



Grower-Shipper Association of Central California
“OUR MEMBERS: PARTNERS PRODUCING PROSPERITY”

May 14, 2014

Re: Comments to Agricultural Expert Panel



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

To: Members of the Agricultural Expert Panel,

Thank you for the opportunity to provide input to your process. The Grower-Shipper Association of Central California (GSA) represents over 340 growers, shippers, processors and affiliated business in the counties of Monterey, Santa Cruz, San Benito and Santa Clara. We have been close collaborators on groundwater recharge efforts predominately in Santa Cruz and Monterey Counties, have been active participants in the Region 3 Irrigated Lands Order and were a founding organization of the Central Coast Groundwater Coalition.

There are a few key topics we hope you will address as you answer the questions before you:

Nitrate Hazard Index

In last week's sessions you heard a lot about the value of the Nitrate Hazard Index as a tool for understanding nitrate inputs and a grower's potential for loading when growing specific crops on specific soils using specific irrigation methods. While the NHI has been a valuable tool to farmers for years, it is incomplete as a regulatory trigger, and that's how it's being used on the Central Coast. The NHI was never intended to be a regulatory trigger. Instead, it was meant to be an educational tool for farmers. Admittedly, our organization and others advocated for the NHI to be used during the adoption of the agricultural order in 2012, due to concerns with the alternative being presented by the Regional Board. That said, I believe we would benefit from the Expert Panel making recommendations regarding how to modify the NHI for Central Coast. A couple of examples:

1. Many of the crops that our members grow are considered to be higher risk for nitrate loading, which puts them into a higher level of fertilizer reporting because of the way this tool is formatted. Growers of many specialty crops on the Central Coast generally must use sprinklers to get a "stand" on the plant, and then use drip tape for the rest of the plant's growing cycle. This tool doesn't allow for a grower to choose short term sprinkler use that transitions to drip tape. Therefore, they must choose sprinkler, which generally drops them into the high nitrate risk category.

2013-2014 Board of Directors

Mark Borman, Chairman | Ernie Farley, Vice Chairman | Tom Nunes V, Treasurer
Brian Antle | Allan Clark | Butch Corda | Mike Costa | Margaret D'Arrigo-Martin | Henry Dill | David Hart
Steve McIntyre | Jerry Rava II | Nikki Rodoni

2. “Deep Ripping” is not well defined, and upon further conversations with the authors of the NHI we have found that what our members might consider “deep rip” isn’t the same as how the authors would have defined it and they therefore might have unintentionally placed themselves at a higher risk.

3. We’re concerned that the way the tool is currently being used is pushing growers into the worst-case scenario and that is not an appropriate use of the tool. Growers are expected to input their soils of highest nitrate leaching potential, regardless of what percentage of their land that soil represents. We don’t believe that in other parts of the state growers using this tool are expected to input their “worst case scenarios” into the NHI or other tools being used to determine risk, as we are on the Central Coast. This puts the growers on the Central Coast at a production and economic disadvantage to growers they’re competing with from other areas due to the tremendous reporting requirements and resource expenditures that follow this determination.

4. Additionally, the U.C. decision index classified 20 as low risk deliberately to induce the farmers to adopt the only management option that allows high yield with reduced nitrate load. Having 20 classified as high risk for this tool, as it has been defined by the Central Coast Regional Board, eliminates the incentive to the farmers to invest in the only effective approach to resolving the matter. Thus this regulation is counter-productive to what the Board is trying to achieve.

We believe it is essential for the Expert Panel to review the ways the NHI is being used and its appropriateness to regulation. If it is being used to determine risk for regulatory purposes, we suggest the Expert Panel discuss how to engage with the Center for Water Resources to look for ways to adopt it to accurately portray risks associated with the cropping systems in the area where they are farming, and specifically for the crops on the Central Coast.

A Coalition Model for the Central Coast

The Central Coast actively advocated for a coalition option in our region and began working on coalition proposals in 2010. Even though our organization and others disagreed with the Staff Addendum’s legal characterization of the agricultural alternative that was presented on March 17, 2011, and as revised on May 4, 2011, we continued to strive to address Central Coast Water Board staff’s concerns. In July 2011, agricultural trade associations and commodity organizations on the Central Coast came together to illustrate what a coalition-based irrigated lands program might look like for the crops grown in Region 3. We engaged Dr. Marc Los Huertos (California State University, Monterey Bay) in this effort, working with him for nine months to create a report “A Coalition-Based, Farmer Focused Water Quality Protection Program: A Proposed Model to Implement the Conditional Discharge Waiver for Irrigated Farms”. While this full report wasn’t admissible into the written administrative record (which closed in August 1, 2011 for a March 15, 2012 decision), we created a “Part E” based in large part on Dr. Los Huertos’ report and presented that to the Regional Board on March 14.

Throughout this process, the agricultural community worked diligently to develop an alternative that would provide growers in the region with an option between complying with the prescriptive Tier 2 and Tier 3 requirements in the Conditional Waiver, or participating in a third party group that would audit Tier 2 and Tier 3 farms/ranches and would work directly with growers to help develop and implement protective management practices. Based on numerous comments received from Central Coast Water Board members, Central Coast Water Board staff and others, the agricultural community revised its alternative, which ultimately culminated in New Part E. Key details of Part E are noted below:

Within six (6) months of the Executive Officer issuing the NOA to the third-party group, a third-party submits all of the following for Executive Officer approval:

- i. An auditable Farm Plan Template that can assess risk, document management practice implementation, and provide the basis for an independent audit;*
- ii. An Independent Audit Program Structure, which includes the ability of the third-party to ensure that all farms for participating Dischargers are subject to an independent audit within the term of the Order;*
- iii. A proposed nutrient management plan template for submittal to the third-party that will allow the TAC to assess individual participant nutrient management practices;*
- iv. A proposed process for prioritizing farms for practice effectiveness evaluation, which includes a requirement that participants conduct at least one (1) representative soil sample from each field/ranch that is submitted to the third-party and that the highest priority farms be included in the Practice Effectiveness Evaluation Program identified in subsection v below;*
- v. A proposed Practice Effectiveness Evaluation Program that includes all of the following: identifies farms as high priority to impair or degrade waters of the state; proposes to evaluate practices against appropriate water quality standards set forth in the Basin Plan; identifies management practices needed to meet water quality standards; and, identifies areas of research needed to develop additional management practices necessary to meet water quality standards; and,*
- vi. A list of enrolled growers.*

Within one (1) year of the submittal outlined in subsection (3), and annually thereafter, a third-party group must submit all of the following to the Central Coast Water Board:

- i. A certification that at least 20% of participating farms have been subject to an independent audit that year (all farms must be audited by the end of the Order);*
- ii. A Summary of Independent Auditor Reports that must include the following: number of growers and farms participating in the audit, number of growers and farms that failed the audit, and summary of corrective action(s) taken by growers who failed the audit and then subsequently passed;*
- iii. A Risk Self-Assessment Summary that summarizes data to the Central Coast Water Board that documents the number of farms and types of risk captured by the third-party program;*
- iv. Farm Water Quality Plan Summaries, which would be a summary of electronically submitted farm plans in a matrix format that links risk with practices used to protect water quality;*
- v. A list of Dischargers who are in “good standing”; and,*
- vi. A list of Dischargers who are not in “good standing.”*

Within three (3) years of the submittal outlined in subsection (3), a third-party group must submit the following to the Central Coast Water Board:

- i. Practice Effectiveness Evaluation Summaries, which is a summary of grower practices necessary to reduce risk to water quality and to ensure compliance with water quality standards.*

The Discharger complies with applicable monitoring conditions specified in Part C of this Order, and all other applicable provisions of this Order.

The Discharger provides the third-party group with all information requested by the third-party for compliance with this Order, and shall be subject to an independent audit by the third-party in accordance with the third-party’s approved program.

The Discharger implements water quality management practices as identified through the independent audit process and/or as necessary to improve and protect water quality and to achieve compliance with applicable water quality standards in waters of the state, recognizing any applicable time schedules for compliance with water quality standards as set forth in Part H below. Water quality management practices can be instituted on an individual basis, or installed to serve growers discharging to a single location.

If the Executive Officer fails to issue an NOA to a requesting third-party under subsections (b)(1) and (2) above, the third-party shall be given the opportunity to seek approval as a third-party from the Central Coast Water Board at the next reasonably available publicly noticed meeting of the Central Coast Water Board.

Failure by the Discharger or the third-party group to comply with any of the above shall result in the Discharger being subject to Parts F and G of this Order.

However, despite these diligent efforts, the Central Coast Water Board staff repeatedly discounted the agricultural alternative because it did not include the same prescriptive requirements as contained in the then pending Central Coast Water Board draft order. Central Coast Water Board staff also incorrectly characterized the agricultural alternative as inappropriately allowing third party groups. The Staff Addendum also claimed that the agricultural alternative was not consistent with the state's Nonpoint Source Policy.

However, in subsequent comments provided to the Central Coast Water Board from legal counsel (Frances McChesney), her legal concerns (although not agreed upon by our organization) were with respect to proposed Conditional Waiver changes unrelated to Part E. Specifically, Counsel McChesney conveyed legal concerns with proposed changes that would have incorporated compliance schedule provisions into requirements for complying with water quality standards, and proposed changes with respect to providing the Farm Plan to Central Coast Water Board staff upon request. Neither of these issues is relevant to Part E. When discussing Part E, Counsel McChesney commented that there was "great improvement" but that some areas could be "clarified better." (March 15, 2012 Transcript, p. 58:12-15.) A statement with respect to better clarification did not support staff's statement that Part E "does not meet the legal standard." Furthermore, staff provided significant other comments on New Part E, but none explained why, in their opinion, Part E was not consistent with Water Code section 13269 or other applicable statutory authority. Yet, despite the lack of a clear explanation as to why New Part E was unlawful, Central Coast Water Board members were left with the perception that they could not adopt New Part E because it was fundamentally flawed.¹

We are concerned that the Regional Board will continue to view coalition-based proposals such as this one as legally flawed due to this inaccurate perception. Our question of the expert panel is as follows:

The State Water Board has stated that it is supportive of coalitions for irrigated lands order compliance. In the Central Valley, there are a number of Coalitions whose activities are similar

¹ From Petition to SWRCB: "In the Matter of the Petition of Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers for Review of Action and Failure to Act by the Central Coast Regional Water Quality Control Board" April 2012.

to those proposed in Part E. We'd appreciate the Expert Panel's thoughtful analysis of what it might take to have a similar coalition(s) on the Central Coast that complies with Porter-Cologne, allows for third party aggregation of data submitted to the Regional Board, focuses on education and BMP development and research, and relieves farmers of the current tiering system if they choose to participate.

We've had successes with the Central Coast Groundwater Coalition over the last year, and believe this is an example of what we may be able to accomplish in a surface water/watershed-focused based coalition as well. A roadmap detailing essential functions and deliverables would be helpful.

Aligning Production & Regulation

There was a lot of discussion in the Expert panel meetings about methods for focusing on data collection that is useful. An important question surfaced: how do we align production and regulation in terms of data collection? Farmers under this current order are dealing with a lot of duplicate expenses. Regulations that meet the objectives of water quality improvement could be a win-win, but in the current scenario it seems that the focus is collecting data without a strong understanding of how it's going to be used. We are concerned that without a transparent definition of use, it's difficult for the agricultural community to help identify holes and inconsistencies with the way that the data is collected.

A basic requirement for collecting data should be a description of the types of reports and analyses that will be performed with it. Our current system holds farmers to a standard that isn't well defined, which means that the data collected ends up being inconsistent and therefore of little use and value. The data collected can also be highly variable. The current data requirements limited value to many of the growers we represent. In many cases farmers have taken their resources and time away from new management practice trials and education to focus on these new regulations. It would serve us better to identify a limited number of data collection activities that benefit the farmer's decision making, are provided in a fully characterized manner, aggregated by area of interest (e.g. sub-watershed, groundwater aquifer) for reporting purposes, and then use that data to begin answering essential, well-defined questions that have been vetted and discussed through a public process.

Another important question that came out of these sessions was: if the science isn't repeatable, is it valuable? There's still quite a bit to understand about BMPs and the variables that affect their efficiency. We should focus our interests on understanding how to achieve water quality improvement in this highly variable environment instead of focusing so many resources on monitoring multiple data points with little characterization.

It's also important to address the large grower discussions head-on. While that size definition varies throughout the state, on the Central Coast a larger grower has been defined by the Regional Board to be 500 contiguous acres with high nitrate loading potential crops. Time and again we've argued that the growers with larger acreage are successful because they've been innovative and invested time and resources wisely, which is exactly what's needed for water quality improvement. These growers shouldn't be pinpointed as high-risk. Instead of assuming these are those with the most impairment potential, they should be provided the opportunity to innovate. Those with fewer resources look to the actions of these leaders when complying with regulations and a coalition model helps achieve this win-win situation.

Thank you again for the opportunity to comment and please contact me at 831-422-8844 or abby@growershipper.com with any questions.

Sincerely,

A handwritten signature in black ink that reads "Abby Taylor-Silva". The signature is written in a cursive, flowing style.

Abby Taylor-Silva
Vice President, Policy & Communications