



# CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

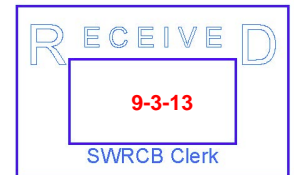
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*Via Email Only*

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

September 3, 2013

Ms. Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board  
1001 I St., 24th Flr.  
Sacramento, CA 95814



**Re: Comments to SWRCB/OCC Files A-2209(a)-(e)—September 10, 2013, Board Meeting**

Dear Ms. Townsend:

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 more than 74,000 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.

California Farm Bureau Federation, Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, and Santa Cruz County Farm Bureau (collectively “Farm Bureau”) petitioned the State Water Resources Control Board (“State Board”) to review the actions and inactions by the Central Coast Regional Water Quality Board (“Central Coast Water Board”) in issuing Order No. R3-2012-0011, adopting a Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands, Monitoring and Reporting Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03, and Certification, pursuant to the California Environmental Quality Act (“CEQA”), of the Final Subsequent Environmental Impact Report (“SEIR” or “Final SEIR”), CEQA Findings, and Statement of Overriding Considerations for the Adoption of Renewal of a Waiver of Waste Discharge Requirements for Discharges of Waste From Irrigated Lands in the Central Coast Region, Resolution Number R3-2012-0012 (all documents collectively referred to as “2012 Ag Order”).

Farm Bureau appreciates the opportunity to review the State Board's Revised Proposed Order in response to the various petitions filed with respect to the Central Coast Water Board's adoption of the 2012 Ag Order, and provides the following comments and concerns.

**A. Water Quality Standards Compliance, Provisions 22-23; Effective Control of Pollutant Discharges, Provisions 82, 84-87**

Farm Bureau appreciates the Revised Proposed Order's revisions to provisions 22-23, 82, and 84-87 to provide clarity that the Agricultural Order does not require immediate compliance with water quality standards but rather, the implementation of management practices in an iterative manner constitutes compliance. Nevertheless, the use of the "shall not cause *or contribute*" to an exceedance of applicable water quality objectives causes concern as it is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest de minimus contribution. As currently written, the new language suggests one molecule of a constituent may "contribute" to an exceedance, and growers may therefore be subjected to unwarranted liability and enforcement actions. Farm Bureau suggests the "or contribute to" language be removed and Provision 22 be revised to read as follows:

Provision 22: Dischargers shall not cause exceedances of applicable water quality standards, as defined in Attachment A, shall protect the beneficial uses of waters of the State and shall prevent nuisance as defined in Water Code section 13050.

At the very least, the "contribute to" requirement should be limited to situations where the member has significantly contributed to a violation of a water quality standard.

**B. Third Party Compliance Options, Provision 11**

Farm Bureau supports the revisions to Provision 11 that "draw out the option of proposing third party monitoring and reporting programs in addition to third party water quality improvement projects and clarify the criteria for evaluating such program proposals." (Revised Proposed Order, p. 11.)

**C. Containment Structures, Provision 33**

Farm Bureau supports the previous draft's revisions to Provision 33 requiring containment structures to "minimize percolation of waste to groundwater" rather than the Revised Proposed Order's change to "avoid the percolation of waste to groundwater." (See Revised Proposed Order, p. 25 contrasted with the first draft Proposed Order, p. 22.) Many growers within the Central Coast Region use containment structures or retention ponds to control, capture, retain, and reuse stormwater runoff and irrigation water. The use of ponds and structures provides many benefits not only to the grower but also to the environment. Irrigation and stormwater runoff stored in a retention pond and then used as a source of irrigation water can reduce surface water use in an area, recharge groundwater aquifers, and reduce loadings to nearby waters of the state.

As currently revised, Provision 33 now requires growers with existing or new containment structures to construct or retrofit existing structures in such a manner as to prevent any percolation to groundwater. (Revised Proposed Order, p. 25.) This provision essentially requires growers to totally eliminate any potential leaching to groundwater, as any level of nitrate above 0 ppm could “contribute” to the problem (irrigation water in many areas of the Central Coast Region is already above 0 ppm before it is applied on fields). In addition to the large costs associated with lining structures to “avoid” or prevent any “contribution,” this provision negatively impacts the groundwater by prohibiting percolation of water to groundwater, thus preventing needed and beneficial groundwater recharge. By requiring containment structures to “minimize percolation of waste to groundwater, the previous draft of the Proposed Order’s revisions to Provision 33 appropriately remedy the above flaw while protecting water quality. Farm Bureau suggests reverting to the previous draft’s language.

#### **D. Groundwater Monitoring, Provision 51 and Part 2 of Tier 1-3 MRPs**

##### **1. Requirement for Cooperative Groundwater Monitoring to Monitor All Wells, Revision to Section A.6 of Part 2 of MRP Orders 1, 2, and 3**

As stated in the Revised Proposed Order, third parties can play a vital role in assisting regional water boards with their implementation of water quality regulatory programs for agriculture. As recognized in the proposed order, third parties have the expertise to provide technical assistance and training to growers “at a scale that cannot be matched by regional water board staff resources, and, in many cases, third parties already have relationships in place with the dischargers.” (See Revised Proposed Order, p. 13 (stating support for third parties).) Further, the MRPs specifically state the benefits of cooperative monitoring programs, stating “in lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort *to help minimize costs and to develop an effective groundwater monitoring program.*” (Section A.6 of Part 2 of Tier 1 MRP, p. 9; Section A.6 of Part 2 of Tier 2 MRP; p. 9, Section A.6 of Part 2 of Tier 3 MRP, p. 9; emphasis added.)

However, the changes within the Revised Proposed Order for the Cooperative Groundwater Monitoring Program erode the benefits of such a program. The Revised Proposed Order now requires a cooperative groundwater monitoring program to sample “all domestic drinking water wells to the same extent these wells are required to be sampled under the individual groundwater monitoring provisions.” (Revised Proposed Order, pp. 30-31.) Further, any cooperative groundwater monitoring program must monitor “all wells that are used or may be used for drinking water purposes.” (*Id.* at, p. 31.) By requiring the same monitoring requirements as those conducting individual groundwater monitoring, the *very benefits* of the cooperative groundwater monitoring program, as expressed in the Order, are eroded.

Prior to the approval of any cooperative groundwater monitoring program, the Central Coast Water Board must first review the program to make sure the program achieves the “general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources.” (Section A.6 of Part 2 of Tier 1 MRP; p. 9; Section A.6 of Part 2 of Tier 2 MRP,

p. 9; Section A.6 of Part 2 of Tier 3 MRP, p. 9.) The Revised Proposed Order recognizes the need to ensure proper monitoring and reporting at a scale sufficient to ensure the protection of water quality while allowing the Central Coast Water Board the ability to verify the program's effectiveness. Specifically, the Revised Proposed Order clearly states:

We recognize the need to be wary of third party programs that report compliance at too high a level of generality. As a result, we expect the Central Coast Water Board to review proposals carefully to ensure consistency with legal requirements to verify the adequacy and effectiveness of waiver conditions and provide sufficient feedback mechanisms for determination of whether the required controls are achieving the Agricultural Order's stated purposes.

(Revised Proposed Order, p. 13.) Thus, any cooperative groundwater monitoring program (which includes its detailed schedule of monitoring and reporting wells) that is approved by the Central Coast Water Board must protect drinking water sources including those wells used for drinking water. To require such programs to monitor all wells not only eradicates any benefits of such programs, it also adds unnecessary requirements onto programs that already must protect drinking water.

Further, the Revised Proposed Order adds new language clarifying that cooperative groundwater monitoring programs have the flexibility to propose the appropriate scale of monitoring:

In the new language describing third party monitoring and reporting programs, we state that 'aggregate monitoring and reporting must be on a scale sufficient to track progress in small sub-basins and be sufficiently representative of conditions in the sub-basins.' The program proponents have flexibility to propose the appropriate scale for such sub-basins. We expect small sub-basins to be real representations that are dictated by local conditions and constitute a reasonable unit for follow-up practice implementation for water quality improvement.

(*Id.* at, p. 12, fn. 36.) However, flexibility to determine the appropriate scale for monitoring and reporting, contingent upon the Central Coast Water Board's approval, is null given the new language's requirement to monitor *all wells* no matter the local conditions, the program's monitoring and reporting scale, and the program's structure to verify adequacy and effectiveness of the 2012 Ag Order's conditions, and provide sufficient feedback.

Farm Bureau suggests striking the new requirement for cooperative groundwater monitoring programs to monitor all wells. The Revised Proposed Order acknowledges the shortcomings in groundwater monitoring, especially in the near-term, as well as its inappropriateness for use as compliance or trend monitoring. (Revised Proposed Order, p. 29.) Further, the Revised Proposed Order details the necessary components of a cooperative groundwater monitoring program in order for such a program to properly protect drinking water, monitor and report on a sufficient scale to be legally consistent, provide sufficient feedback, and verify the adequacy and effectiveness of waiver conditions. Thus, the addition to monitor all

wells is burdensome and unnecessary given the existing requirements within the 2012 Ag Order. Finally, Farm Bureau questions the necessity of the new proposed requirements in the interim while the Expert Panel is tasked with developing recommendations for proper and scientifically sound approaches to groundwater monitoring.

## **2. Notification Requirements, Addition of Section A.7 of Part 2 of MRP Orders 1, 2, and 3**

Revisions to the Proposed Order now “require that the discharger conducting individual groundwater monitoring or the third party conducting cooperative groundwater monitoring notify the users when a well is identified as exceeding any MCL.” (Revised Proposed Order, p. 31.) This new requirement applies to both dischargers conducting individual monitoring and cooperative groundwater monitoring programs, all wells that are being used or may be used for drinking water, and any and all exceedances of Primary or Secondary MCLs. Specifically, if “water in a well that is used or may be used for drinking water exceeds any Primary or Secondary MCL, the discharger or third party must notify the Regional Board and users of that water of the exceedance within 30 days.” (*Id.* at p. 32.) Further, if the exceedance is of 45 mg/L of Nitrate as NO<sub>3</sub> or 10m/L of Nitrate + Nitrite (as N), the notification must be provided to users within 24 hours. (*Ibid.*)

No rationale is given as to why individuals or cooperative groundwater monitoring programs must notify users within 30 days after *one* exceedance of a Secondary MCL. Unlike Primary MCLs which address health concerns, Secondary MCLs are not contaminants that cause an adverse effect on the health of persons. (Contrast Health & Saf. Code, § 116275(c) defining Primary MCLs as those that “may have an adverse effect on the health of persons” with Health & Saf. Code, § 116275(d) defining Secondary MCLs as “any contaminant in drinking water that may adversely affect the odor or appearance of the water.”) Rather, Secondary MCLs address esthetics such as taste and odor. (Health & Saf. Code, § 116275(d); see also Cal. Code Regs., tit. 22, § 64449, describing secondary MCLs as “consumer acceptance contaminant levels.”)

The record does not cite to a significant public health threat facing the Central Coast region due to an exceedance of a Secondary MCL. Further, the Department of Public Health’s requirements only require the groundwater monitoring of Secondary MCLs once every three years and do not require the automatic public notification of an exceedance within 30 days after *one* sample, as required in the Revised Proposed Order. (See Cal. Code Regs., tit. 22, § 64449(b) and (c) describing the monitoring and notification schedule for Secondary MCLs.)

The new public notification requirements for a *single* exceedance of a Secondary MCL are burdensome and outweigh the benefit. Given that this burden does not bear a reasonable relationship to the need and benefits to be obtained (see Wat. Code, § 13267(b)(1)), and the new requirements differ vastly from those required by the Department of Public Health, Farm Bureau suggests eliminating the automatic notification requirements for exceedances of Secondary MCLs.

**E. Total Nitrogen Applied, Provision 70 and Part 2, Section C.5 of Tier 2 and Tier 3 MRPs**

The Revised Proposed Order requires dischargers to report the total annual nitrogen applied in lbs/acres per crop for each field or management block. (Revised Proposed Order, pp. 43-45.) The Revised Proposed Order defines reporting on a field basis or management block, specifying that the reporting unit must be planted with the same crop and receive the same fertilizer inputs. (*Id.* at pp. 44, 45.) The change to reporting by field or management block will result in logistical burdens that will far outweigh any benefits from reporting such information. (Wat. Code, § 13267(b)(1), the benefits obtained from reporting total nitrogen applied will not outweigh the burdens, including the costs.) For example, a 500 acre vegetable farm in Tier III due to some high nitrate crops, with 20 acre blocks and an average of 2.5 crop cycles per block per year will yield at least 62 blocks per year to track (this figure may be more due to variations in soil type, differences in fertilizer inputs, differences in management practices, and general variations farm-wide). In addition to the sheer number of management blocks, additional difficulties arise given the differences in seed to harvest time. Tracking and reporting all 62+ management blocks will be extremely time consuming and burdensome as the time expense to input all of this data into the Annual Compliance Form will be vast.

Reporting total nitrogen inputs in the Annual Compliance Form will not provide the Central Coast Water Board with useful information as the number by itself will only represent the grand total amount of fertilizer applied in the Region and will be out of context. Further, the information to be obtained through the reporting of total nitrogen applied is not relevant to site-specific conditions. For example, total nitrogen applied does not take into consideration the number of plantings per block/field per year, the concentration of nitrogen in irrigation water, the number of fertilizer applications, soil types, cropping patterns, geographical conditions, and management practices that play a role in nitrogen application.

Given the difficulties in tracking and reporting total nitrogen applied annually in the Annual Compliance Form, Farm Bureau proposes deleting the requirement to report these figures in the Annual Compliance Form. Instead, Farm Bureau proposes that this information will be reported in the Farm Plan. Farm Plans are available for inspection and review by the Central Coast Water Board and thus no information will be hidden from the Central Coast Water Board. By including total nitrogen applied in Farm Plans rather than reporting the numerous figures in the Annual Compliance Form, growers will not be burdened by this new enormous data input undertaking and will not have to shift limited grower resources away from investing in new technology and implementing new management practices that will benefit water quality.

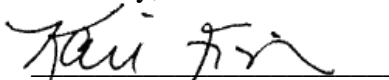
Accordingly, the reporting of total nitrogen in the Annual Compliance Form should be removed, or suspended while the Expert Panel provides its recommendations, and instead reported annually in the Farm Plan.

**F. Irrigation and Nutrient Management Plan, Provisions 74-77 and 79 and Part 6 of Tier 3 MRP**

Reporting total nitrogen applied at the field level or management block level will negatively impact the development of Irrigation and Nutrient Management Plans (“INMPs”). Growers will now have to prepare INMPs per management block which will dramatically increase the cost, time, and, work involved in the preparation of each plan. Further, each INMP will have to be certified by a professional, thereby increasing costs. For the reasons expressed above, Farm Bureau is concerned that the reporting of total nitrogen applied at the field level or management block level will lead to serious repercussions that are both extremely burdensome and costly while not providing substantiated environmental benefits.

Farm Bureau appreciates the State Board’s consideration of these petitions as well as the opportunity to comment on the State Board’s Revised Proposed Order.

Sincerely,



Kari E. Fisher

Attorney for Petitioners

California Farm Bureau Federation

Monterey County Farm Bureau

San Benito County Farm Bureau

San Luis Obispo County Farm Bureau

San Mateo County Farm Bureau

Santa Barbara County Farm Bureau

Santa Clara County Farm Bureau

Santa Cruz County Farm Bureau

KEF/pkh

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