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Chairman Wolff  
Central Coast Regional Water Board  
895 Aerovista Pl., Suite 101  
San Luis Obispo, CA 93401-7906

**Subject: 11/8-11/9/18 BOARD MEETING**

Dear Chairman Wolff:

Thank you for the opportunity to provide comment on the Matrix of Options (Matrix) proposed for the next Central Coast Irrigated Lands Regulatory Program (ILRP) permit. As stated in the Staff Report for this item, a permit has many components and the proposed Matrix contains only a few of the components found in a permit. However, the proposed options are foundational and because of the over-reaching nature of the proposed Matrix, there are many points where clarification is needed. It is hoped that the questions and comments provided below will assist the Water Board in elucidating answers.

**Process:**

- The Water Board heard presentations regarding the next ILRP permit at each Water Board hearing between September 2017 and September 2018. This is almost one year without *formal* input from stakeholders during a three-year, compressed timeline for adoption. Why was there no formal input from the growing community at Water Board hearings until the September 2018 hearing?
- The proposed Matrix lacks any indication that Staff seriously considered input from Agricultural as a result of *informal* meetings or interactions over the past year.
- The State Water Resources Control Board (SWRCB) anticipates adopting statewide Toxicity Provisions as Part of the Inland Waters and Enclosed Bays and Estuaries Plan in early 2019. In reality, adoption could be delayed. In the event that adoption occurs as per the proposed timeline, Agriculture is concerned the provisions will be inserted into the Central Coast ILRP Permit without adequate public dialog and after the ILRP Permit administrative record is closed.
- Similarly, SWRCB is developing a Statewide Biostimulatory Policy. It is possible that a public review draft will be released in Spring 2020 with adoption scheduled for Fall 2020. Ag is concerned that the Board will incorporate proposed elements of the Biostimulatory Policy without sufficient public dialog and after the administrative record has been closed for public comment.

### **General Questions about the Matrix of Options:**

- Staff refers to the next Central Coast ILRP as “AW 4.0” throughout the Staff Report. Is this an acronym for “Ag Waiver 4.0”? Does this pre-suppose that the next ILRP permit will be a general Ag Waiver, rather than a general Waste Discharge Requirement (WDR)?
- What does Staff mean by “Phase”? One grower commented, “So, instead of using size to determine tiers, Staff is now going to use location?” If this is the case, then, shouldn’t Staff give the Board more detail as to the number of locations or “phases” and where those locations are likely to be? It seems this would be necessary in order to assess the scope of the proposed options.
- Staff is recommending that ranches be required to obtain an individual WDR if there is a slope that exceeds X%. This is unexpected. Over the course of the past year, Agriculture has asked Staff for more details in respect to individual WDRs for specific situations. Staff has been discouraging and reluctant to discuss individual WDRs. There are specific situations where an individual WDR might be a better fit than a Waiver. For example, a grower might have thousands of acres that are contiguous and contain multiple ranches; however, there are only a couple of discharge outfalls to ambient surface receiving water associated with this contiguous piece of property. The ranches might have wells that are plumbed together, and tailwater and stormwater are also managed as a whole. In other words, water discharges from one ranch to another ranch that is owned by the same grower. Under the current permit scenario, a grower would have, at the very least, one discharge compliance point per ranch, whereas, there are only a couple of discharge outfalls to surface receiving water. The question is whether it would be better for the grower to continue to be regulated under the general ILRP Permit or to obtain an individual WDR?
- It should be noted that if a substantial amount of acreage were removed from the general ILRP Permit, then, a third party group would find it difficult and expensive to fund their program(s).

### **What is missing from the Matrix of Options:**

- The approach is punitive and seems to conflict with goals expressed by Staff and the Board. It was thought that the Board was looking for ways to incentivize technical development and grower innovation. If so, it is hoped that the Board will seriously consider revisions to this Matrix.
- Most controlling laws and authorities require a balance between water quality protection, economic considerations, and the protection of private rights. Where is the balance in the proposed Matrix?
- It appears that Staff continues to omit or de-emphasize the role of education, outreach and the need for extensive technical research. These activities are prioritized in the East San Joaquin Order. How can these omissions be justified?
- The Matrix is silent on the issue of Coalitions (i.e., Third Party Groups), even though the East San Joaquin Order prioritizes Coalitions. What is proposed in this Matrix is highly complicated, highly technical, and will be extremely labor intensive to implement. If Staff is not proposing to work collaboratively with Third Party Groups, the Central Coast Water Board will have to increase Staff exponentially. This, in turn, will lead to ever-increasing grower fees. What effort will the Water Board make to show a nexus between the regulatory requirements, water quality improvement, costs of implementation, and grower fees?

- Terms are vague and not defined. This would normally be acceptable in a concept proposal; however, don't the Board and the public deserve to know the scope of what is being proposed?
- There is strong concern about the quality of science involved with many of the components associated with the proposed Matrix.
  - Many beneficial use designations were originally made without scientific basis.
  - Inadequate data were used for listing processes, especially before 2006.
  - There are questions about calculating Nitrogen-Removed (R).
  - Mineralization and volatilization are omitted from Nitrogen loading assumptions.
  - There will likely be poor statistical confidence of the A/R and A-R calculations.
  - A/R and A-R reported data might not be comparable across ranches.
  - Criteria for determining "outliers" are omitted.
  - This applies east coast derived standards and Point Source approaches to Non Point Sources located on ephemeral streams in western waterbodies, with no baseflows.
  - How useful is the application of numeric standards that are lower than Central Coast background levels (for example, for turbidity or nitrogen)?
  - Potential use of "no observable effects levels" (aka zero detections) for purposes of determining toxicity or pesticide exceedances contravenes multiple acts and policies, which state that the overarching goal is not zero detection.
  - The use of the null hypothesis for toxicity testing may lead to false positives.
  - The use of most sensitive species for toxicity tests may lead to false positives, even when it is obvious that the same species are thriving in ambient water.
  - There is no state or EPA guidance concerning the use of Chironomus spp. in toxicity tests. None is planned for the Toxicity Policy.

How can the Board address these issues and ensure that sound science is being used?

### **Questions about the Matrix:**

- How will it be possible for the Board to conceptually endorse this Matrix without knowing critical details such as risk assessments criteria and scope of the proposal?
- What is proposed is very similar to the Tier 3 requirements in Ag Waiver 3.0. In fact, one could call the first Option, "Tier 3 Plus" (T3+), and the second option, "Tier 3 Plus Plus" (Tier 3++). Having had the opportunity to assist three growers with six Tier 3 ranches over the past four years, my assessment is the feasibility of what is proposed is questionable. What evidence does Staff have that the proposed Options are implementable at this scale?
  - Do growers have sufficient technical capacity to implement what is proposed?
  - Does the industry possess sufficient technical service provider capacity to assist growers?
  - Are there sufficient public resources to support this program?
  - Does sufficient laboratory capacity exist?
  - Has Staff done an estimate of stakeholder implementation costs?
  - Has Staff done an estimate of Water Board implementation costs?
  - Has Staff estimated how many person years (PYs) will be necessary to implement the proposed options?
  - Has Staff estimated how to build the Water Board budget that will be necessary to implement the proposed options?

### Nutrients/Irrigation

- Baselines: Growers are concerned they will not be given credit for improvements that began since the Irrigated Lands Regulatory Program was initiated in 2004. How will individual grower baselines be determined?
- Is Staff ignoring the issue of “New Nitrogen” and requiring growers to estimate pre-irrigation water as part of the Total Nitrogen Applied against the recommendations of experts on nitrogen management?
- It is known that grower reported data is highly variable. What if the data are so unreliable and/or variable or the confidence is so low that the data cannot be compared or analyzed across ranches with acceptable levels statistical) confidence?
- Staff does not indicate whether the Irrigation Nutrient Management Plan (INMP) is by crop or ranch. Could Staff clarify this?
- Staff is silent on the issue of a multi-year average for reporting A/R and A-R.
- Reporting yield for a crop is a Crop Report; and therefore, probably, is a defensible trade secret.
- Isn't it premature to adopt orthophosphate numeric standards? It is unknown how the State Water Resources Control Board Biostimulatory policy will treat biostimulatory indicators such as Phosphorous.
- Additionally, with the exception of adoption of two Nutrient TMDLs, with associated public workshops, very limited amount of public dialog has occurred regarding Orthophosphate by the Water Board or the Research Community. Perhaps, this should be phased in at a future date?

### Pesticides

- Aren't the proposed pesticide prohibitions in conflict with California Department of Pesticide Regulation's (CDPR's) Authority?
- Isn't the proposed pesticide Management Plan and Report duplicative of the CDPR Pesticide Use Reports (PURs)?

### Toxicity

- See questions above about the imminent SWRCB Toxicity Provisions and about science concerns.
- How does Staff account for other sources that contribute to toxicity (i.e., naturally occurring substances or urban sources?)

### Sediment

- Each watershed has a unique turbidity signature. How does Staff propose to take variable and naturally occurring background levels into account when establishing turbidity numeric standards?
- Staff refers to “Flow measurements”. Does Staff mean continuous flow monitoring? If so, this may not be feasible. Often, on a farm, there is no electricity at the discharge point. Rural theft is epidemic and solar panels are stolen. Therefore, in general, running an electrical measuring device and/or collecting data wirelessly are not possible. Additionally, discharge pipes vary in size and flow is highly variable so the flow meters or measuring devices must be engineered for each individual pipe.

- Isn't mandating a 30-foot vegetated buffer the equivalent of mandating a management practice?
  - What is Staff's definition of an "erosion event"?
  - In respect to ranches with plastic mulch, how will "intensity and volume from an equivalent non-impermeable area" be determined?
  - Is "non-impermeable" the same thing as "permeable"?
  - How is Staff going to account for "existing scours, creek bank failures, downcutting or sediment accumulation"? How will they inform the growing community of this?
  - What is a "design storm"?
  - Since Sediment and Erosion Plans are written for each ranch, who makes the determination of "proper sizing, design, and maintenance of sediment and erosion control measures (e.g., retention basins)?" Is there adequate technical capacity to do this?
  - It appears that Staff is recommending a formulaic, one-size-fits-all approach to vegetation cover. Watershed experts do not support this approach, as each watershed is unique. How can Staff account for ignoring expert opinion?
  - How will a ranch be handled if only a small percentage of the ranch exceeds the proposed regulatory trigger of X% slope?
  - What are the criteria for an "approved watershed restoration program"?
  - Do the proposed sediment regulatory requirements exceed non-Ag stormwater permits (e.g., NPDES POTW, and MS4 Stormwater)?
  - In 2011, Mary Bianchi, San Luis Obispo County UCCE Director, and Karen Lowell, NRCS District Agronomist wrote an chapter for the American Chemical Society titled *Food Safety and Surface Water Quality, Pesticide Mitigation Strategies for Surface Water Quality*. They make the following points about coordinating Water Quality and Food Safety:
    - Growers are "stuck" with trying to address Food Safety and Water Quality simultaneously. What they do for one be might exacerbate problems for the other.
    - Even if growers do all the "right things for water quality, causing themselves significant Food Safety headaches in the process, they STILL might not meet Water Quality standards.
    - Using research findings to guide management can be tricky because something may be statistically significant but may not be biologically impactful.
    - We may not be able to summarize how effective conservation management practices are in addressing Water Quality challenges.
- Doesn't Staff ignore these points in proposed sediment management requirements? What justification does the Board have for ignoring Food Safety requirements that safeguard Human Health?

### Riparian Habitat

- Watershed experts might not support some of the statements made in this section. What if Staff's premises are not supported by experts with stronger credentials on this subject? How will the Board account for ignoring established Watershed Science?
- What is a "surface waterbody"?

### Monitoring

- The only way to determine if growers are meeting the discharge limits is to require Individual surface water monitoring. This needs to be confirmed the Matrix is unclear on this point.

- What is the point of compliance? Is it receiving water quality? Is it the point of discharge? If it is the point of discharge, isn't that treating Non Point Source discharges as if they are a Point Source discharges? If a Non Point discharge is going to be treated like a Point Source discharge, why isn't there a mixing zone allowed, similar to a POTW discharge?

## **Conclusion**

The Matrix of Options, as proposed, is highly problematic. It contains vague terms and questionable science. Additionally, it lacks balance, and therefore, may not be supported by most Water Quality Acts and Policies. It treats NonPoint Source dischargers as if they were Point Source dischargers so that it likely conflicts with both Porter Cologne and the NonPoint Source Policy. It incorrectly summarizes the precedential requirements in the East San Joaquin Waste Discharge Requirements and also misinterprets the Non Point Source policy. This will be discussed in greater detail in other letters.

Both proposed options contain requirements that may lack technical feasibility. The proposed Matrix likely overreaches technical capacity of growers and the technical service providing community. It is puzzling how Staff will implement this proposal without tremendous increase in funding and resources.

There are no provisions for innovation or collaborative problem solving. There are no incentives, and in fact, it creates disincentives for grower proactivity. It is essentially demoralizing in nature.

The fiscal impact to individual growers may be considerable; hence, there is grave concern about the sustainability of the Central Coast Agriculture, as well as communities, which are economically reliant on agriculture for their means of survival.

Thank you for considering my questions and comments. I look forward to hearing Staff and Board discussions at the November Water Board Hearing.

Most Sincerely,



Kay Mercer,  
President

CC:

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Jane Grey, Board Member  
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