draft, I would suggest that the Board consider postponing the adoption of a new Ag Waiver until workable solutions can be adopted. Better yet, I would suggest that the Board consider adoption of the Ag Alternative to the new Ag Waiver as submitted. I was involved in the process to develop the Ag Alternative and feel it, if adopted, will result in true improvements to water quality in the region. The concept of a coalition based approach has value and I believe is the best way to involve growers to make meaningful changes. As a berry grower associated with Driscoll's, I have seen first hand the benefits of growers sharing ideas and technologies on the ranch and feel this is one of the reasons Driscoll's is the largest berry supplier in the world. New ideas and practices need to be cultivated to achieve meaningful long-term improvements to water quality and by adopting a system where growers can, through the coalition, share advances made on each ranch and those that are successful can be available to those in the coalition. I realize, many details of the proposed coalition have yet to be worked out, but the concept is sound. True improvements must be shown and reported to the Board by the coalition in order for it to prove its value. Growers will be held accountable to the coalition and, through it, to each other, otherwise the validity of the coalition is at risk. Growers that continue to pose true risks to water quality and refuse to make changes and improvements put the whole coalition at risk and therefore will be removed from the coalition and reported to the Board. Individual accountability is, therefore, assured as those that do not cooperate will not be allowed to operate within the coalition.

The proposed Ag Alternative is designed to focus on those growers who, through their types of practices, crops and other aspects of their operations pose the greatest risk to water quality. Efforts will be directed to address those problems which can result in the greatest improvements. It is my sincere belief that our industry can address problems associated with water quality in a cooperative and effective way and the proposed Ag Alternative offers the best chance of achieving that.

Thank you for considering my views.

Sincerely,

John Eiskamp
J. E. Farms, Inc.

AgOrder - Ag Order Comment

From: Vard and Terri Ikeda <ikedas5@charter.net>
To: <AgOrder@waterboards.ca.gov>
Date: 1/2/2011 9:57 AM
Subject: Ag Order Comment

RWQCB,

As a local Avocado grower, I'm in full agreement with the letter sent to you by the California Avocado Commission. With our micro-sprinklers there is never any irrigation water leaving the orchard. Putting these blanket mandates on every grower is not necessary.

Vard Ikeda

Arroyo Grande



January 2, 2011

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 (“Draft Ag Order”), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Young,

I am a winegrower with 31 acres of vines in the Paso Robles appellation. I am forwarding Ms. Bodrogi’s letter because she expresses my objections to your proposed Draft Ag Order much better, and much more calmly, than I could. Please listen to what she has to say.

Bob Tillman
Alta Colina Vineyard & Winery
2725 Adelaida Road
Paso Robles, CA 93446

December 31, 2010

Electronically Submitted to: AgOrder@waterboards.ca.gov
Hard Copy to Follow

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 (“Draft Ag Order”), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

The Paso Robles Wine Country Alliance represents 500 members comprised of wineries, growers, hospitality partners and related businesses. These are all stakeholders and rely upon a viable agricultural economy to sustain the quality of life we all enjoy on the Central Coast.



San Luis Obispo County is now the third largest wine region and has the potential to lead the California Wine Industry alongside the Napa and Sonoma Valleys. Last reported, the San Luis Obispo Wine Community contributes close to \$1.8 billion dollars in economic value and pays more than \$86 million in local and state taxes. San Luis Obispo wineries, vineyards, and allied industries and services account for over 8,000 jobs, generating a payroll of more than \$240 million per year. These jobs represent 7.5% of total county employment, 9.2% of private sector employment and a major share of recent job creation. Winegrapes remain the highest value agricultural crop in San Luis Obispo County.

For this reason, our organization has made a concerted effort to work with our local governments, neighbors and communities to expand education, awareness, and collaboration on matters that affect our industry and in turn the communities we serve. It is our view that incentives and education go much farther in addressing the end goal of resource protection and conservation, including water quality, more than regulation ever could. Although we recognize staff's progress in developing a Tiered Program as a marked improvement from the proposal issued in February 2010, we offer the following comments and suggest additional revisions to the approach to make for a more practical and targeted program:

1) Tiered-Approach: Basing the tiers on location and size has no practical bearing on potential contribution to poor water quality. The tiers should be based upon whether there is probable cause for pollution to be transported. Farming operations that do not result in tailwater (i.e. drip irrigated vineyard operations) and are closely monitored for input requirements to the specific plant needs, should be exempt from a tiered approach.

2) Incentives: Vineyards utilize deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations. These practices should be encouraged and incentives given to maximize such practices that serve to minimize water quality degradation. Incentives and performance-measures to improve water quality should be the focus of requirements. The ability to be exempt from a tiered structure or shift to a lower tier should be an incentive to incorporate best management practices and farming practices that eliminate tailwater and improve water quality.

3) All dischargers, including Tier 1, are subject to: Receiving Water Monitoring and Groundwater Well Reporting:

Receiving Water Monitoring: Dischargers who do not cause tailwater, as is the case for vineyards, should not be subject to receiving water monitoring.

Groundwater Well Reporting: The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges. How does monitoring depth to groundwater



address these issues? It may be impossible to measure depth to groundwater due to clearances in the well without pulling the pump and adding a sounding tube. This could add substantial cost for compliance without any justification for this requirement. Depth to groundwater monitoring should be eliminated from the order.

Any well testing should be associated specifically to the constituents in question. Additionally, this information should not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.

If groundwater testing is deemed legal and necessary under this Order, we support the Ag Alternative approach to targeting water well testing to the constituents in question by limiting testing to one primary well; the constituents for testing only nitrates, TDS or EC, and pH; and keeping results on-farm in the Farm Plan to maintain proprietary information.

4) Impaired Water bodies – Much confusion surrounds the threshold trigger of 1,000' from an impaired water body. There are several lists and a number of waterbodies impaired from other sources aside from sediment, turbidity, nutrient, pesticide, toxicity, or temperature. The final order should include the list of impaired waterbodies that would trigger the setback threshold rather than creating ambiguity between what lists, what impaired waterbodies, etc.

The final list of impaired water bodies should correlate to the specific impairments called into question by this Order. For example, an impaired waterbody that is listed under pesticide impairment due to DDT should not be a matter of this order as present farming conditions are not contributing further to this impairment. A single list needs to be referenced and used for the life (5 years) of the Ag Order. Otherwise, there is too much uncertainty in determining what tier you are in.

5) Public Review Process: Insufficient time has been allowed for the public to respond to staff's recommendations in a meaningful way. The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe. Additionally the condensed schedule for review over the holiday season is an unfair tactic to reduce the amount of public comments received. Limiting written submittals for review by staff or your Board to the January 3rd deadline is counter to typical public review and decision-making and will limit the ability for affected growers, and jurisdictions alike, to provide meaningful comments. Written comments should continue to be allowed and encouraged throughout the Regional Board review and decision-making process.

6) NOI Requirement: The requirement to submit an updated NOI before the updated Ag Order is adopted is problematic in that there is no regulatory mechanism to enforce this. Also, there



needs to be a mechanism for data submission in a non-electronic form for those farmers who do not use, or do not have, internet access.

7) Data Accumulation: Data collection should not exceed that which staff can reasonably review and enforce. Admittedly, staff cannot manage and oversee the extent of data to be collected under staff's proposal. Page 37 of Appendix F states that "with the current staffing and budget, staff cannot review information from, nor inspect, most of the operations in the region". An obvious question is why more data is being requested if staff cannot review the information nor inspect the operations.

Your Board quantified the objectives for the next 5 years during the May and July Workshops to focus on surface water nitrates and organophosphates; secondary sediment and riparian issues should be addressed later. Staff's proposal takes on too much without the necessary tools or ability to make a difference in improving water quality.

8) Cost/Benefit: Although we appreciate the attempt to evaluate costs associated with the Order in Appendix F a full cost/benefit analysis is still needed. The Water Board needs to better define their rationale for the proposed requirements to justify the costs imposed on the agricultural community as well as provide a more accurate cost of the Ag Order.

We were encouraged with the comments and directives given to staff during the workshops in May and July and wish to continue to emphasize the following general considerations as the Board evaluates and develops a final Order:

- a. A successful program is performance-based and provides incentives and opportunities to improve water quality. Arbitrary factors such as operational size and location; unnecessary requirements; burdensome paperwork; and limited resources to manage and enforce does not provide any benefits towards improving water quality.
- b. A longer term approach to improve water quality beyond 5 year increments should be sought. Water quality degradation did not occur overnight and cannot be expected to be solved in a short time horizon without creating negative and unintended consequences to the agricultural community which serves us.
- c. The first 5 year Ag Waiver Program has been a success in collecting data and getting the farming community and regional board to begin talking about solving water quality issues. The next 5 years should encompass a priority-based approach targeting the most extreme issues to build momentum to continue to work collaboratively on water quality concerns.
- d. It is important to maintain a cooperative effort to ensure the long term continuation of solving water quality issues as well as the long term continuation of agricultural



production. Preservation of water quality/quantity and a viable food production system are equivalent priorities and should be given equal weight in any program development.

We support the Agricultural Alternative as an improved approach to addressing water quality concerns. Most particularly, we find the Ag Alternative to be more performance-based and focused on research, education, and extension rather than unnecessary and burdensome paperwork that serve no purpose in improving water quality.

Incentives and education go much farther in addressing the end goal of resource protection than regulation ever could; when people are motivated to do good (particularly by their peers), they will do good. We continue to support efforts that are collaborative, performance-based, educational, and well-researched. We respectfully request your Board give your staff very clear direction to work in conjunction with the agricultural community in developing an incentive-based proactive program that will encourage open dialogue and education among stakeholders.

Sincerely,

Lisa M. Bodrogi
Government Affairs Coordinator
Paso Robles Wine Country Alliance



VINEYARD
PROFESSIONAL
SERVICES

December 31, 2010

Electronically Submitted to: AgOrder@waterboards.ca.gov
Hard Copy to Follow

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

I am a local vineyard owner and manage vineyards for others in San Luis Obispo and Monterey Counties. My livelihood as well as those depending on me; seasonally over 200 employees as well as the owners of the thirty vineyards we manage, local vendors and service businesses all depend on a healthy wine industry.

This New Year starts the thirty-ninth vintage of my career farming wine grapes in California. I have witnessed many changes in four decades at the receiving end of the increasing regulations placed upon California farmers. While I have not always embraced or agreed with many of these changes over the years, I have seen positive impacts. The California farmer is the state's original stakeholder in sustaining our environment and believe me, we care about the quality of where we live and the impacts of our actions. The most positive changes I have seen take place are the result of the various regulatory agencies working with industry to achieve understanding and work towards an end that does not destroy those of us who produce so many benefits to society.

As you Chair the formation and work towards updating the Ag Order, please take into consideration the following:

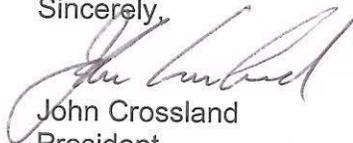
- A successful program is performance-based and provides incentives and opportunities to improve water quality. Arbitrary factors such as operational size and location; burdensome paperwork; unnecessary requirements; and limited resources to manage and enforce does not provide any benefits towards improving water quality.

- Additional written comments should be accepted for submittal to your Board beyond Jan. 3rd to accommodate an open and deliberative dialogue throughout the decision-making process.
- The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe. The lack of comments by many growers should not be considered by the Water Board as an indication of approval or disinterest.
- The tone and much of the language of the Draft Ag Order conveys a distrust of farmers that is without basis. The Regional Water Quality Control Board (Water Board) staff did not act in the spirit of cooperation as particularly demonstrated by the unreasonable timeframe for public comment, compressing the schedule over the holidays.
- Vineyards utilize deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations. These practices should be encouraged and incentives given to maximize practices that serve to minimize water quality degradation.
- An exemption from additional monitoring and requirements should be available for farming practices and operations that are not contributing to water quality degradation.
- Basing the tiers on location and size has no practical bearing on potential contribution to poor water quality. The tiers should be based upon whether there is probable cause for pollution to be transported. Farming operations that do not result in tailwater (i.e. drip irrigated vineyard operations) and are closely monitored for input requirements to the specific plant needs, should be exempt from a tiered approach.
- The Ag Order should be based upon practices that have the potential to degrade water quality and provide incentives and performance-measures to improve water quality, not based upon arbitrary characteristics such as size or location.
- Dischargers who do not cause tailwater, as is the case for vineyards, should not be subject to receiving water monitoring.
- The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges.
- Depth to groundwater monitoring should be eliminated from the order.
- Any well testing should be associated specifically to the constituents in question. Additionally, this information should remain proprietary and not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.

- The 2010 Section 303(d) list of impaired waterbodies is referenced in the Ag Order. The reference needs to be to a single list that is based upon the constituents/ impairments the order is meant to address. A grower should be able to know clearly what list is referenced and be assured that the tier classification for their operation does not change within the term of the Order.
- There needs to be a mechanism for data submission in a non-electronic form for those farmers who do not use, or do not have, internet access.
- The November 2010 staff report starts with the statement that “discharges of waste associated with agricultural discharges (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The water quality impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and agricultural discharges continue to contribute to already significantly impaired water quality and impose certain risks and significant costs to public health, drinking water supplies, aquatic life, and valued water resources.” This language is inflammatory, does not accurately represent the situation, and does not acknowledge that relatively few farmers contribute to water quality problems.
- In order to gain popular support for the necessary programs, it would be helpful for the Water Board staff to adopt a tone that reflects an interest in working with the regulated community rather than treating farmers as adversaries. The Water Board should also offer incentives for participation.

I appreciate your consideration of the importance of the regulatory impacts upon not only on the environment, but those working to protect it while making a livelihood and producing food and fiber to sustain the populace.

Sincerely,



John Crossland
President
Vineyard Professional Services, Inc.

AgOrder - Draft Order No. R3-2011-0006 ("Draft Ag Order")

From: Greg Barr <barrcreeksidevineyard@tcsn.net>
To: <AgOrder@waterboards.ca.gov>
Date: 1/2/2011 9:07 PM
Subject: Draft Order No. R3-2011-0006 ("Draft Ag Order")
CC: Lisa Bodrogi <lbodrogi@pasowine.com>

January 2, 2011

Barr Creekside Vineyard, LLC
6944 Union Road
Paso Robles, CA 93446

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Honorable Chairman Young:

Our family has owned Barr Creekside Vineyard since 2007. It is a relatively small 85 acre parcel with less than 50 acres planted in a mixture of varieties. The bulk of our grape production is sold to a large winery but we keep a portion of the production for our use at Barr Estate Winery.

To say it has been a steep learning curve to understand the basics of vineyard management and operations would be an understatement. We have been fortunate to have good advice from neighbors and agricultural organizations to help us along the learning path. We also employ the services of an experienced Farm Advisor. Most of the routine hands on work, we do ourselves to control costs. Agricultural activities that require large amounts of labor over a short period of time, such as pruning and leaf thinning, are performed by qualified labor contractors that we select. Both my son and I maintain QAL licenses that allow us to purchase and properly apply the chemicals we use on the vineyard. We also operate and maintain the drip irrigation system at the vineyard. We utilize a weather station and soil moisture monitoring probes at the vineyard to help us match the irrigation water to the plant requirements.

In 2006, like most non-farmers, I didn't have an appreciation for how challenging the business is for small producers. In the last three years, I have seen a number of small vineyards and wineries seek bankruptcy protection or change hands. Undoubtedly, the economy was a significant factor but it also highlights the fragile economic structure of this business. To survive, a small farmer must be a good steward of the land and resources, follow sound agricultural practices, and watch their costs like a hawk.

We are members of CAWG, IGGPRA, and the Paso Robles Wine Country Alliance. As I am sure you are aware, these organizations are strong sponsors of sustainable wine grape growing. The industry, both farmers and wine makers, fully understand the critical importance of applying best practices to our industry. There are few industries that possess a greater understanding of the criticality of managing our limited water resources to ensure our business longevity. Without a reliable source of good water, there will be no wine industry. Our customers, wine enthusiasts, are also demanding high standards of sustainability for the industry.

I am providing this background information so you have a better understanding of my perspective on wine grape farming, wine production, and the need to conserve and maintain the quality of our water resources. From this perspective, I would like to respectfully provide input on the proposed updates to the Ag Order.

- Vineyards utilize deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations. These practices should be encouraged and incentives given to maximize practices that serve to minimize water quality degradation.
- An exemption from additional monitoring and requirements should be available for farming practices and operations that are not contributing to water quality degradation.
- Basing the tiers on location and size has no practical bearing on potential contribution to poor water quality. The tiers should be based upon whether there is probable cause for pollution to be transported. Farming operations that do not result in tailwater (i.e. drip irrigated vineyard operations) and are closely monitored for input requirements to the specific plant needs, should be exempt from a tiered approach.
- The Ag Order should be based upon practices that have the potential to degrade water quality and provide incentives and performance-measures to improve water quality, not based upon arbitrary characteristics such as size or location.
- Dischargers who do not cause tailwater, as is the case for vineyards, should not be subject to receiving water monitoring.
- The requirements for well water monitoring go beyond what is necessary to carry out the order to address pesticides, sediment, and nutrients associated with agricultural discharges.
- Depth to groundwater monitoring should be eliminated from the order. It is unclear how this would address the issues of pesticides, sediment, and nutrients associated with agricultural discharges. This could add substantial cost for compliance without any justification for this requirement.

I believe the Agricultural Alternative is a better approach to addressing water quality issues since it is more performance-based and focused on research, education, and extension.

In closing, I'd like to make two points.

San Luis Obispo County is blessed with an abundance of small vineyards and wineries that are family owned and operated. They are positive contributors to the local economy, the quality of life, and create a unique and attractive image for the area. They are businesses that face extreme financial pressures even in the best of economic times. As we move forward, we must be sensitive to adding nonproductive costs and unnecessary reporting requirements that don't produce clearly identifiable benefits to the

maintenance of resources and the environment.

The wine industry and the Water Resource Board have aligned objectives in the area of water conservation and quality control. I believe more can be achieved through collaboration than confrontation. Every effort should be made to maintain a constructive dialogue that addresses our mutual objectives. Working together will always produce the most workable plan with the best outcomes.

Respectively,

Greg Barr

8201 Santa Rosa Road
Buellton, CA 93427
pinot@sandpointvineyard.com

January 2, 2011

Jeffrey S. Young, Chairman of the Board
Roger Briggs, Executive Officer
California Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Sent via email to: AgOrder@waterboards.ca.gov
Aschroeter@waterboards.ca.gov

RE: Draft Agricultural Order

Dear Mr. Young & Mr. Briggs:

Thank you for the opportunity to comment on the Draft Ag Order.

Allow me to introduce myself. My family owns two farms: an avocado orchard outside Carpinteria and a farm on which we grow row crops outside Buellton. Both farms are Certified Organic. I am a full time farmer and have been farming for 10 years. Earlier in my professional life, I was a tenured professor in the College of Business Administration at Cal Poly Pomona teaching marketing research; I have a Ph.D. in political science with a specialization in survey research and quantitative data analysis.

I want to compliment the Staff on attempting to take into account several factors and propose a tiered system. However, the factors considered are too broad and fail to take into consideration documentable variations and elements of paramount importance.

Concern #1:

The criterion “**1000 feet from a 303(d) water body**” is imprecise and arbitrary.

Being near a 303(d) water body does not automatically indicate that farmers are causing the impairment. If there is no use of pesticides and no runoff of fertilizer, farming can safely be conducted near a water body – impaired or not. Also, many farmers have worked with the NRCS implementing cover crops and buffers to protect waterbodies.

Furthermore, the Central Coast Water Quality Preservation's FOLLOW-UP MONITORING REPORT: WATER QUALITY RESULTS FROM UPSTREAM MONITORING 2008 (2010) confirms that not all sections of an impaired water body contribute to impairment.

The report concludes:

In some water bodies from 2008 Upstream Monitoring, the dominant discharges were agricultural. These included Quail and Chualar Creeks, Rec Ditch tributaries from the east side of Salinas, the West Central Ave canal in Lompoc, parts of Oso Flaco Creek, parts of Orcutt-Solomon Creek, parts of Green Valley, the Main St Ditch below Hanson Way, and at least one

reach of Glen Annie Creek. **In other water bodies, the dominant discharges were clearly of urban origin**, including the west branch of San Juan Creek, part of the Main St Ditch in Santa Maria, and Miguelito Creek in Lompoc.(p 56; p 63 pdf)

In the case of the Santa Ynez River, the report states:

“The upper Santa Ynez River [east of Lompoc] does not appear to be a source area for nitrates or suspended sediments beyond the loads which are naturally associated with moderate flows of low concentration for both constituents, except in major storms. The upper Santa Ynez River also does not appear to be a source of any aquatic toxicity to the lower watershed.” (p 54 , p 61 pdf)

#1 Recommended change to Tier criteria:

“not located within 1000 feet of an impaired waterbodies with the exception of operations that have (1) no surface runoff of irrigation water or (2) that have worked with NRCS to improve operations or (3) are located on sections of 303(d) waterbodies which monitoring data show are not sources of toxicity, nutrients, or sediment”.

Concern #2:

Designating all irrigated acreage that grows crops with **“high nitrate loading potential”** as automatically Tier 2 or 3 is inconsistent with the recommendations of the Nutrient Technical Advisory Committee (TAC) appointed by the California State Water Resources Control Board. The TAC proposed a nitrate hazard index based on the soil type, crop, and irrigation systems – not merely crop. The University of California Center for Water Resources provides an easy-to-use interactive tool that assigns an index number based on crop, soil, irrigation, and ripping depth (<http://wrc.ucanr.org/search2.php>). Index numbers greater than 20 “should receive careful attention.” Use of this index would be better than simply listing crops with high nitrate loading potential. Even better would be modifying the index to include such practices as use of cover crops and not fertilizing during the rainy season.

#2 Recommended change to Tier criteria:

eliminate: “does not grow crops with high nitrate loading potential”

replace with: *“has a Hazard Index less than or equal to 20 or has a Hazard Index between 20 and 25 and uses cover crops and does not use fertilizer, pesticides, or herbicides during the rainy season.”*

Concern #3:

Designating all farms with total irrigated acreage “greater than 1000 acres” as automatically Tier 2 or 3 seems rather arbitrary. Surely it is possible to farm more than 1000 acres organically without use of pesticides or herbicides and a low Hazard Index. If I could afford 1000 acres, that's how I would farm.

#3 Recommended change to Tier criteria:

eliminate size of farm criteria.

Thank you for taking these concerns and recommendations into consideration.

Sincerely,

Sharyne Merritt, Ph.D.
Farmer

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,¹ the Alternative Proposal contains measurable and realistic goals, timelines, and milestones. The Board should adopt the Alternative Proposal.

¹ 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.”² 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

² 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.

AgOrder - new regulations

From: Steve Christian <binyodi@yahoo.com>
To: <AgOrder@waterboards.ca.gov>
Date: 1/3/2011 10:16 AM
Subject: new regulations
CC: steve <binyodi@yahoo.com>, <kris@vineyardteam.org>

I am writing about the proposed irrigation regulations. I farm 25 acres of head trained, dry farmed Zinfandel grapes. If I think the year will be very rainy, I plant a cover crop of legumes(2009, 2005) I use minimal inputs into the growing of my grapes. I do not irrigate as I am dry farmed, so I am wondering why I am being put into Tier 1 of the program and will be forced to fill out many many forms, attend 15 hours of classes per year to stay updated on irrigation practices that I don't need? This means two days without pay, the cost of the classes and any travel or lodging that the classes may entail. For a small family farm these added costs will be difficult accept, especially as I already work two jobs to keep the farm afloat.

Steve Christian

AgOrder - water quality regulation update

From: Kathy Tucker <adasvines@wildblue.net>
To: <AgOrder@waterboards.ca.gov>
Date: 1/3/2011 11:25 AM
Subject: water quality regulation update
CC: 'Kris O'Connor' <kris@vineyardteam.ccsend.com>

Dear Water Board,

I am writing to you as an owner of a small vineyard. We have 8.5 acres of Cabernet Sauvignon. I participate in the sustainable practices recommended by the Central Coast Vineyard Team. I use a cover crop, we use organic sprays and pesticides whenever possible and we drip irrigate to minimize run off. We use organic fertilizers yearly to build healthy soil. Like most small farmers, I care deeply for the land and our environment.

As a small farmer, I have been burdened by regulations regarding all chemicals we apply, farm labor regulations and the record keeping for our farm plan.

I have real concern that the increase in regulatory monitoring requirements for water quality will place such a burden on small vineyard owners that we cannot continue to pursue farming our crops.

In addition, our vineyard is located about two miles downstream from a city which uses the Salinas River as a place for runoff from housing, sewer plant and other drainage. To blame the small local farmers on any contamination of this water source is questionable to me.

I understand and commend the water quality control effort, but I feel the burden on small farmers and vineyard owners is onerous and will put us in a position where we can no longer afford to farm.

Please consider using the Central Coast Vineyard Team participation as a monitoring source and ease the burden on small vineyards.

Sincerely yours,

Kathy Tucker RN
Ada's Vineyard LLC
PO Box 3029
Paso Robles, CA 93447



California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.
*Secretary for
Environmental Protection*

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Edmund G. Brown Jr.
Governor

Public Comments to

Draft Agricultural Order, released 11/19/2010

71: Form Letter - this letter was received from the following entities:

Name	Date Received
Wittsrom Vineyard	01/03/2011
F & T Vineyard	01/03/2011
San Juan Vineyard	01/03/2011
Ancient Peaks Winery	01/03/2011

WITTSTROM VINEYARD

42 WELLSONA RD, PASO ROBLES CA

1.3.11

Electronically Submitted to: AgOrder@waterboards.ca.gov
Hard Copy to Follow

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

Re: California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chairman Young:

For several generations my family has farmed and lived in San Luis Obispo County. Preserving our precious resources is of the utmost importance to me as well as my family. The future of our vineyard depends on healthy land. I appreciate the protective steps the California Regional Water Quality Control Board is attempting to make, however I feel that there are several oversights in the California Regional Water Quality Control Board, Central Coast Region Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. Below are my concerns:

- A successful program is performance-based and provides incentives and opportunities to improve water quality. Arbitrary factors such as operational size and location; burdensome paperwork; unnecessary requirements; and limited resources to manage and enforce does not provide any benefits towards improving water quality.
- Additional written comments should be accepted for submittal to your Board beyond Jan. 3rd to accommodate an open and deliberative dialogue throughout the decision-making process.
- The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe. The lack of comments by many growers should not be considered by the Water Board as an indication of approval or disinterest.
- The tone and much of the language of the Draft Ag Order conveys a distrust of farmers that is without basis. The Regional Water Quality Control Board (Water Board) staff did not act in the spirit of cooperation as particularly demonstrated by the unreasonable timeframe for public comment, compressing the schedule over the holidays.

- Vineyards utilize deficit irrigation practices, drip tubing, water to root technology, drip irrigation and soil moisture calibrations. These practices should be encouraged and incentives given to maximize practices that serve to minimize water quality degradation.
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- Any well testing should be associated specifically to the constituents in question. Additionally, this information should remain proprietary and not be submitted to the Control Board for public record. Particularly, if you are not contributing to the concerns meant to be addressed through this order. The groundwater reporting requirements are over-burdensome and unnecessary.
- The 2010 Section 303(d) list of impaired water bodies is referenced in the Ag Order. The reference needs to be to a single list that is based upon the constituents/ impairments the order is meant to address. A grower should be able to know clearly what list is referenced and be assured that the tier classification for their operation does not change within the term of the Order.
- There needs to be a mechanism for data submission in a non-electronic form for those farmers who do not use, or do not have, internet access.
- The November 2010 staff report starts with the statement that “discharges of waste associated with agricultural discharges (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The water quality impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and agricultural discharges continue to contribute to already significantly impaired water quality and impose certain risks and significant costs to public health, drinking water supplies, aquatic life, and valued water resources.” This language is inflammatory, does not accurately represent the

situation, and does not acknowledge that relatively few farmers contribute to water quality problems.

- In order to gain popular support for the necessary programs, it would be helpful for the Water Board staff to adopt a tone that reflects an interest in working with the regulated community rather than treating farmers as adversaries. The Water Board should also offer incentives for participation.

Sincerely,

Amanda Wittstrom- Higgins