

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**SUPPLEMENTAL SHEET FOR REGULAR MEETING OF DECEMBER 5-6, 2013**

Prepared November 25, 2013

**ITEM NUMBER:** 6

**SUBJECT:** Approve Revisions to Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011, Condition 65 – Public Disclosure of Well Location

**STAFF CONTACT:** Angela Schroeter 805/542-4644 or [Angela.Schroeter@waterboards.ca.gov](mailto:Angela.Schroeter@waterboards.ca.gov)

**SUMMARY**

This Supplemental Sheet is to provide to Board Members the following three comment letters received in response to the Public Notice for Item 6.

1. Comment letter titled, "*Comments on the Proposed Revision of Conditional Waiver Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011 Condition 65 – Public Disclosure of Well Locations.*" The letter was submitted by Kari Fisher on behalf of California Farm Bureau Federation, received November 22, 2013.
2. Comment letter titled, "*Revision of Conditional Waiver Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3--2012---0011.*" The letter was submitted by Parry Klassen on behalf of the Central Coast Groundwater Coalition, received November 22, 2013.
3. Comment letter titled, "*Revisions of Conditional Waiver Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011, Condition 65-Public Disclosure of Well Location.*" The letter was submitted by Kenia Acevedo, Steve Shimek and Colin Bailey on behalf of California Rural Legal Assistance Inc. (CRLA), the Otter Project and Monterey Coastkeeper, and Environmental Justice Coalition for Water, received November 22, 2013.

The first two comment letters listed are in support of our Executive Officer's recommendation to revise the Order and Monitoring and Reporting Programs. The third comment letter listed includes specific objections to the proposed revisions.

**ATTACHMENTS**

1. November 22, 2013 letter from California Farm Bureau Federation
2. November 22, 2013 letter from Central Coast Groundwater Coalition
3. November 22, 2013 letter from CRLA, the Otter Project and Monterey Coast Keeper, and Environmental Justice Coalition for Water



# CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

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Sent via E-Mail

[centralcoast@waterboards.ca.gov](mailto:centralcoast@waterboards.ca.gov)

November 22, 2013

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

**Re: Comments on the Proposed Revision of Conditional Waiver Waste Discharge Requirements for Discharges From Irrigated Lands, Order No. R3-2012-0011  
Condition 65 – Public Disclosure of Well Locations**

Dear Chairman Young and Members of the Board:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to comment on the proposed revisions to Condition 65, the public disclosure of well locations, within the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R3-2012-0011). Farm Bureau supports the change in which groundwater well location and data will only be referenced within one square mile of the actual well location rather than the previous requirement of a one half mile radius. No evidence is provided in which well location and data needs to be provided at a level greater than the standard of care implemented to protect locations of public drinking water supply wells regulated by the California Department of Public Health. (See Geotracker GAMA Tutorial, Understanding the Results Map, p. 4, available at <http://geotracker.waterboards.ca.gov/gama/GAMA%20Public%20Tutorial.pdf>), “Square icons represent California Department of Public Health wells and are approximated within one mile of their actual locations.”) By aligning the Conditional Waiver’s requirements with the California Department of Public Health’s protocol and standard of care for displaying information on GeoTracker, the consistent approach will aid the Regional Board and the public in assessing information.

NANCY N. MCDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

Item No. 6, Supplemental Sheet Attachment 1

December 5-6, 2013

November 22, 2013 Letter, CA Farm Bureau Federation

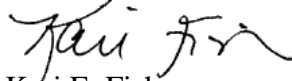
Letter to Central Coast RWQCB

November 22, 2013

Page 2

Farm Bureau appreciates the opportunity to submit comments on the revisions to public disclosures of well locations as required under the Conditional Waiver and recommends the Regional Board approve such revisions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari Fisher", written in a cursive style.

Kari E. Fisher

Associate Counsel

KEF/pkh



November 22, 2013

**Via Electronic Mail Only** [centralcoast@waterboards.ca.gov](mailto:centralcoast@waterboards.ca.gov)

Mr. Kenneth Harris  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

**SUBJECT:** Revision of Conditional Waiver Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011

Dear Mr. Harris:

The Central Coast Groundwater Coalition (CCGC) appreciates the opportunity to comment on the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) proposed revisions to Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011 and associated Monitoring and Reporting Program. The CCGC is one of the recently approved cooperative groundwater monitoring programs formed to administer groundwater monitoring in the Central Coast Region in compliance with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands and Monitoring and Reporting Program Order Nos. R3-2012-0011-01, R3-2012-0011-02, R3-2012-0011-03 (hereafter, "Conditional Waiver" and "MRP-01," "MRP-02," and "MRP-03," respectively). Accordingly, CCGC would like to express support for the proposed revisions.

The CCGC supports Central Coast Water Board staff's recommendation to change the public disclosure of groundwater well location and data so that it is referenced within a one mile square of the actual well location rather than a one-half mile radius of the actual well location. CCGC finds it important that cooperative groundwater wells are treated consistently and with the same protocol and standard of care implemented to protect locations of public drinking water supply wells regulated by the California Department of Public Health (CDPH).

The CCGC hereby encourages the adoption of the proposed language changes to Agricultural Order [page 27, Part D. Submittal of Technical Reports for All Dischargers – Tier 1, Tier 2, Tier 3; Condition No. 65] and MRP-01 [page 12, Part 3.A.2], MRP-02 [page 16, Part 5.A.2], and MRP-03 [page 23, Part 8.A.2] to read as follows:

. . . In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the display of public supply wells regulated by CDPH on GeoTracker, groundwater well location and data will only be referenced within a one mile square of the actual well location.

Thank you for providing this opportunity to comment.

Sincerely,

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

Parry Klassen  
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Central Coast Groundwater Coalition  
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Post Office Box 828 | Salinas, California 93902 | [www.centralcoastgc.org](http://www.centralcoastgc.org)



November 22, 2013

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

**RE: REVISION OF CONDITIONAL WAIVER WASTE DISCHARGE  
REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS ORDER No. R3-  
2012-0011, Condition 65 – Public Disclosure of Well Location**

On behalf of the above listed organizations we are writing to express our concern about the proposed revision of Condition 65 of Agricultural Order No. R3-2012-0011 and associated MRPs (“Agricultural Order”).

Given the significant water quality problems facing small water systems in the Central Coast region, due in large part to agricultural discharges, we urge the Central Coast Regional Water Quality Control Board (“the Regional Board”) to decline approving any revisions which would further limit public access to vital information regarding drinking water quality.

Referencing data within a one-half mile radius of the tested well location provides the public with more precise information regarding the quality of their drinking water than the proposed one mile square revision. More precise data allows the public to make well-informed decisions regarding where to live, start a business or promote development. Obscuring the data to one mile square compromises the utility of such information, makes it difficult to identify the proximity between contaminated wells, and potentially compromises the health of residents who will not be able to determine the likelihood that their residence used contaminated well water.

**The Board Should Not Further Obscure Well Location In Excess of One-Half Mile  
Because Doing So Would Hinder Public Access to Reliable Data.**

The recommended revision to reference well location within one mile square of the actual well location instead of one-half mile radius of the actual well location is one of many recommendations of the Approval of Central Coast Cooperative Groundwater Program (“Approval Letter”), which, individually and in the aggregate, would function to hinder public access to groundwater data.

Item No. 6, Supplemental Sheet Attachment 3  
December 5-6, 2013

November 22, 2013 Letter, CRLA, the Otter Project and Monterey Coast Keeper, and Environmental Justice Coalition for Water

In addition to the recommended revision of Condition 65, on page seven of the EO's letter to Central Coast Cooperative Groundwater Program ("CCCGP"), the EO approved withholding the display of individual wells sampled by the cooperative program on the public-side of GeoTracker "for at least the terms of the Agricultural Order, which Expires in March 14, 2017 [...] until such time that a renewed Waiver or other similar order is adopted." (Approval Letter, p. 7). This decision was made despite an acknowledgment of the detrimental effect it could have on public access and the effectiveness of the Regional Board:

Withholding the display of individual well information on maps on the public side of GeoTracker limits the Central Coast Water Board's ability to provide all members of the public with broad and convenient access to its records and to promptly make the fullest possible disclosure of its records [...] (Approval Letter, p. 7).

Thus, we ask the Regional Board to evaluate the proposed change regarding groundwater well location and data referencing not as free-standing revision, but as a component within a broader set of recommendations that together would limit the public's right to broad and convenient access to data gathered by the Regional Board.

**The Regional Board's Staff Believes the Public's Interest in Disclosure Outweighs the Public's Interest in Non-Disclosure.**

In an April 17, 2013 communication regarding the disclosure of cooperative groundwater monitoring program data Regional Board staff counsel wrote the following:

The Water Board believes that it can defend the decision to blur the well location to a one-half mile due to public safety and food safety concerns and will be supported by GeoTracker and the standard practice of blurring well locations to a one-half mile for other regulatory programs. Furthermore, blurring well locations beyond the one-half mile will result in providing inaccurate or poor information to the public, causing the public to make misinformed decisions that can affect drinking water quality, public health, and individual exposure to contaminated drinking water.

Groundwater quality conditions in agricultural areas of the Central Coast region are severe and nitrate impacts to drinking water poses a significant threat to human health [...] Maximizing the accessibility of groundwater quality data to the public increases the public's ability to be informed about their drinking water quality. The public has a right to know the nitrate levels in groundwater wells and where wells are potentially contaminated or unaffected by nitrate contamination. This information is necessary for informed decision making necessary to protect drinking water sources and public health. *Therefore, the Water Board believes past one-half mile, the public's interest in disclosure outweighs the public's interest in non-disclosure and so the Water Board cannot support any proposal to blur the well locations any further than one-half mile.* (Regional Board Counsel Letter, Attachment 1, pgs. 2-3, *emphasis added*).

The Regional Board staff acknowledges the severity of nitrate impacts to drinking water, and has stated the importance of maximizing the accessibility of groundwater quality data to the public. Therefore, any proposal to blur the well locations farther than one-half mile is indefensible. We urge the Regional Board to implement their staff counsel's previous well-reasoned positions in its April 17, 2013 letter regarding maximizing the accessibility of groundwater quality data to the public.

**Adopting the One Mile Reference Area to be Consistent with CDPH Well Display Protocol is Not a Sufficient Reason to Revise Condition 65.**

There is no sufficient reason why the Board should adopt the position taken by CCCGP "to show with an uncertainty of the precise locations of groundwater wells samples in this program to one square mile" simply because CDPH's display protocol is also one square mile on GeoTracker.

The Regional Board, unlike CDPH, is subject to a specific requirement to "provide all members of the public broad and convenient access to its records and to promptly make the *fullest possible disclosure* of its records." (State Water Resource Control Board – California Public Records Act Guidelines, *emphasis added*). Clearly, the fullest possible disclosure of well data, if given a choice between referencing between one-half mile radius versus one mile square is the former choice.

While it is true that the proposed revision would be consistent with CDPH's display protocol on GeoTracker, without more explanation, this by itself does not justify the change from half-mile radius reference area to one mile square, especially given the Regional Board staff's own findings that a half-mile reference area adequately protects all public interests.

The Regional Board should not unnecessarily limit public disclosure, nor should it contravene its staff's own prior reasoning. Further, according to the Regional Board itself, Condition 65 is already "[c]onsistent with the reporting of groundwater wells on GeoTracker." (Agricultural Order, p. 27).

Regardless of the outcome of this specific issue, we retain the right to ask for Regional Board review of the entire Cooperative Groundwater Monitoring Plan as provided on page 32 of the State Board Order WQ 2013-0101:

Because the data to be generated through groundwater monitoring is of significant public interest and value, we also find that it is appropriate to provide for discretionary Central Coast Water Board review of Executive Officer approvals or denials of cooperative groundwater monitoring programs, if requested by an interested person.

We appreciate the opportunity to submit comments and urge the Regional Board to implement its staff counsel's own sound policy recommendations regarding the one-half mile radius blurring reference area.

Sincerely,



Kenia Acevedo  
Staff Attorney  
California Rural Legal Assistance, Inc.  
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Enclosures





EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Coast Regional Water Quality Control Board**

April 17, 2013

Ms. Abby Taylor-Silva  
Vice President, Policy and Communications  
Grower Shipper Association of Central California  
512 Pajaro Street  
Salinas, CA 93901  
abby@growershipper.com

Dear Ms. Taylor-Silva:

**CLARIFICATION OF WATER BOARD'S POSITION ON THE PUBLIC DISCLOSURE OF DATA RELATED TO COOPERATIVE GROUNDWATER MONITORING PROGRAMS**

This letter is to follow-up to questions from agricultural representatives regarding the public disclosure of data and data confidentiality related to cooperative groundwater monitoring programs implemented in compliance with Agricultural Order R3-2013-0011 and the associated Monitoring and Reporting Program (MRP).

**Water Board Policy Regarding Public Disclosure of Information**

California's Constitution provides that the people of California have the right of access to information concerning the conduct of the people's business and that the writings of public officials and agencies shall be open to public scrutiny. In enacting the California Public Records Act, the Legislature stated that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. The fundamental principle of the California Public Records Act is that governmental records shall be disclosed to the public upon request, unless there is a specific reason not to do so.

Generally, all records must be made available to the public upon request. The Legislature also recognized the need to balance the public's right to know against competing constitutional rights to privacy and the government's need to perform its functions in a reasonably efficient manner. Consequently, the California Public Records Act also contains several exemptions from disclosure and incorporates several other statutes that prohibit state employees from disclosing certain types of public records.

It is the policy of the Central Coast Regional Water Quality Control Board (Water Board) to provide all members of the public broad and convenient access to its records and to promptly make the fullest possible disclosure of its records. Some Water Board records are exempt from disclosure under the California Public Records Act (CPRA). For example, Water Code section 13267, subdivision (b)(2) states that the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies.

### Groundwater Data in GeoTracker

Specifically related to groundwater, Chapter 670, Statutes of 2008, (AB 2222, Caballero) required the State Water Resources Control Board (State Water Board) to make recommendations to enhance the public accessibility of information on groundwater conditions. In response, the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program prepared a Report to the Legislature in December 2010. The report recommended increasing public accessibility to groundwater information and coordination among groundwater agencies and stakeholders, through sharing and displaying information using the State Water Board's existing internet-based information management system – GeoTracker. The system is available to the public via the Internet and Californians now have access to a Google map-based database that readily provides a wealth of information including results of groundwater quality, groundwater level information, as well as links to published reports for a specific area of interest. Scientists, regulators, water managers, educators and the public can now effectively use these data, and as more data are shared through GeoTracker, the status of groundwater quality in California can be better understood.

### Agricultural Order – Cooperative Groundwater Monitoring Program Data

The Water Board manages information for the Agricultural Regulatory Program using GeoTracker. As stated in Condition 65 of the Agricultural Order, in the interest of public health and safety, the Water Board will not make available for public inspection, the precise location or associated farm/ranch name of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location. The Water Board will apply the one-half mile blurring of well location data when providing data in response to a CPRA request and to the display of well locations on GeoTracker.

There is no Water Code authority requiring that the Water Board blur well locations to one-half mile, and Water Code section 13269, subdivision (a) (2) states that "monitoring results shall be made available to the public." As well, under the CPRA, the Water Board must disclose all records unless there is a specific exception applicable to those records. There is no explicit exception for well locations in the CPRA and so the only possible exception would be under the public interest exception where the Water Board must demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. (Gov. Code section 6255.) In GeoTracker, all wells automatically have the location blurred to one-half mile when the information is viewed by a member of the public. The Water Board believes that it can defend the decision to blur the well locations to a one-half mile due to public safety and food safety concerns and will be supported by GeoTracker and the standard practice of blurring well locations to a one-half mile for other regulatory programs. Furthermore, blurring well locations beyond the one-half mile will result in providing inaccurate and poor information to the public, causing the public to make misinformed decisions that can affect drinking water quality, public health, and individual exposure to contaminated drinking water.

Groundwater quality conditions in agricultural areas of the Central Coast region are severe and nitrate impacts to drinking water poses a significant threat to human health<sup>1</sup>. Governor Brown

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<sup>1</sup> Harter, T., J. R. Lund, J. Darby, G. E. Fogg, R. Howitt, K. K. Jessoe, G. S. Pettygrove, J. F. Quinn, J. H. Viers, D. B. Boyle, H. E. Canada, N. DeLaMora, K. N. Dzurella, A. Fryjoff-Hung, A. D. Hollander, K. L. Honeycutt, M. W. Jenkins, V. B. Jensen, A. M. King, G. Kourakos, D. Liptzin, E. M. Lopez, M. M. Mayzelle, A. McNally, J. Medellin-Azuara, and

signed Assembly Bill 685 on September 25, 2012, establishing a state policy that every Californian has a human right to safe, clean, affordable and accessible drinking water. The bill directed relevant state agencies to advance the implementation of this policy when those agencies make administrative decisions pertinent to the use of water for human consumption, cooking, and sanitary purposes. Maximizing the accessibility of groundwater quality data to the public increases the public's ability to be informed about their drinking water quality. The public has a right to know the nitrate levels in groundwater wells and where wells are potentially contaminated or unaffected by nitrate contamination. This information is necessary for informed decision making necessary to protect drinking water sources and public health. Therefore, the Water Board believes past one-half mile, the public's interest in disclosure outweighs the public's interest in non-disclosure and so the Water Board cannot support any proposal to blur the well locations any further than one-half mile.

Agricultural representatives have requested that the Water Board sign a non-disclosure agreement to keep all data confidential and require the Water Board to not make any disclosures under the CPRA or use the data in any of the Water Board's public reports or presentations. The Groundwater Cooperative Program would provide the public with an annual report with the data aggregated. The basis for the request is the need to protect the nation's food supply from the threat of foreign and/or domestic terrorist attacks. The Water Board must be able to use the data, make the data accessible to the public and cannot sign a non-confidentiality agreement. An aggregate annual report does not satisfy the requirement of Water Code section 13269, subdivision (a) (2) to make the monitoring results available to the public.

The Water Board is considering adjusting the timeframe for which groundwater quality and well location data is made available on GeoTracker to the public. For other regulatory programs, data submitted to GeoTracker by Dischargers is immediately available to the public. The submittal of data to GeoTracker by Dischargers enrolled in the Agricultural Order is relatively new. To ensure the proper and accurate display of data submitted in compliance with the Agricultural Order, the Water Board is considering delaying the posting of this data to the public on GeoTracker. Data submitted to the Water Board would be posted to the regulator-side of GeoTracker immediately for evaluation, but would only be available to the public-side of GeoTracker after a period of months. This delay provides additional time for the Water Board and the Dischargers to verify data accuracy and conduct any necessary follow-up prior to making data broadly available to the public via the Internet on the public side of GeoTracker.

If you have any questions, please contact me at (916) 341-5168 or [jjahr@waterboards.ca.gov](mailto:jjahr@waterboards.ca.gov), or the Interim Executive Officer, Ken Harris at (805) 549-3140 or [kharris@waterboards.ca.gov](mailto:kharris@waterboards.ca.gov).

Sincerely,



Jessica Jahr  
Staff Counsel

T. S. Rosenstock. 2012. Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake Basin and Salinas Valley Groundwater. Report for the State Water Resources Control Board Report to the Legislature. Center for Watershed Sciences, University of California, Davis. 78 p. <http://groundwaternitrate.ucdavis.edu>.

cc:

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