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Central Coast Regional Water Quality Control Board

July 13, 2012

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Dear Ms. Bashaw:

As invited by the State Water Resources Control Board (State Water Board) in its Opportunity to Respond to Requests for Stay dated June 26, 2012, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) hereby submits its preliminary written response in opposition to the Stay requests by the petitioners in SWRCB/OCC Files A-2209(b)-(e). The Central Coast Water Board asks the State Water Board to deny all requests for a stay by the Petitioners.

If you have any questions, please contact Jessica Jahr by phone at (916) 341-5168 or by email at jjahr@waterboards.ca.gov, or Lisa McCann, Environmental Program Manager, by phone at (805) 549-3132 or by email at lmccann@waterboards.ca.gov.

Sincerely,

Roger Briggs
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Cc:
[All via email only]

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Central Coast Water Board
Written Response In Opposition To The Stay Requests
By The Petitioners In SWRCB/OCC Files A-2209(B)-(E)
July 13, 2012

As invited by the State Water Resources Control Board (State Water Board) in its Opportunity to Respond to Requests for Stay dated June 26, 2012, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) hereby submits its preliminary written response in opposition to the Stay requests by the petitioners in SWRCB/OCC Files A-2209(b)-(e) (collectively, the Petitioners). The Central Coast Water Board asks the State Water Board to deny all requests for a stay by the Petitioners.

The Petitioners are requesting a stay of Order No. R3-2012-0011, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver) and Order No. R3-2012-0011-01 *Monitoring and Reporting Program for Tier 1 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Tier 1 MRP), Order No. R3-2012-0011-02 *Monitoring and Reporting Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Tier 2 MRP), and Order No. R3-2012-0011-03 *Monitoring and Reporting Program for Tier 3 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Tier 3 MRP) (collectively, the Agricultural Order). The 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 requests a stay of the entire Agricultural Order in SWRCB/OCC File A-2209(b). Ocean Mist Farms and RC Farms also request a stay of the entire Agricultural Order in SWRCB/OCC File A-2209(c) (Ocean Mist Petition). The Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers requests a stay of certain provisions of the Agricultural Order in SWRCB/OCC File A-2209(d) (Grower-Shipper Petition). Finally, Jensen Family Farms, Inc. and William Elliott request a stay of the entire Agricultural Order in SWRCB/OCC File A-2209(e).

As set forth herein, the Central Coast Water Board urges the State Water Board to deny the stay requests.

THE AGRICULTURAL ORDER

The Agricultural Order was adopted by the Central Coast Water Board on March 15, 2012, after a three year public process. It is a necessary update to the previous

conditional waiver that was adopted in 2004 (2004 Agricultural Order). The Agricultural Order applies to discharges from irrigated lands, where water is applied for producing commercial crops. Discharges subject to the Order include discharges of waste to surface water and groundwater, such as irrigation return flows, tailwater, drainage water, subsurface drainage water generated by irrigating crop land, stormwater runoff, runoff from frost control, and/or operational spills. In the Central Coast Region, irrigated agricultural discharges are causing severe degradation of water quality, including nitrate in drinking water aquifers and surface water, toxicity in surface water and sediment, erosion, and degradation of riparian and wetland habitat.

Agricultural discharges of fertilizers, pesticides and sediment have severely impaired or degraded surface and groundwater in all agricultural areas of the Central Coast Region.¹ These conditions continue today, and in some cases even became worse after the Central Coast Water Board adopted the 2004 Agricultural Order.² The 2004 Agricultural Order did not include specific groundwater protection conditions or groundwater monitoring and did not include specific monitoring and reporting to evaluate effectiveness of management practices, pollution reduction or water quality improvement from individual farms. Therefore, an updated Order was necessary to address water quality concerns identified by the Central Coast Water Board.

The Central Coast Water Board also found the need to address the diversity of farming operations, the diversity of pollution loading from individual farms along with the highest priority water quality problems and the geographic locations of water quality problems. Therefore, the Central Coast Water Board "tiered" or scaled the conditions in the Agricultural Order so that the farms that are or may be causing or contributing water quality impacts to the greatest extent or discharging the most waste must implement more specific conditions.³ The Agricultural Order splits dischargers into three groups, Tier 1, Tier 2, and Tier 3, depending on the risk to water quality from that discharger's operations. Tier 1 dischargers have the lowest risk to water quality, and so must meet limited conditions under the Agricultural Order. Tier 2 dischargers must meet the same conditions as Tier 1, and also comply with additional conditions. Tier 3 dischargers have the highest threat to water quality, and must meet all of the Tier 2 conditions as well as additional conditions that are necessary to protect water quality. The majority of dischargers are in Tier 1 and Tier 2, with only a very small subset of dischargers in Tier 3. The tiered system tailors the conditions in the Agricultural Order to the threat to water quality and reduces the burden on those with a lower threat.

¹ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix G.

² Staff Report for Item 4 for Central Coast Water Board Meeting, March 14, 2012;

Addressing Nitrate in California's Drinking Water, prepared by Thomas Harter and Jay R. Lund, Center for Watershed Sciences, University of California, Davis, March, 2012, available at <http://groundwaternitrate.ucdavis.edu/>.

³ Staff Report for Item 4 for Central Coast Water Board Meeting, March 14, 2012.

STAY RESPONSE

State Water Board regulations recognize the extraordinary nature of a stay remedy and place a heavy burden on the seeker of the stay.⁴ In order to issue a stay of conditions in the Agricultural Order, the State Water Board must find that the Petitioners have alleged facts and produced proof of: (1) substantial harm to the Petitioners or to the public interest if a stay is not granted; (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and (3) substantial questions of law or fact regarding the disputed action.⁵ It is incumbent on the Petitioners to meet all three prongs of the test before a stay may be granted.⁶ In addition, the issue of whether a stay is appropriate must be judged in the temporal sense – the Petitioners must prove that they will suffer substantial harm if a stay is not granted for the period of time pending resolution of the petitions on the merits.⁷ The issue before the State Water Board is *not* whether the Petitioners might prevail on any of the merits of its claims, or whether Petitioners will suffer harm over the term of the Agricultural Order.

1. **Petitioners Will Not Suffer Substantial Harm If the State Water Board Does Not Grant Petitioners' Stay Requests**

The Petitioners allege that they will suffer harm due to excessive costs and immediate exposure to liability if the State Water Board does not stay the Agricultural Order. First, the costs are reasonable and are necessary to improve the severe surface and groundwater pollution. The costs for dischargers to comply with the Agricultural Order will vary depending on the tier they are in, the management practices that the discharger chooses to implement, and the threat to water quality. Second, the costs to dischargers are not disproportionate to the benefit gained by the public through improved water quality. Third, the Agricultural Order does not require dischargers to immediately comply with water quality standards and so does not immediately expose dischargers to liability as a result of exceedances of water quality standards. Finally, the Grower-Shipper Petition requested a stay for selected provisions of the Agricultural Order, and the Central Coast Water Board has determined that each provision is cost-effective, necessary to improve water quality, and reasonable.

A. The Costs to Implement the Agricultural Order are Reasonable.

⁴ See State Water Board Order WQ 97-05 (*Ventura County Citizens*) at page 4.

⁵ See California Code of Regulations, Title 23, § 2053.

⁶ See State Water Board Order WQ 2002-0007 (*County of Los Angeles, et al.*).

⁷ See *id.*

The State Water Board has said that it will not grant a stay merely because the party requesting it must incur some expense, even a substantial one.⁸ Petitioners point to the State Water Board decision of *In the Matter of the Petition of International Business Machines*, Order No. WQ 88-15 (*In the Matter of IBM*), to demonstrate that excessive compliance costs may justify a stay.⁹ In that decision, the San Francisco Regional Water Quality Control Board ordered IBM to install a continuous pumping well to monitor groundwater at a site subject to cleanup and to provide a technical report describing the well.¹⁰ The State Water Board noted that the necessity of the well was uncertain, and the well was not originally part of the long term remedial plan.¹¹ Therefore, the State Water Board found that IBM could be substantially prejudiced by preparing the extensive technical report and other plans required under the Regional Board's order.¹² The facts of this matter are substantially different. The Agricultural Order is not a deviation from a long-term cleanup plan; rather it is a conditional permit to discharge waste to waters of the state consistent with the Water Code and the Basin Plan to protect surface and groundwater. In the Central Coast Region, data clearly demonstrates that there is severe groundwater and surface water pollution caused in substantial part by irrigated agricultural practices.¹³ As discussed below, the Agricultural Order's conditions are necessary to protect water quality and are cost-efficient. The need for the conditions are not duplicative or uncertain like the well in *In the Matter of IBM*, but are specific conditions that implement the Basin Plan to protect and improve water quality through management practices and provide information to the Central Coast Water Board regarding the effects of discharges on water quality.

Under the Water Code, any person who discharges waste that could affect the quality of the waters of the state is required to submit a report of waste discharge and obtain either waste discharge requirements or a conditional waiver of waste discharge requirements.¹⁴ Waste discharge requirements and waivers must implement the applicable water quality control plans (Basin Plans). The Agricultural Order establishes a conditional waiver, consistent with the Water Code and the Basin Plan. Like any person who discharges waste that could affect the waters of the state, irrigated

⁸ State Water Board Order WQ 2003-0010 (*County of Sacramento*) at page 4; see also State Water Board Order WQ 2001-09 (*Pacific Lumber Company, et al.*) at page 3.

⁹ See Grower-Shipper Petition, page 13.

¹⁰ *In the Matter of IBM*, at pages 2-3.

¹¹ *Id.* at page 5.

¹² *Id.*

¹³ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, Findings 5-8; Attachment A – Additional Findings 1, 27, 33-133;

Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix G; Staff Report for Item 4 for Central Coast Water Board Meeting, March 14, 2012.

¹⁴ Water Code §§13260, 13263, and 13269.

agricultural dischargers must comply with the Water Code and the Basin Plans. As described in the Agricultural Order and as set forth in the State Water Board's "Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program" (NPS Policy), dischargers comply by implementing management practices to protect water quality. Petitioners have also referred to gross estimates of costs within the Region to implement the Agricultural Order to support their request for a stay. Referring to gross cost estimates is not meaningful and an oversimplification of the issues. Because each farm may impact water quality in a different way, management practices will necessarily vary from farm to farm and cost will vary from farm to farm. However, it is the legal responsibility of those dischargers to comply with the Water Code by implementing management practices necessary to protect water quality. The Central Coast Water Board provided information about costs of implementing various management practices but did not dictate which management practices dischargers must use to protect water quality. The Agricultural Order, like the 2004 Agricultural Order, continues to require dischargers to comply with the Water Code and to implement management practices to protect water quality. With some exceptions as noted below, there are no new costs to dischargers to comply with this Agricultural Order as compared to the 2004 Agricultural Order, or for that matter, conditional waivers issued by other Regional Water Quality Control Boards.

Many conditions of the Agricultural Order are similar to the conditions in the 2004 Agricultural Order (e.g., develop and implement a farm water quality plan). During the first year of complying with the Agricultural Order, dischargers must continue to implement farm water quality practices to reduce pollution loading. The conditions of the Agricultural Order are similar to those required in the 2004 Agricultural Order. The main difference between the Agricultural Order and the 2004 Agricultural Order has to do with monitoring and reporting – the Agricultural Order requires additional monitoring and reporting, distinguished by Tier, to evaluate the effectiveness of practices used to control waste discharges and to demonstrate improved water quality in the five-year term of the Agricultural Order.

Therefore, the Central Coast Water Board determined that many growers would be continuing to implement practices already in place so costs to individual growers would be less than the full cost of implementing required practices without any previous farm water quality planning or implementation. The Ocean Mist Petition also alleges that dischargers will incur costs to develop a farm plan.¹⁵ However, the farm plan was required under the 2004 Agricultural Order, and so dischargers who developed and implemented farm plans compliant with the 2004 Agricultural Order should not have to spend significant amounts of money to update those plans for compliance with the Agricultural Order. This condition was specifically and deliberately carried forward from

¹⁵ Ocean Mist Petition, page 12.

the 2004 Agricultural Order to the Agricultural Order in response to comments from agricultural industry representatives and Central Coast Water Board members.¹⁶

The Central Coast Water Board also determined that growers would be continuing to implement practices already in place based on compliance and status reports to the Central Coast Water Board during implementation of the 2004 Agricultural Order.¹⁷ For example, growers were required by the 2004 Agricultural Order to report on implementation of farm water quality practices by submitting a "management practice checklist." The 2006 Management Practice Checklist Update Summary Report (June, 2007, Central Coast Regional Water Quality Control Board) indicated that growers reported implementation of several water quality management practices for more than 50% of the acres enrolled.¹⁸

The Central Coast Water Board directed staff to make changes and ultimately adopted conditions in the Agricultural Order responsive to their direction to staff or comments by agricultural interests to make implementation and compliance simpler and less costly.¹⁹ Many dischargers commented during public hearings that they already implement the practices proposed and stated that they have already spent money installing these types of practices. Similar to the testimony from growers at Central Coast Water Board workshops, Agricultural representatives told the State Water Board, at a workshop on the UC Davis Nitrate Report on May 23, 2012, that they have been and continue to implement farm water quality practices similar to those encouraged by both the 2004 Agricultural Order and the Agricultural Order. One of the representatives is enrolled in the Central Coast Water Board Agricultural Order.²⁰

The Central Coast Water Board further determined the costs of the Agricultural Order to be reasonable because the new conditions were building on existing agricultural water quality projects funded with tens of millions of dollars of public funds in the Central Coast Region that offset private costs to agricultural dischargers. The Central Coast Water Board and State Water Board together directed more than 15 million dollars in grant funding from State of California Propositions 13, 40, 50, 84, and Clean Water Act section 319(H) NPS grant programs to Central Coast grantees for agricultural water quality grant projects. In addition, the Central Coast Water Board directed an estimated 10 million dollars of Pacific Gas and Electric (PG&E) and

¹⁶ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix I; Staff Report for Item 4 for Central Coast Water Board Meeting, March 14, 2012.

¹⁷ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix I.

¹⁸ *Id.*, page 13.

¹⁹ Staff Reports and Response to Comments for Central Coast Water Board Meetings, Item No. 4-March 17, 2011, Item No.17-September 1, 2011 and Item No. 4, March 14-15, 2012.

²⁰ http://www.waterboards.ca.gov/water_issues/programs/nitrate_project/index.shtml

Guadalupe Settlement Funds toward agricultural water quality grants. The focus of these grant projects was to increase educational outreach through ranch and farm water quality management planning short courses, watershed-based monitoring, and implementation grants throughout the Central Coast Region.²¹

Additionally, 15 dischargers are currently complying with Central Coast Water Board Orders, pursuant to Section 13267 of the Water Code, to comply with many of the same reporting requirements required by the Agricultural Order and MRP for Tier 3 related to nutrient management. These dischargers are able to report the information required and are demonstrating improvements in practices and reporting indicators, demonstrating that Tier 3 dischargers can reasonably implement the conditions in the Agricultural Order. Where dischargers are conducting monitoring already that is consistent with the conditions of the Order, they are not required to duplicate that monitoring.

With respect to “new” conditions as compared to the 2004 Agricultural Order, most of these provisions are not costly to implement or comply with. For example, the Petitioners claim they will have to hire consultants to conduct expensive technical analysis to determine their nitrate loading risk (condition 68) when this determination can be made by evaluating limited set of parameters, commonly known to farmers or their farm managers with use of simple tools specified in the Agricultural Order.²² See specific discussion of the costs to comply with Condition 68 and other conditions in section D below.

The Petitioners costs are also based on the costs of conditions that do not require implementation or costs to be incurred during the first 9-18 months of the five-year term of the Order and apply only to a very small subset of dischargers (about 100 dischargers out of 3800) who present the highest risk to water quality and are or maybe discharging waste to surface or groundwater (Tier 3). For example, the Petitioners

²¹ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix I, page 8, Staff Reports for Items 18 and 19 for Central Coast Water Board Meeting, February 3, 2011, Summary of Grant Funds Provided to Support Agriculture and Summary of Technical Services Available to Agriculture, respectively.

²² Order No. R3-2012-0011-02 Monitoring and Reporting Program for Tier 2 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011-03 Monitoring and Reporting Program for Tier 3 Dischargers Enrolled Under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands;

Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Section Appendix D. Options Considered, Section V.C., and Appendix E, Response to Comments, Comment No. 167, 203, 439; Staff Report for Central Coast Water Board Meeting, September 1, 2011, prepared on July 6, 2011, pg 25;

Staff Report for Item 17 for Central Coast Water Board Meeting, September 1, 2011, prepared on August 10, 2011, Attachment 4. Response to Comments, Letter #12.

claim they will have to develop an individual sampling and analysis plan at high cost in order to initiate individual surface water discharge monitoring. However, the sampling and analysis plan for individual surface water discharge monitoring only applies to the subset of Tier 3 dischargers and is not due until March 15, 2013. Actual monitoring is not required to start until October 1, 2013, and reporting this data is not due until March 15, 2014.

Petitioners claim they will incur harm based on immediate excessive costs from hiring hire consultants to immediately comply with applicable Total Maximum Daily Loads (TMDLs); prevent containment structures from percolating waste to groundwater and to maintain existing riparian vegetative covers.²³ Petitioners wrongly assume that there are applicable TMDLs with requirements with which dischargers must immediately comply. The conditions for irrigated agricultural dischargers for TMDLs listed in the Agricultural Order are to implement the Agricultural Order. Therefore, the Agricultural Order's provision to comply with applicable TMDLs is met by dischargers implementing the provisions in the Agricultural Order as scheduled and not implementing some additional or immediate conditions that require special consulting or actions.²⁴

Petitioners also wrongfully claim that the condition to prevent containment structures from discharging waste (condition 33) means growers must immediately construct new structures, thereby causing harm from costs of new construction.²⁵ The Agricultural Order does not require new containment structures, nor does it include a date by which they must be installed or a specific date that dischargers must demonstrate they are not discharging waste from a containment structure. The Tier 3 MRP does not require these specific dischargers to sample and report results for the water in ponds or containment features until March 15, 2014.

Petitioners state the conditions of the Agricultural Order will cause harm due to excessive costs, for Conditions such as, "...Conditions that Apply to Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and that have High Nitrate Loading Risk farms/ranches to, by October 1, 2013, determine typical crop nitrogen uptake for each crop type produced and report the basis for the determination..." And yet, the alternative to the 2012 Agricultural Order proposed by Agriculture (the Ag Alternative) would require documentation of very similar practices. From Page 20 and 21 of the Ag Alternative, March 17, 2011:

²³ Ocean Mist Petition, pages 12-13.

²⁴ See implementation plans for Pajaro River Nitrate and Sediment TMDLs, and Salinas River Chlorpyrifos and Diazinon TMDLs at http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/303d_and_tmdl_projects.shtml.

²⁵ Ocean Mist Petition, page 13.

"f. Specific components that address known impairments or identified farm water quality conditions or challenges shall be included in the Farm Plan. Examples of such components shall include the following when applicable to the specific farm:

1) Irrigation Management Practices, including as follows:

- i. A grower will have to plan to address and improve (where appropriate) irrigation efficiency by addressing the irrigation delivery (distribution uniformity) and/or irrigation scheduling (matching irrigation application to crop ET demand using various tools involving soil, plant, and/or weather assessments).
- ii. Irrigation efficiency of applied irrigation water should be known and a plan for improvement should be included, if applicable.
- iii. A grower will have to plan to address efficient irrigation practices by addressing the irrigation delivery and/or irrigation scheduling, whichever is appropriate, if applicable. ...

4) Fertilizer Management Practices, including as follows:

- vii. Growers shall develop a Proprietary Nutrient Management Plan (NMP) that includes soil analysis, well water analysis and/or plant tissue analysis, as applicable. This will allow the grower to account for nutrients that have been "banked" in the soil profile.
- viii. A grower will efficiently use fertilizer while maintaining an adequate margin of error as necessitated for commercial agricultural production.
- ix. Growers will prepare a Proprietary Nutrient Management Plan, if applicable, which needs to identify individual-management practices, taking into consideration the level of nitrate in the irrigation source water when calculating the amount of fertilizer needed. This will be the mechanism by which growers implement practices to address both irrigation water runoff and groundwater nitrate impairments."²⁶

From Attachment B, page 3 &4, of the Ag Alternative:

"a. The General Report/Workplan shall identify the specific criteria and weighting system the third party group intends to use to determine an operation's level of risk to water quality for the following four individual categories:

- i. Toxicity and Sediment in Stormwater. Criteria for this category may include, e.g., percentage of slopes, sediment basins, presence of cover crops and/or bare soils, use of plastics or impervious surfaces, and application of priority pesticides during the winter months.
- ii. Toxicity in Irrigation Runoff. Criteria for this category may include,

²⁶ New Information on the Agricultural Alternative Proposal, Submitted May 4, 2011 - Order Attachment B, Terms and Conditions for Discharger Compliance Through Third Party Group with redline and strikeout

e.g., the presence of irrigation runoff, application of priority pesticides, type of irrigation system, use of treatment systems, and drainage to impaired water bodies.

iii. Nutrients in Irrigation Runoff. Criteria for this category may include, e.g., nitrate background levels in source water supplies, operation of tile drains, drainage to areas with history of bio-stimulation, presence of vegetative strips or collective treatment systems designed to remove nitrates, and the implementation of a nutrient management program.

iv. Nitrate Leaching to Groundwater. Criteria for this category may include, e.g., the intrinsic vulnerability of underlying groundwater based on soil classification, crop type and irrigation system, and implementation of a nutrient management plan that includes soil and water testing for nitrate.”

These practices and determinations were considered appropriate and reasonable (presumably from a cost standpoint as well as a technical need) in the proposed Ag Alternative. Agricultural representatives also gave some indication that more growers would be using these more extensive practices under their alternative than under the tiering system proposed by staff and ultimately adopted by the Central Coast Water Board.

“MR. JOHNSTON: So what you're saying is there would still be something like that 1 or 1.2 number, the difference is that there would be farmer participation in developing it, but that, essentially, the Board, through the EO, would still have to approve it; is that correct?”

MR. TOMLINSON: I'm saying that's possible, yes. And that, yes, it's possible that you might get more folks participating than just two or three right now.”

“MR. JOHNSTON: Well, let me see if I understand. Let me repeat back, and you tell me if I've got it right. What I hear you saying is that under the Ag Alternative they would still have to be making some version of this calculation of nitrate loading, but that there would not be -- in terms of what you call a regulatory end point, there would not be a standard that they would have to hit, everybody would make the calculation, everybody would be somewhere on the -- maybe, conceivably in the range we see on that chart of .5 to 2.8, and that hopefully over time that would go down. Is that correct?”

MS. DUNHAM: That is correct.”²⁷.

²⁷ Central Coast Water Quality Control Board, Panel Hearing, Transcripts, San Luis Obispo, CA, March 14, 2012, page 353, available at http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf.

The Ag Alternative was promoted as being more effective in implementing even more of the management practices sought by the staff's proposed Order. The representatives stated this at several workshops and hearings even though their alternative would require costs of on-farm implementation, monitoring and reporting along with costs to administer the program by a third-party, as proposed and presented in the Ag Alternative.

After the Order was adopted, the appropriateness of careful nitrogen management practices is reinforced by the Ocean Mist Petition, which stated:

"...it is reasonable in the INMP to require that farmers identify available nitrogen in their soil and irrigation water and to take those contributions into consideration in making management plans on fertilization..."²⁸

Here the Petitioners argue against the authority to impose conditions designed to protect water quality but agree that the conditions are reasonable, and not unduly expensive or harmful.

B. The Cost of Compliance is Not Disproportionate to the Benefit to be Gained.

The Petitioners also allege that the costs of compliance for dischargers are disproportionate to the benefit to be gained.²⁹ Petitioners state that the provisions in the Agricultural Order are unlikely to result in improved water quality or provide the Central Coast Water Board with any meaningful information.³⁰ Petitioners have the burden to prove that the costs of compliance are disproportionate to the benefit to be gained by the required water quality monitoring.³¹ They have not done so in this case.

To support the allegation that individual surface water quality monitoring will not provide any real information to the Central Coast Water Board, Petitioner cites statements from Dr. Los Huertos, who claimed that this information cannot be used to characterize water quality, prioritize which farms to visit, enforce, describe practice effectiveness or describe trend analysis.³² The Central Coast Water Board is requiring only very few dischargers, those with the most significant threat to water quality, to do individual surface water quality monitoring. The provision is in compliance with Water Code section 13269(a)(2), which requires the conditions of a waiver include monitoring designed to support the development and implementation of the waiver program,

²⁸ Ocean Mist Petition at page 20.

²⁹ See Grower-Shipper Petition at page 13.

³⁰ *Id.* at page 14.

³¹ State Water Board Order WQ 2001-09 (*Pacific Lumber Company, et al.*) at page 3.

³² Grower-Shipper Petition at page 14.

including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. Furthermore, the Central Coast Water Board determined that some individual surface discharge monitoring, along with other information on individual farms, is necessary to verify the adequacy and effectiveness of the Order's conditions given the 2004 Agricultural Order did not include conditions that allowed the Central Coast Water Board to determine individual compliance with conditions of the Order or if and what level of effectiveness was achieved by actions taken to protect water quality.³³ The monitoring will help the Central Coast Water Board evaluate implementation progress, compliance with the Agricultural Order conditions, and prioritize areas in need of follow up (e.g., inspections).³⁴ The monitoring will be one indicator of the effectiveness of management practices, along with nitrogen budgets and pesticide applications, which create a clearer picture of the water quality, the discharger's compliance, and the success of the management practices. For these purposes, the Central Coast Water Board found benefit and value of the monitoring and reporting requirements because they will improve the Central Coast Water Board's ability to evaluate implementation progress, compliance with the Order conditions, and prioritize areas in need of follow up (e.g., inspections), necessary steps to reduce the harm to the public from on-going waste discharges from irrigated agriculture. Like the monitoring program in the State Water Board Order WQ 2001-09 (*In the Matter of Pacific Lumber Company*), the cost to dischargers to comply with the Agricultural Order is not outweighed by the benefits that the monitoring and other conditions of the Agricultural Order provide to the public and the Central Coast Water Board. In addition, the condition to conduct monitoring is a usual condition for any discharger; agricultural dischargers have generally been subject to very limited monitoring requirements.

Similarly, the Petitioners also state that requiring Tier 2 and Tier 3 dischargers to determine the nitrogen loading risk factors for each farm will not provide any benefits as both methodologies are highly simplistic and unlikely to accurately determine nitrate loading risk factors.³⁵ The Central Coast Water Board relied on the technical expertise of several nitrate experts (including state and local Certified Crop Advisers and University of California Cooperative Extension advisors) to determine these loading risk methods; and the methods are considered the best approach to simply but reasonably calculate loading risk and should not take dischargers much effort or incur significant costs, as the information to make the calculations is readily available.³⁶ The Agricultural Order also allows a discharger to conduct a more intensive risk determination if a

³³ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, Finding 16.

³⁴ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, Finding 15.

³⁵ Grower-Shipper Petition, page 14.

³⁶ Staff Report for Item 14 for Board Meeting, March 17, 2011, Appendix D. Options Considered, Section V.C.; Appendix E, Response to Comments, Comment No. 151, 439.

discharger desires to do so. The Central Coast Water Board approved the Agricultural Order with both methods for risk determination in response to comments by agricultural representatives that they wanted the flexibility to choose and the opportunity to use the second method even though it requires additional information (soil type).

The nitrate loading risk factors are used as a screening tool to determine which farms require more intensive and accurate loading management, evaluations and reporting. The Central Coast Water Board found it reasonable to require this short term investment to assess risk so that additional conditions for management practices/pollution reduction measures would only apply to those likely or actually discharging greatest amounts of nitrate to groundwater and not to all Tier 2 and 3 growers. Additionally, this information will also improve the Central Coast Water Board's ability to evaluate implementation progress, compliance with the Agricultural Order conditions, and prioritize areas in need of follow up (e.g., inspections). The Central Coast Water Board specifically identified the need to prioritize those farms most likely or actually loading nitrate to groundwater in order to most effectively protect drinking water polluted by nitrate. This is a necessary first step in reducing current and on-going harm to the public from continuous and intensive fertilizer applications that leach nitrate to groundwater.

C. The Agricultural Order Does Not Require Immediate Compliance with Water Quality Standards.

Petitioners also assert that the Agricultural Order requires all dischargers to immediately comply with water quality standards and leaves dischargers vulnerable to enforcement by the Central Coast Water Board.³⁷ The State Water Board has previously stated threats of enforcement are not justification to stay a permit's provisions.³⁸ Therefore, even if the Agricultural Order did require dischargers to immediately comply with water quality standard, that is not sufficient harm to stay the Agricultural Order. The Petitioners misstate the terms of the Agricultural Order, by asserting that it requires "immediate" compliance. The Agricultural Order does not include the word "immediate" prior to the conditions requiring compliance with water quality standards, as has been stated repeatedly by the Central Coast Water Board and does not require immediate compliance with water quality standards.³⁹ Several

³⁷ Grower-Shipper Petition, page 15.

³⁸ See State Water Board Order No. WQ 2006-0007 (*In the Matter of the Petitions of Boeing Company*) at page 5.

³⁹ For example, the staff report for the March 14-15, 2012, Central Coast Water Board Meeting, states on page 32 that "there are no defined requirements to specifically meet water quality standards or objectives in runoff or discharges." The Staff Report for the September 11 Central Coast Water Board meeting also discusses this on pages 19, 22-23, and 27. The March 2011 Central Coast Water Board Meeting Staff Report, Appendix E, Responses to Comments, responds to this issue in comment numbers 173, 416, 386, 488, 286, 494, 445, and 393.

provisions in the Agricultural Order clarify the Board's expectation of compliance with water quality standards (see paragraph below).

The language in the Agricultural Order regarding compliance with water quality standards is language that is consistent with the NPS Policy, required by the Water Code and routinely included in Conditional Waivers of Waste Discharge Requirements, including specifically, the 2004 Agricultural Order, and the Conditional Waivers for Discharges from Irrigated Lands for the Central Valley Region and the Los Angeles Region. Provision 12 on page 15 in the Agricultural Order says "dischargers who are subject to this Order shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards." Several Provisions and Conditions in Part B, starting on page 18, direct how and when to implement management practices to comply with water quality standards. Part G. Time Schedule, Provision 82, page 31, presents time schedules for compliance with conditions, identifies milestones and defines them as indicators of progress, and lists types of information that will be considered to evaluate compliance, including effectiveness of management practices and results of monitoring in surface receiving waters. This Provision does not say compliance depends on surface receiving water quality meeting applicable water quality standards. The milestones were included specifically to indicate some reasonable indicators of progress towards achieving water quality standards.

Petitioners further contend that immediate compliance is required by asserting the individual surface water discharger and groundwater monitoring requirements were adopted for the purpose of determining compliance with the Agricultural Order. This is incorrect because monitoring data alone cannot indicate a grower is in violation of any provision of the Agricultural Order as the Order does not include effluent or receiving water limitations that must be met by any time frame. For example, Condition 51 says monitoring conducted "...so that the Central Coast Water Board can evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for waste discharge and nitrogen loading and exceedance of drinking water standards, and identify priority areas for nutrient management." It does not say the purpose is to evaluate immediate compliance. The Agricultural Order is designed to improve water quality through milestones and management practices that are intended to ultimately result in attaining water quality standards in the receiving waters, but it does not require immediate compliance with water quality standards.

It is not the intent of the Agricultural Order to expect immediate compliance with the water quality standards. It is true that the Water Code requires compliance with water quality standards, but Water Code section 13263(c) allows the use of time schedules to achieve compliance. In addition, the NPS Policy contemplates that dischargers will comply with water quality standards through an iterative process of implementing management practices and improving them over time based on effectiveness monitoring (i.e., the feedback mechanism). The Agricultural Order

includes time schedules for complying with certain specific tasks and milestones that are not enforceable dates. The Agricultural Order, similar to the 2004 Agricultural Order and orders regulating agricultural discharges issued by other Regional Water Quality Control Boards, makes it clear that dischargers comply by implementing and improving management practices to meet water quality standards. Water Code section 13269 requires that the conditions of a waiver be enforceable, but in this case there is no condition that requires immediate compliance with water quality standards.

Petitioners cite to *Natural Resources Defense Council v. County of Los Angeles* 2011 WL 2712963 (9th Cir., 2011), to support its contention that the Agricultural Order requires immediate compliance. The decision is not applicable to the Agricultural Order. It involved a citizen suit under the federal Clean Water Act to enforce a provision of an NPDES stormwater permit. The Agricultural Order is not subject to citizen suits. In addition, the Agricultural Order makes clear in several locations, that the Central Coast Water Board expects dischargers to engage in an iterative process to improve management practices where there are exceedances of water quality standards or to undertake additional evaluation to determine the source of exceedances. The provision that was the subject of the NRDC citizen suit contained no such limitation.

D. The Specified Provisions in the Grower-Shipper's Petition will not Cause Harm to Dischargers.

The Grower-Shipper Petition alleges that to prevent immediate harm to dischargers, they are requesting a stay of specified provisions of the Agricultural Order. While the arguments relating to the entire Agricultural Order also apply to these specified provisions, each of these provisions was determined by the Central Coast Water Board to be necessary to protect and improve water quality.

Condition 31 of Part B, General Conditions and Provisions for All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to install and/or maintain back flow prevention devices for any irrigation system that is used to apply fertilizers, pesticides, fumigants, or other chemicals by October 1, 2012.⁴⁰

Costs of this condition are reasonable because they are necessary to prevent chemicals from discharging directly into a well that is drilled into an aquifer used for drinking water (see discussion above regarding impacts to groundwater and protection of drinking water). Additionally, the condition only applies to the subset of dischargers who apply fertilizers, pesticides, fumigants or other chemicals through an irrigation system *and* are not currently complying with existing conditions to use these devices, *or* to dischargers who only apply fertilizers (and no other chemicals) through an irrigation

⁴⁰ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, pages 19-20.

system. Many dischargers who apply pesticides through an irrigation system already use these devices because the Department of Pesticide Regulation (DPR) requires backflow prevention devices for pesticide applications through irrigation systems and county departments enforce the DPR requirements or their own local ordinances. Also, technical service providers indicated that most growers who apply chemicals through irrigation lines also apply fertilizers through the same lines, so compliance with the conditions ensures that the wells and groundwater are protected from both pesticides, fertilizers, and likely other chemicals. The Agricultural Order establishes new conditions for backflow prevention devices to protect water quality for application of fertilizers through irrigation systems. Therefore this condition will only newly apply to dischargers who are not complying with existing conditions or who only apply fertilizers through an irrigation system so have not previously been required to use these devices to protect water quality. The cost of complying with this condition is about \$800.⁴¹ Note that Petitioners are now claiming this condition is unreasonably expensive, yet during the multiple rounds of written comments with about two thousand letters and multiple workshops and hearings, this issue was not raised as being unreasonable or excessively expensive.

Condition 39 of Part B, General Conditions and Provisions for All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to immediately “a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste...”⁴²

The condition implements the Basin Plan, which includes prohibitions on land disturbance activities to protect riparian areas.⁴³ Water Code section 13269 requires a waiver of waste discharge requirements to be consistent with the Basin Plan. This condition is necessary to protect aquatic life beneficial uses. Riparian vegetation helps prevent erosion and sediment discharges, shades streams to improve temperature, nutrient and oxygen conditions critical to organisms and fish, maintains stream structure for instream habitat, and provides food and habitat for terrestrial wildlife. In agricultural areas of the region, riparian vegetation has already been cleared along many stream reaches, impacting beneficial uses and minimizing natural buffers for agricultural waste

⁴¹ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix F, page 20.

⁴² Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 20.

⁴³ Basin Plan Chapter IV, Section VIII.E.1.

discharges.⁴⁴ Implementing this condition only necessitates action, therefore cost, if dischargers are not maintaining existing vegetative cover, which means they are likely illegally encroaching on riparian areas or degrading habitat and resources necessary to meet beneficial uses designated for the streams where the riparian area, vegetation must be maintained. Therefore, dischargers will not have to do anything to maintain existing vegetation, or hire employees to maintain riparian vegetation, so long as they are not illegally disturbing existing vegetation as part of their farming operations.⁴⁵ Activities to remove riparian vegetation currently destabilize streambanks, cause erosion or temperature increases, or cause adverse impacts to aquatic life through discharge of materials to streams must be regulated with a permit pursuant to Section 401 and 404 of the Clean Water Act or through waste discharge requirements authorized by the Water Code.

Condition 44g of Part B General Conditions and Provisions for All Dischargers – Tier 1, Tier 2, and Tier 3, which requires all dischargers to describe and include results of methods used to verify practice effectiveness and compliance with this Order by October 1, 2012.⁴⁶

This information is necessary to allow the Central Coast Water Board to (1) characterize sources of wastes, determine pollution load reductions, determine compliance with the conditions, prioritize dischargers for follow up (e.g., inspections), track short-term improvements to water quality within the five-year term of the Order, and (2) to verify the adequacy and effectiveness of the conditions of the Agricultural Order, as required by Water Code section 13269. Additionally, this information will inform dischargers as to how to adapt and improve implementation of management practices to reduce pollution loading and reduce or justify costs to better protect water quality. The 2004 Agricultural Order did not contain conditions or monitoring and reporting that allowed the Central Coast Water Board to conduct the above evaluations or make such determinations. The Agricultural Order improves on the 2004 Agricultural Order monitoring and reporting requirements which only included cooperative surface receiving water monitoring and surveys of general management practices implemented.

The costs for this condition are reasonable and minimal, given the benefit of this information to the Central Coast Water Board and the public to be able to better and more efficiently identify sources, evaluate individual implementation and compliance with conditions of the Order, prioritize regulatory oversight and followup activities, and

⁴⁴ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, Attachment A, Findings 88, 89, 90, 91; Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix G, Section 3.

⁴⁵ See Ocean Mist Petition, page 12 (argument that Dischargers will need to train or hire employees to maintain riparian vegetation).

⁴⁶ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 22.

characterize the extent of water quality improvement. Monitoring and reporting requirements are key in achieving and demonstrating water quality improvement in the impaired surface water and groundwater.

This condition does not dictate how a discharger must evaluate and report on practice effectiveness thereby providing flexibility for dischargers to choose the least costly methods. Additionally, this condition can be met by implementing methods that have already been used and are standard practices or good business/cost-saving farming practices, such as evaluating irrigation efficiency to determine water use and nutrient budgeting to determine fertilizer applications.⁴⁷ Dischargers can comply with this condition through visual inspection and record keeping (e.g., amount of nitrogen fertilizer applied). These methods of verification do not require a specifically qualified or licensed professional (consultants as claimed by petitioners), use of any particular method of analysis or computer models. Some dischargers may choose more complex, technical and costly methods of evaluating effectiveness of practices such as water quality monitoring, computer modeling, or evaluations by consultants, but dischargers are not required to do so under the Agricultural Order.

Also, this condition does not require dischargers to demonstrate effectiveness of all practices, just report on the methods and results of effectiveness evaluations. If a discharger determines that a practice was not effective, the discharger must adapt practices to improve effectiveness. This adaptive management approach acknowledges that it will take time for practices to become effective and for dischargers to be able to demonstrate the effectiveness at reducing pollution loading through reporting. All the versions of the Agricultural Alternatives to the Agricultural Order included some methods of evaluating effectiveness, and in some cases, similar methods (e.g. water quality sampling, certified irrigation and nutrient management plans). Measuring effectiveness of management practices was the focus of presentations and discussions at the February 1, 2012 and several other Central Coast Water Board Meetings.⁴⁸

Only Tier 2 and 3 dischargers have to report methods and results of methods used to verify practice effectiveness, and the Central Coast Water Board has made the reporting very simple. Dischargers will report methods of effectiveness by choosing from drop down menu pick lists on an on-line annual compliance form. The format for the annual compliance form is based on a template for farm water quality plans developed

⁴⁷ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, page 27-30, and Appendix D, Options Considered, Section IV.D, page 50,; Appendix E, Response to Comments, Comment No. 204, 267, 286, 393, 395, 398, 432, 494; Staff Report for Item 17 for Central Coast Water Board Meeting, September 1, 2011, prepared on August 10, 2011, Attachment 4. Response to Comments, Letter #29.

⁴⁸ Staff Report and Presentations for Item 4 for Central Coast Water Board Meeting, March 14, 2012; Staff Report and Presentations for Item 4 for Central Coast Water Board Meeting, February 1, 2012; Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011.

and distributed by the Central Coast Agricultural Water Quality Coalition.⁴⁹ Tier 1 dischargers do not have to report this information; they must document this information in their farm water quality plans, in whatever format they choose, and retain the farm water quality plans onsite.

This type of reporting is reasonable and protective of water quality. For example, regarding nitrate discharges, if growers are applying fertilizer in random amounts with no knowledge of quantities, such practices can cause serious harm to surface water, groundwater, and those who use nearby wells for drinking water. Some farmers have already demonstrated reductions in their fertilizer applications in response to nutrient budgeting, thereby preventing unknown and/or unnecessary discharges of nitrate.

Tier 3 dischargers must later submit additional practice effectiveness information for additional cost, per conditions which apply only to these or a subset of these very few (100) dischargers posing highest risk to water quality (see additional discussion below regarding condition 69- photo monitoring, condition 72- individual monitoring and reporting).

Condition 67, Part E, Additional Conditions that Apply to Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 2 and/or Tier 3 to file by October 1, 2012 (and annually thereafter), an Annual Compliance Form that includes all of the information requested, which is identified in the Tier 2 MRP and Tier 3 MRP.⁵⁰

See Response to Condition 44g above, specifically regarding the need for and benefit of this condition which includes reporting on the effectiveness of management practices as discussed in response above. Regarding the costs for the Annual Compliance Form, the cost for this condition is reasonable and minimal. To comply, dischargers must develop and then report information using the on-line annual compliance form. The cost to meet this condition is the cost to the discharger for the time (estimated to be a few to tens of hours) to review existing information to inform answers to a series of yes/no questions or to select applicable responses from drop down menus. Most of the information to be reported in the Annual Compliance form is readily available to each discharger through existing documentation and knowledge of their farming operations and water quality management practices currently and previously required to be documented in a farm water quality management plan (e.g., verification of cooperative monitoring fee payments, identification of discharges to a stream, identification of specific farm water quality management practices). Also see response to Condition 44g above regarding reporting format and information.

⁴⁹ Farm Water Quality Plan Template, Central Coast Agricultural Water Quality Coalition, <http://agwaterquality.org/projects-partnerships.html>.

⁵⁰ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 27.

The 2004 Agricultural Order required development and implementation of farm water quality plans and the Central Coast Water Board provided compliance assistance with staff resources directly and indirectly with financial resources to other agencies and non-profit organizations to assist growers to develop the plans. Dischargers will only incur costs to comply with this condition immediately if (1) they have not previously collected standard operating information (e.g., the identification of discharge to a stream, verification of cooperative monitoring fee payments), (2) they have not planned or implemented farm water quality management practices as previously required, or (3) have never collected some additional information newly required by the Agricultural Order.

Measuring nitrate concentration of irrigation water and determining nitrate loading risk factors and risk level are the primary new conditions related to farm water quality planning in the Agricultural Order that will generate new costs. This information is necessary to directly address nitrate pollution in groundwater used for drinking water, which is the highest priority and most significant impact to water quality from irrigated agricultural runoff. The 2004 Agricultural Order did not specifically prioritize nutrient management to protect drinking water, nor include any monitoring or reporting to characterize groundwater conditions or indicate reduction in nitrate loading to groundwater. Given the widespread pollution of groundwater from nitrate in the region, the fact that 85% of water supply in the region is from groundwater, and the public health risk to those unknowingly drinking polluted water or paying to treat water polluted by nitrate discharges from agricultural runoff, these conditions are necessary and beneficial for the Central Coast Water Board to begin controlling waste discharges to groundwater by prioritizing dischargers for follow up (e.g., inspections, review compliance with the Agricultural Order conditions that require nutrient management practices).⁵¹

Nitrate concentration in irrigation water can be determined with a nitrate quick test kit for \$10-100⁵² or by collecting a sample from the well and taking it to a water quality lab for nitrate analysis for a cost of about \$25.⁵³ Regarding cost to determine nitrate loading risk factors and level of risk, see response to condition 68 below.

Condition 68, Part E, Additional Conditions that Apply to Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or

⁵¹ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix G, and Addressing Nitrate in California's Drinking Water, prepared by Thomas Harter and Jay R. Lund, Center for Watershed Sciences, University of California, Davis, March, 2012, <http://groundwaternitrate.ucdavis.edu/>

⁵² <http://www.nextag.com/serv/main/buyer/OutPDir.jsp?search=nitrate+nitrite+test&psort=0>.

⁵³ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix F, Attachment 1.

designation as Tier 2 and/or Tier 3 to file by October 1, 2012, their determination of nitrate loading risk factor(s) in accordance with requirements specified in the Tier 2 MRP and Tier 3 MRP, and to report by October 1, 2012, the nitrate loading risk factors and overall Nitrate Loading Risk level calculated for each ranch/farm or nitrate loading risk unit in the Annual Compliance Form.⁵⁴

This condition is necessary and beneficial for the reasons discussed above in Response to Condition 67, namely to directly address the nitrate pollution in groundwater drinking water. The cost to determine nitrate loading risk is reasonable and minimal. Petitioners contend that they will have to hire consultants to collect technical information and conduct complex analysis to determine nitrate loading risk levels. This is inaccurate. The Central Coast Water Board specifically identified loading risk methods that balance accuracy and cost and found it appropriate to select simple, most cost-saving methods since the loading risk determination is just a trigger or screening tool to determine which farms require more intensive and accurate nitrate loading management, evaluations and reporting. The Agricultural Order allows a discharger to conduct a more intensive risk determination if a discharger desires to do so. The cost to determine nitrate loading risk is either:

1. the cost to spend the time (estimated to be a few hours) plus the cost of either a field test or lab analysis for irrigation water nitrate concentration (about \$10-25 as stated above in Response to Condition 67) to review Table 4 in the MRP to find the rating value (1-4) that applies to the crop type, irrigation system type, irrigation water nitrate concentration and multiplying these values, or
2. the cost to spend the time (estimated to be a few hours) to use the Nitrate Groundwater Pollution Hazard Index which requires inputting crop type, soil type, irrigation type and deep rip into an online tool that evaluates and provides the risk level automatically (all known or readily accessible factors to the dischargers or available at the website with the Hazard Index).

Central Coast Water Board staff originally proposed only the first method to determine nitrate loading risk because it does not require dischargers to determine soil type which is less commonly known or available to dischargers so makes risk determination more difficult. Not all soil types for the Central Coast region are identified on the website to calculate the Hazard Index. The Central Coast Water Board approved the Agricultural Order with both methods for risk determination in response to comments by agricultural representatives that they wanted the flexibility to choose and the opportunity to use the second method even though it requires additional information (soil type). The Central Coast Water Board relied on the technical expertise of several

⁵⁴ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 28.

nitrate experts (including state and local Certified Crop Advisers and University of California Cooperative Extension advisors) to determine these loading risk methods; and the methods are considered the best approach to simply but reasonably calculate loading risk and should not take dischargers much effort or incur significant costs, as the information to make the calculations is readily available.⁵⁵ At Central Coast Water Board workshops and in staff meetings with agricultural representatives, some of those present stated that the Central Coast Water Board's proposed method made sense. They agreed, for example, that the option of vadose zone testing would be more difficult and more costly.⁵⁶ The simpler loading risk methods were selected deliberately to avoid the potentially high costs of using more complex site assessments to determine more accurate loading risk. Additionally, the Central Coast Water Board found it reasonable to require this short term investment to assess risk so that additional conditions for management practices/pollution reduction measures would only apply to those likely or actually discharging the highest levels of nitrate to groundwater and not to all Tier 2 and 3 growers.

Condition 69, Part E, Additional Conditions that Apply to Tier 2 and Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 2 and/or Tier 3, and that have farms/ranches that are adjacent to or contain a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment to, by October 1, 2012, conduct and report photo monitoring of the condition of perennial, intermittent, or ephemeral streams and riparian and wetland area habitat, and demonstrate compliance with erosion and sedimentation requirements identified in Provision 80 of Part F, Additional Conditions that apply to Tier 3 Dischargers.⁵⁷

This condition is necessary to document conditions and locations of riparian vegetation and buffers and impacts to riparian vegetation where agricultural operations are adjacent to or contain waterbodies impaired by temperature, turbidity or sediment. See discussion of water quality benefits of maintaining existing vegetation and water quality impacts of removing vegetation in Response to Condition 39. This information will provide the Central Coast Water Board with information (1) to prioritize and consider follow up where farm activities are contributing to these impairments and (2) to indicate effectiveness of dischargers' efforts to buffer streams from farming operations with natural vegetation and/or installed management practices such as sediment basins or berms.

⁵⁵ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix D. Options Considered, Section V.C.; Appendix E, Response to Comments, Comment No. 151, 439.

⁵⁶ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix D. Options Considered, Section V.C., page 62; Appendix E, Response to Comments, Comment No. 144, 204, 474.

⁵⁷ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 28.

This condition is reasonable because it only applies to a subset of Tier 2 and Tier 3 dischargers, those operating and potentially impacting adjacent impaired streams directly (about 764 out of about 3900). In addition, the Agricultural Order requires the Executive Officer to approve protocols for conducting the photo-monitoring and the protocols are being developed so the photo-monitoring methods both provide the necessary level and type of information *and* minimize the effort and cost to dischargers. The Central Coast Water Board is creating simplified reporting by creating the capability for dischargers to upload photos to the eNOI Geotracker database used for reporting annual compliance form information. Other than taking the photos, reporting entails estimating distances/width of vegetation and choosing descriptors from a drop-down menu form to upload with photos. The photography can be completed in one day and the reporting in a few hours. Costs for this is about \$150 for equipment provided all equipment must be purchased new, and about \$150 per each half-mile of stream length at the farm being photographed. This is based on assumptions that each photo (time and printing/uploading) will cost about \$30, and each half-mile length of stream will require about five photos per protocols to be approved by the Executive Officer.⁵⁸

Condition 72, Part F, Additional Conditions that Apply to Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to initiate individual surface water discharge monitoring in accordance with the requirements specified in the Tier 3 MRP by October 1, 2012, or initiate an alternative that is approved by the Central Coast Water Board's Executive Officer.⁵⁹

This condition is necessary because the information will benefit the Central Coast Water Board to (1) characterize sources of waste discharges, determine pollution load reductions, determine compliance with the conditions, and prioritize dischargers for follow up (e.g., inspections), and (2) verify the adequacy and effectiveness of the conditions of the 2012 Agricultural Order, as required by the Water Code. Water Code section 13269 requires conditional waivers to include monitoring to evaluate the effectiveness of the terms of the waiver, so this condition for additional monitoring for the highest risk dischargers is consistent with Water Code section 13269.

The 2004 Agricultural Order did not contain conditions or monitoring and reporting that allowed the Central Coast Water Board to conduct the above evaluations or make such determinations. The Agricultural Order improved on the 2004 Agricultural Order monitoring and reporting requirements which only included cooperative surface receiving water monitoring and surveys of general management practices implemented.

⁵⁸ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix E. Cost Considerations, pp. 37-38.

⁵⁹ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 29.

The costs for this condition are reasonable and minimal, given the benefit of this information to the Central Coast Water Board and the public to be able to better and more efficiently identify sources, evaluate individual implementation and compliance with conditions of the Order, prioritize regulatory oversight and followup activities, specifically for the small subset of dischargers (about 100 out of about 3800) who are Tier 3, highest risk to water quality. These are necessary steps in achieving and demonstrating water quality improvement in the affected, and in many cases, already severely impaired surface and groundwaters, based on discharges from the farms most likely causing the most pollutant loading to these waters.

Petitioners mistakenly stated that dischargers must initiate monitoring required by this condition on October 1, 2012 but the condition to initiate monitoring is not due until October 1, 2013. Therefore, the temporal costs to dischargers for the purpose of the stay request will only be from October 1, 2013 until the State Water Board resolves the petition. Petitioner's claim that to meet this condition will cost \$17,000-\$28,000 for an individual Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP) (which is due by March 15, 2013), plus \$7,000-\$11,000 for one sampling event. The Central Coast Water Board found that the annual cost for sampling will be \$4,100-\$4,600 for smaller operations (<5,000 acres) and \$8,200-\$9,300 for larger operations (>5,000 acres).⁶⁰ The Central Coast Water Board also found that development of a QAPP for a large complex project can cost up to \$10,000 but will only cost approximately \$750, assuming a ready-to-use QAPP template is available for use.⁶¹ Central Coast Water Board staff will provide the QAPP template in advance of the October 1, 2013 compliance date to initiate the monitoring. Templates reduce the cost of a QAPP to a discharger because Central Coast Water Board Staff, rather than consultants dischargers will hire, will prepare all the language for the required sampling and the dischargers will just have to fill in site-specific information. In addition, Water Code section 13269 requires conditional waivers to include monitoring to evaluate the effectiveness of the terms of the waiver. Additional monitoring for the highest risk dischargers is consistent with Water Code section 13269.

Condition 73, Part F, Additional Conditions that Apply to Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 to submit by March 15, 2014, individual surface water discharge monitoring data and reports as required by the Tier 3 MRP, or submit alternative monitoring reporting program data approved by the Central Coast Water Board's Executive Officer.⁶²

⁶⁰ Staff Report for Item 14 for Central Coast Water Board Meeting, March 17, 2011, Appendix E. Cost Considerations, pp. 34-35.

⁶¹ *Id.*

⁶² Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 29.

Compliance with this condition is not costly and is not due until March 15, 2014, so dischargers are unlikely to incur costs related to this condition prior to the State Water Board reaching a decision on the petitions. This condition is just to submit monitoring data electronically by the date specified. The information to be reported is necessary and beneficial as described in the response to Condition 72 above. Typically, the lab that conducts the analyses submits the data directly on behalf of the person who commissioned the analyses so the cost to comply with this condition is included in monitoring costs discussed in response to Condition 72 discussed above.

Condition 74, Part F, Additional Conditions that Apply to Tier 3 Dischargers, which requires dischargers meeting the criteria or designation as Tier 3 and that have High Nitrate Loading Risk farms/ranches to, by October 1, 2013, determine typical crop nitrogen uptake for each crop type produced and report the basis for the determination as required by the Tier 3 MRP.⁶³

Compliance with this condition is not costly and is not due until October 1, 2013. Therefore, the temporal costs to dischargers for the purpose of the stay request will only be from October 1, 2013 until the State Water Board resolves the petition. This determination is not costly because dischargers can choose to rely on information already provided by researchers or other crop specialists, or can use site specific information. If dischargers choose to use existing information, they simply have to refer to values developed by a commodity group, published in literature, determined by research trials (many funded with State grant dollars), for only the cost of the few hours to determine the values. If a discharger chooses to use site specific information, they must collect and analyze the crop dry biomass for nitrogen concentration. The cost of this analysis ranges from \$20-50 depending on whether sample collection is included.⁶⁴

Condition 80, Subdivision a, Part F, Additional Conditions that Apply to Tier 3 Dischargers, as applied to dischargers meeting the criteria or designation as Tier 2 and/or Tier 3 and that have farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment through the incorporation of this provision into Conditional Waiver Provision 69, which requires dischargers to show compliance with maintaining a filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent between significant land

⁶³ *Id.*

⁶⁴ Personal communication: Monica Barricarte, Central Coast Water Board staff with Keith Backman, Dellavalle Laboratory.

disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other waterbodies.⁶⁵

This condition only applies to a very small subset of dischargers, those with highest risk to water quality that are in Tier 3 and adjacent to a waterbody impaired for temperature, turbidity or sediment (about 60 out of about 3800). Also, compliance with this condition is not due until October 1, 2016. Therefore, this limited number of dischargers will not have to incur any costs for compliance for several years. These dischargers may opt to spend some money planning sooner, but this is at their own discretion. Of the small subset of growers affected by this condition, a significant number of them may already have sufficient filter strips, as this is a typical farm water quality management measure. In addition, the condition provides the dischargers with an alternative to installing a vegetated water quality buffer.

Section A, paragraphs 1 through 5, and Section B, Tier 1 MRP Part 2, Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to report the results to the Central Coast Water Board by October 1, 2013.⁶⁶

These conditions describe the monitoring and reporting associated with Condition 51. Petitioners did not request a stay of Condition 51 but claim implementing the specific monitoring and reporting requirements for the condition ordering groundwater monitoring is so costly as to cause harm. These conditions are necessary and beneficial for the reasons discussed above in Response to Condition 67, namely to directly address the highest priority and most significant impact to water quality from irrigated agricultural runoff, nitrate pollution in groundwater supplying drinking water.

These conditions are reasonable because Central Coast Water Board staff modified the monitoring and reporting requirements in response to comments in letters, during Central Coast Water Board meetings and direction from Central Coast Water Board members to make the monitoring as cost-effective and reasonable as possible. Those changes included loosening the need to have a registered professional (e.g., geologist) collect the samples, allowing alternative information in lieu of new data and the option to elect to implement groundwater monitoring cooperatively. Even after adoption of the Order, the Executive Officer extended the compliance date to elect cooperative monitoring in response to requests from dischargers to allow more time to evaluate this option. If dischargers elect cooperative monitoring, they do not have to initiate sampling until October 2013 so will delay costs for groundwater monitoring.

⁶⁵ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 31.

⁶⁶ Tier 1 MRP, pages 8-10.

The Central Coast Water Board has further evidence of the reasonableness of these conditions. Consultants and laboratories are already offering reduced costs to dischargers for groundwater monitoring. Many dischargers have already elected or expressed interest in electing cooperative monitoring. Some growers at recent staff workshops, since adoption of the Order, said they already sample their wells and/or will probably just hire someone to do it now. For 97% of the growers, those in Tier 1 and Tier 2, this condition is a once-in-the-life of the Order condition, not an annual cost. The annual cost of this condition is about \$200 per well so total cost ranging from about \$400-\$800, or no cost if opt to provide existing well or groundwater data, as provided in the conditions, or delayed (and potentially lower) cost to comply through cooperative monitoring. The Tier 3, highest risk, dischargers will have to repeat the monitoring every year.

Section A, paragraphs 1 through 5, and Section B, Tier 2 MRP Part 2, Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to report the results to the Central Coast Water Board by October 1, 2013.⁶⁷

See response to Section A, paragraphs 1 through 5, and Section B of Tier 1 MRP Part 2, Groundwater Monitoring and Reporting Requirements above.

Section C of Tier 2 MRP Part 2, Groundwater Monitoring and Reporting Requirements, which requires dischargers meeting the criteria or designation as Tier 2 to calculate the nitrate loading risk factor for each ranch/farm included in their operations, and requires such Tier 2 dischargers with individual farms/ranches that have a HIGH nitrate loading risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form by October 1, 2012, and annually thereafter.⁶⁸

See response to Condition 67 and 68 regarding the need for and benefit of this information. This information, nitrogen applied, was specifically required as a reasonable indicator of and surrogate for indicating pollution reduction and in short-term. Other measures (e.g., lysimeters and groundwater monitoring) to indicate loading risk and/or reduction are much more expensive because they require field measurements, lab analysis and calculations. Groundwater monitoring data can indicate reduction in loading and improvement but over much longer timeframes, likely beyond the term of the Agricultural Order. This condition provides dischargers with the option to use alternative methods to demonstrate with groundwater monitoring that their farms are not discharging nitrate such that it causes or contributes to exceedances of nitrate water quality standards in groundwater.

⁶⁷ Tier 2 MRP, pages 8-10.

⁶⁸ Tier 2 MRP, pages 11-12.

To report total nitrogen applied, dischargers must record the content of nitrogen in the fertilizer used (provided by fertilizer manufacturers) and conduct analysis of the nitrogen content of any compost used, irrigation water and soil. The costs for this condition are for the hours of record keeping, and the analyses which can be conducted in the field with test kits that cost about \$20-50 as discussed in the Response to Condition 67 and 68 above.

Tier 2 MRP Part 3, Annual Compliance Form, which requires dischargers meeting the criteria or designation as Tier 2 to submit by October 1, 2012, and annually thereafter, an Annual Compliance Form that includes, but is not limited to: identification of the application of any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of proper backflow prevention devices, description of method and location of chemical applications relative to surface water, Nitrate Loading Risk Factors; and, for dischargers meeting the criteria or designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity, or sediment photo monitoring to document conditions of streams, riparian, and wetland area habitat.⁶⁹

See above response to Condition 67.

Tier 2 MRP Part 4, Photo Monitoring and Reporting Requirements, which requires dischargers meeting the criteria or designation as Tier 2 to conduct and submit by October 1, 2012, photo monitoring consistent with yet-to-be established protocols, and explain and demonstrate compliance with erosion and sedimentation requirements.⁷⁰

See above response to Condition 69.

Section A, paragraphs 1 through 5, and Section B of Tier 3 MRP Part 2, Groundwater Monitoring and Reporting Requirements, which requires dischargers to sample private domestic drinking water and agricultural groundwater wells by March 15, 2013, and to report the results to the Central Coast Water Board by October 1, 2013.⁷¹

See response to Section A, paragraphs 1 through 5, and Section B of Tier 1 MRP Part 2, Groundwater Monitoring and Reporting Requirements above.

⁶⁹ Tier 2 MRP, pages 12-13).

⁷⁰ Tier 2 MRP, page 14.

⁷¹ Tier 3 MRP, pages 8-10.

Section C of Tier 3 MRP Part 2, Groundwater Monitoring and Reporting Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to calculate the nitrate loading risk factor for each ranch/farm included in their operations, and requires such Tier 3 dischargers with individual farms/ranches that have a HIGH nitrate loading risk to report total nitrogen applied per crop, per acre, per year on the Annual Compliance Form by October 1, 2012, and annually thereafter.⁷²

See above Response for the same requirement for Tier 2.

Tier 3 MRP Part 3, Annual Compliance Form, which requires dischargers meeting the criteria or designation as Tier 3 to submit by October 1, 2012, and annually thereafter, an Annual Compliance Form that includes, but is not limited to: identification of the application of any fertilizers, pesticides, fumigants, or other chemicals through an irrigation system, proof of proper backflow prevention devices, description of method and location of chemical applications relative to surface water, Nitrate Loading Risk Factors; and, for dischargers meeting the criteria or designation as Tier 2 and that have farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity, or sediment photo monitoring to document conditions of streams, riparian, and wetland area habitat.⁷³

See above response to Condition 67.

Tier 3 MRP Part 4, Photo Monitoring and Reporting Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to conduct and submit by October 1, 2012, photo monitoring consistent with yet to be established protocols, and explain and demonstrate compliance with erosion and sedimentation requirements.⁷⁴

See above response for Condition 69.

Tier 3 MRP Part 5, Individual Surface Water Discharge Monitoring and Reporting Requirements, which requires dischargers meeting the criteria or designation as Tier 3 to submit an individual surface water discharge Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP) by March 15, 2013, to monitor individual discharges of waste from their farm/ranch, including irrigation run-off (including tailwater

⁷² Tier 3 MRP, pages 10-12.

⁷³ Tier 3 MRP, pages 12-14.

⁷⁴ Tier 3 MRP, page 14.

discharges and discharges from tile drains, tailwater ponds, and other surface water containment features); and, which requires dischargers meeting the criteria or designation as Tier 3 to initiate individual surface water discharge monitoring per the Sampling and Analysis Plan and QAPP by October 1, 2013.⁷⁵

See above response for Condition 72.

2. Interested Persons and the Public Interest Will Suffer Substantial Harm If the State Water Board Grants Petitioners' Stay Requests

Petitioners assert that a stay of the Agricultural Order will not cause substantial harm to interested persons or the public. Specifically, Petitioners assert that the monitoring and reporting provisions will not improve water quality and so may be stayed without harm to the public.⁷⁶ The Petitioners point to *In the Matter of IBM* to support their position.⁷⁷ However, in *In the Matter of IBM*, the State Water Board found that not requiring IBM to submit a technical report would not result in any prejudice to the overall schedule for the remediation of the contaminated site and therefore there was no harm to the public.⁷⁸ Applying the State Water Board's analysis to this case, a stay must not be granted as staying the Agricultural Order, either in entirety or selected provisions, will delay remediation of actions by dischargers to reduce the severe water quality problems in the Central Coast Region and which are causing substantial harm to the public.

People who rely on groundwater for drinking water have been and continue to be harmed in the absence of waste discharge controls and/or reporting so the Central Coast Water Board can identify and use regulatory authorities to reduce sources of waste discharges, as provided by the Agricultural Order. Groundwater pollution from nitrate in fertilizers used by irrigated agricultural operations is widespread, severe and persistent in the region. Fish and other organisms that live or travel in the streams, estuaries and marine environment in the Central Coast Region are exposed to high levels of nitrate, pesticides and toxicity, to the greatest extent in the areas of the region with irrigated agriculture. The majority of creeks, rivers and estuaries in the Central Coast Region are not meeting water quality standards. Most of these waterbodies are affected by agriculture. These conditions were determined and documented on the Central Coast Water Board's 2008 Clean Water Act Section 303(d) List of Impaired Waterbodies.⁷⁹

⁷⁵ Tier 3 MRP, pages 14-16.

⁷⁶ Grower-Shipper Petition, pages 16-17.

⁷⁷ *Id.* at page 16.

⁷⁸ *In the Matter of IBM*, at pages 6-7.

⁷⁹ See Staff Report, Appendix G to the Staff Report and Staff Presentations for Item 14 for Central Coast Water Board Meeting, March 17, 2011; See Staff Report and Presentations for Item 16 for Central Coast
(footnote continued on next page)

A report for the State Water Resources Control Board Report to the Legislature, *Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake Basin and Salinas Valley Groundwater*, was prepared by UC Davis and published in March 2012. This report further documents the groundwater problems from nitrate in one basin in the region, Salinas Valley, verifies the source of the nitrate as from agricultural sources and demonstrates the need to protect drinking water and reduce nitrate loading to groundwater.⁸⁰ The report found that for the Tulare Lake Basin and Salinas Valley, cropland contributed an estimate 93.7 percent of all nitrate leached to groundwater.⁸¹

Interested persons and the public interest have been and continue to be harmed while agricultural discharges persist as they have in the past. This condition of harm does and will continue until agricultural dischargers significantly reduce their waste discharges and impacts to surface and groundwater. The monitoring and reporting provisions serve as indicators of and evidence of implementation of water quality improvements and provide the Central Coast Water Board with information to base prioritization, compliance assistance and enforcement on, thereby securing responsibility for and actual implementation of water quality control actions or improvements. These provisions will directly lead to improved water quality through this increased information.

In addition to the monitoring and reporting requirements, Petitioners also request a stay of provision 44 which is the condition to "implement" a Farm Plan to "achieve compliance with this Order" and includes/references water quality management practices, treatment and/or control measures. Therefore, staying this provision does prevent immediate and/or progress towards water quality improvement. As discussed earlier this is not a new requirement as Farm Plans and similar practices were previously required under the 2004 Agricultural Order.

The petitioners also assert that a stay of provisions to install backflow prevention devices (Condition 31), maintain existing vegetation and riparian areas (Condition 39) and maintain filter strips of appropriate widths (Condition 80) will not cause the public to be harmed because these conditions "dictate the specific practices and provide no flexibility for agricultural dischargers to self-select appropriate management practices. Staying the specific management practices as requested does not remove any

(footnote continued from previous page)

Water Board Meeting, September 1, 2011; See Staff Report and Staff Presentations for Item 4 for Central Coast Water Board Meeting, March 14, 2012; See Finding 5-8.

⁸⁰ The Draft Report is part of the administrative record for the adoption of the Agricultural Order. The Final Report is *Addressing Nitrate in California's Drinking Water*, prepared by Thomas Harter and Jay R. Lund, Center for Watershed Sciences, University of California, Davis, March, 2012, available at <http://groundwaternitrate.ucdavis.edu/>.

⁸¹ *Id.* at page 18 (Table 1).

conditions with respect to implementing management practices that must improve and protect water quality.”⁸² Their characterization of the conditions is incorrect for several reasons. First, Conditions 31, 39 and 80 all require implementation that improve and protect water quality. Second, the conditions are not prescriptive in that they still allow a discharger to determine how to comply. For example, the Agricultural Order does not specify the type of backflow device. The Central Coast Water Board expects dischargers to select devices which are appropriate to their irrigation systems and consistent with any existing local ordinance and Department of Pesticide Regulation requirements. The Central Coast Water Board also expects most dischargers to be in compliance with Condition 31 relative to pesticide use/chemigation because this is already required by the Department of Pesticide Regulation. Compliance with Condition 39 does not require growers to take any action unless they are currently engaged in activities that do not maintain riparian vegetation, in which case they have flexibility to determine how best to meet the condition to maintain vegetation. Condition 80.b says, “As an alternative to the development and implementation of a Water Quality Buffer Plan, Tier 3 Dischargers may submit evidence to the Executive Officer to demonstrate that any discharge of waste is sufficiently treated or controlled such that it is of sufficient quality that it will not cause or contribute to exceedances of water quality standards in waters of the State or of the United States,” specifically providing flexibility to the discharger.⁸³ The petitioner only quoted paragraph 80.a. in claiming a dictated manner of compliance. Taken together, these conditions do not specify the manner of compliance and are necessary to protect and improve water quality. Staying these provisions will harm the public and water quality.

3. Petitioners have not raised Substantial Questions of Fact or Law.

Under the Water Code, any person who discharges waste that could affect the quality of the waters of the state is required to submit a report of waste discharge and obtain either waste discharge requirements or a conditional waiver of waste discharge requirements. Waste discharge requirements and waivers must implement the applicable water quality control plans (Basin Plans). The Agricultural Order establishes a conditional waiver, consistent with the Water Code and the Basin Plan. Like any person who discharges waste that could affect the waters of the state, irrigated agricultural dischargers must comply with the Water Code and the Basin Plans. They can choose to do so by enrolling the Agricultural Order or by submitting a report of waste discharge and seeking individual waste discharge requirements.

The Petitioners assert that amendments presented by Central Coast Water Board Member Johnston were adopted illegally due to improper ex parte

⁸² Grower-Shipper Petition, pages 17-18.

⁸³ Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2012-0011, page 31.

communications. There is no information presented that any improper ex parte communications occurred. During the course of development of any permit, waste discharge requirement, or waiver, staff, dischargers, and other interested persons often communicate with each other. The information gained in those communications is often included in the final product. This case was no different, Central Coast Water Board staff engaged in communications with representatives of the dischargers and environmental interests in making recommendations to the Central Coast Water Board. The amendment presented by Central Coast Water Board Member Johnston resulted from written and oral comments made directly to the Central Coast Water Board by persons participating in public workshops, hearings, and written comments and from communications between staff and those persons. Communications between interested persons or parties to the proceeding and other interested persons or staff are not ex parte communications. There is also no reason to stay the Agricultural Order based on this amendment simply because the purpose of the amendment is to provide an option for dischargers and would only be initiated by a discharger. No one is required to implement or use this condition.

With respect to monitoring, Water Code section 13269 requires the conditions of a waiver to include monitoring, but does not require any findings regarding costs of such monitoring. To the extent the monitoring requirements are subject to Water Code section 13267, the Central Coast Water Board adequately described the need for the reports, the burden and costs of those reports, and the evidence that supports the need for the reports.

With respect to specific management practices, the Agricultural Order does not specify the manner of compliance. To the extent it specifies conditions, the Agricultural Order provides the option for the discharger to choose an alternative.⁸⁴

The Agricultural Order was adopted after a three year public process and contains conditions for dischargers that are necessary to protect water quality. It is consistent with Water Code section 13269 and the State Water Board's NPS Policy. The Agricultural Order's provisions are not excessive and will provide the Central Coast Water Board with information that is needed to ensure proper implementation of the Agricultural Order and best management practices.

CONCLUSION

Petitioners have not demonstrated that dischargers will suffer substantial harm if the stay requests are not granted. Petitioners have also not shown that the public and interested persons will not be harmed if the stay requests are granted. Petitioners have not raised substantive questions of fact or law. Therefore, Petitioners have not met the

⁸⁴ See State Water Board WQO 2002-0015 (*In the Matter of Review on Own Motion of WDRs Order No. 5-01-044 for Vacaville's Easterly Wastewater Treatment Plant*) at page 37.

requirements for a stay under California Code of Regulations, Title 23, section 2053. For all of the foregoing reasons, the Central Coast Water Board respectfully urges the State Water Board to deny the stay requests filed by all Petitioners.⁸⁵

⁸⁵ If the State Water Board considers adopting a stay or partial stay of the Agricultural Order, the Central Coast Water Board urges the State Water Board to clarify the conditions or Order that would continue to apply to dischargers pending action on the petitions. The Central Coast Water Board expects dischargers to continue to comply with a waiver of waste discharge requirements to protect water quality. In addition, the Central Coast Water Board has adopted TMDLs that rely on the Agricultural Order to implement the TMDLs.

ATTACHMENTS NOT INCLUDED

Bashaw, Jeannette@Waterboards

From: Lynda F. Johnston <lyndaj@stanford.edu>
Sent: Friday, July 13, 2012 11:54 AM
To: Bashaw, Jeannette@Waterboards
Subject: FW: SWRCB/OCC Files A-2209(a)-(e)
Attachments: 2012-7-13 Environmental Petitioners' Opposition to Requests for Stay (Corrected Caption).pdf

From: Lynda F. Johnston [mailto:lyndaj@stanford.edu]
Sent: Friday, July 13, 2012 11:34 AM
To: 'jbashaw@waterboards.ca.gov'
Cc: Debbie Sivas (dsivas@stanford.edu); 'steve@montereycoastkeeper.org'; 'Alicia Thesing'; 'leah.russin@law.stanford.edu'; 'Matthew Armsby'
Subject: SWRCB/OCC Files A-2209(a)-(e)

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95812-0100

Dear Ms. Bashaw:

Attached is a corrected Opposition of Monterey Coastkeeper, et al. to Requests for Stay of California Regional Water Quality Control Board Order No. R3-2012-0011. Typographical errors in the caption have been corrected.

Will you be kind enough to reply with your acknowledgment of receipt of this document? Thank you.

Lynda F. Johnston
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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Adoption of Order No. R3-2012-0011, by the Central Coast Regional Water Quality Control Board for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

SWRCB/OCC FILES A-2209(a)-(e)

**OPPOSITION OF MONTEREY
COASTKEEPER, SAN LUIS
OBISPO COASTKEEPER, AND
SANTA BARBARA CHANNEL-
KEEPER TO REQUESTS FOR
STAY OF CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD ORDER NO.
R3-2012-0011**

Pursuant to the State Water Resources Control Board's June 26, 2012 notice, Petitioners Monterey Coastkeeper, San Luis Obispo Coastkeeper, and Santa Barbara Channelkeeper (collectively "Environmental Petitioners") submit this preliminary written response opposing the requests by various agricultural interests to stay implementation of Order No. R3-2012-0011. In Environmental Petitioners view, more environmentally protective conditions on growers in the

Central Coast are long overdue and there is no basis in law or fact to delay implementation of the new waiver order.

INTRODUCTION

The requests by Petitioners Grower-Shipper Association of Central California, et al, Petitioners California Farm Bureau Federation, et al., Petitioners Ocean Mist Farms and RC Farms, and Petitioners Jensen Family Farms, Inc. and William Elliott (collectively “Agricultural Petitioners”) for an immediate stay of Order No. R3-2012-0011 (“Order”), adopted by the Central Coast Regional Water Quality Control Board (“Regional Board”) on March 15, 2012, after nearly four years of extensive – indeed, unprecedented – public process, should be denied because these requests do not satisfy any of the three criteria set forth in title 23, section 2053 of the California Code of Regulations. First, Agricultural Petitioners have not demonstrated that they will suffer substantial harm in the absence of a stay; the fact that some growers may incur modest costs to comply with the Order’s first incremental steps over the course of the next year or two does not justify a stay of the Regional Board’s long-overdue effort to begin bringing agricultural dischargers into compliance with the Porter-Cologne Act. Second, the record is unambiguous that the discharges subject to the Order are currently causing substantial harm to water quality, public health, and the ecosystem and that the Regional Board’s ongoing measures to encourage voluntary pollution reduction have been largely unsuccessful. Although the Order certainly will not stop all harm posed by agricultural discharges, timely implementation of its initial requirements is critical to laying the groundwork for future reductions in the most egregious pollution. Finally, the petitions for review filed by agricultural interests do not raise substantial questions of law or fact regarding the Order. Agricultural Petitioners obviously

disagree with the Regional Board's ultimate policy choice, but the various constitutional and procedural arguments raised in their petitions have no legal merit. Accordingly, a stay of the Order is entirely inappropriate.

FACTUAL BACKGROUND

The California Water Code authorizes State and Regional Water Boards to conditionally waive waste discharge requirements ("WDRs") if doing so both complies with applicable water quality plans and standards and is determined to be in the public interest. Cal. Water Code § 13269. Over the years, the Regional Boards have issued waivers for over 40 categories of discharges. Although waivers must be conditional, historically they contained few meaningful conditions. For example, waivers enacted before 2000 typically did not require any water quality monitoring, a feature of WDRs that allows Regional Boards to understand whether discharges are meeting water quality standards. Senate Bill 390, signed into law on October 6, 1999, was intended to strengthen the waiver process and bring dischargers utilizing a waiver into better compliance with the water quality provisions of the Porter-Cologne Act. It amended section 13269 of the Water Code to require, among other things, (i) a Regional Board determination that waivers are consistent with applicable water quality plans and in the public interest, (ii) the inclusion of water quality monitoring requirements, and (iii) an expiration date within five year. SB 390 required that Regional Boards review their existing waivers and renew them under the new statutory requirements or replace them with WDRs. Under SB 390, waivers not reissued automatically expired on January 1, 2003.

The Central Coast Regional Board adopted its first Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands under revised section 13269 on

July 9, 2004, expiring July 9, 2009. In late 2008, the Regional Board took steps to develop a new conditional waiver. That process included the formation of an Advisory Panel with stakeholders, iterative drafts of a new order prepared and proposed by Regional Board staff, multiple hearings and workshops by the Board, extensive comments from the public, scoping sessions, and multiple proposals from various groups, some of which submitted several different proposals over time.

During this lengthy and extensive public process, the 2004 waiver, which was slated to expire by its own term on July 9, 2009, was kept in place despite the Regional Board's unambiguous conclusion that it was not adequate to protect water quality. By a vote of the Regional Board, the 2004 waiver was extended, first, until July 10, 2010 and then again until March 31, 2011. It was administratively extended for a third time on March 29, 2011, this time by Regional Board staff instead of the Board and for a fourth time on September 30, 2011, again by the Regional Board staff. During each of these extension periods, outreach by staff and input from stakeholders, particularly agricultural interests, continued. The language of the proposed new waiver, which was first put forward by the Regional Board in February 2010, has been repeatedly revised over the last two years to accommodate concerns and objections expressed by growers.

The Advisory Panel: In a letter dated December 12, 2008, Central Coast Regional Board Executive Officer Roger Briggs invited various stakeholders to participate on a panel to assist in development of a new waiver. The goals of the new waiver were stated as:

- Eliminate toxic discharges of agricultural pesticides to surface waters and groundwater;
- Reduce nutrient discharges to surface waters to meet nutrient standards;
- Reduce nutrient discharges to groundwater to meet groundwater standards;

- Minimize sediment discharges from agriculture lands; and
- Protect aquatic habitat (riparian areas and wetlands) and their buffer zones.

The composition of the panel was heavily weighted towards agricultural interests: 12 members representing the agricultural industry and growers, 4 member representing environmental organizations, 2 Regional Board staff, 2 agricultural academics, and 2 agencies. The Advisory Panel first met on December 18, 2008 and, thereafter, met monthly through September 2009.

Gita Kapahi from the State Board moderated the sessions, but the group was unable to reach any consensus.

Staff Drafts: Following dissolution of the Advisory Panel, the Regional Board directed staff to distribute a preliminary report and preliminary draft order for the regulation of discharges from irrigated lands, and staff did so on February 1, 2010. The preliminary report demonstrated in painstaking detail that the 2004 waiver was not consistent with water quality objectives for the region and did not comply with Water Code section 13269. Despite the existence of that waiver, staff found that impairment of beneficial uses by agricultural pollutants was widespread and severe and that the situation generally was not improving. Specifically, staff summarized the situation as follows:

Agricultural discharges (primarily due to contaminated irrigation runoff and percolation to groundwater) are a major cause of water quality impairment. The main problems are:

1. In the Central Coast Region, thousands of people are drinking water contaminated with unsafe levels of nitrate or are drinking replacement water to avoid drinking contaminated water. The cost to society for treating polluted drinking water is estimated to be in the hundreds of millions of dollars.
2. Aquatic organisms in large stretches of rivers in the entire region's major watersheds have been severely impaired or completely destroyed by severe toxicity from pesticides.

These impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and the discharges causing the impairments continue. Immediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.

Preliminary Draft Staff Recommendations for An Agricultural Order at 4 (Feb. 1, 2010).

Staff recognized that the 2004 waiver focused on enrollment, education, and outreach, but lacked clarity and a focus on water quality requirements and did not include adequate compliance and verification monitoring. *Id.* at 18-19. The draft new waiver proposed by staff was intended to address those issues and bring the waiver into compliance with section 13269 of the Porter-Cologne Act.

In response to the February 2010 draft waiver, the Regional Board received extensive public comment and invited alternative proposals. At least three alternative proposals were submitted, by the California Farm Bureau Federation, OSR Enterprises, Inc., and, as a group, the Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, and the Santa Barbara Chapter of Surfrider Foundation. The Regional Board analyzed these submissions in subsequent staff reports and held two follow-up public workshops, on May 12, 2010 and July 8, 2010, during which it accepted additional public comment and allowed key stakeholders, including various agricultural industry representatives, to make formal presentations.

In response to ongoing public comment, and specifically in response to the criticisms of the agricultural community, staff continued to revise the original draft waiver over the next two year, producing a total of five new versions for public review and consideration at Regional Board meetings on November 19, 2010, March 17, 2011, May 4, 2011, September 1, 2011, and

March 15, 2012. The Regional Board held at least one additional public workshop on February 3, 2011 and staff continued thereafter to meet individually with various stakeholders. In an attempt to appease growers, every iteration of staff's draft waiver was less protective of the environment, and required less of the farming community, than the previous version. The time for reporting and compliance was extended in each draft. Additional changes to the drafts included:

<u>Iteration</u>	<u>Individual monitoring</u>	<u>Pesticide List</u>	<u>Nitrate discharges to groundwater</u>	<u>Buffer from impaired waters of the state.</u>
<u>February 2010</u>	All	Comprehensive list of 50+ pesticides that can cause toxicity	Require Compliance with Drinking Water Standards ("DWS") in 6 years	50, 75, and 100 feet.
<u>November 2010</u>	Tier 3 only	Diazinon and chlorpyrifos only	Tier 3: Achieve nitrate balance ratio within 3 years. DWS compliance in discharge within 4 years	30 feet.
<u>March 2011</u>	Tier 3 Only	Diazinon and chlorpyrifos only	Tier 3: Nitrate balance ratio within 3 years; annual reduction in loading to groundwater	Protect existing habitat.
<u>March 2012</u>	Tier 3 only	Diazinon and chlorpyrifos only	Nitrate balance ratio reported but no compliance standard	Protect existing habitat.

CEQA Process: Concurrent with this administrative process, the Regional Board undertook actions to comply with the California Environmental Quality Act ("CEQA"). On August 10, 2010 the Regional Board held a CEQA scoping meeting, and on October 14, 2010,

the Regional Board released a “Notice of Preparation of a Draft Subsequent Environmental Impact Report.” On November 19, 2010, the Regional Board released a Draft Subsequent Environmental Impact Report and accepted public comments on the document. This document was intended to tier to the earlier CEQA review prepare in connection with the 2004 waiver and to update that analysis for the proposed new waiver. On March 2, 2011, the Regional Board issued a Final SEIR, making minor clarifications and responding to public comments. On August 10, 2011, the Board issued an Addendum to the Final SEIR to address intervening revisions to the draft waiver.

The Ag Alternative: The agricultural community availed itself fully of the public process. The California Farm Bureau Federation submitted at least five proposals over the course of the process, additional and subsequent to the original proposal it had submitted in April 2010. First, on December 3, 2010, it submitted a “Draft Central Coast Agriculture’s Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands” (the “Ag Alternative”). The organization subsequently submitted revised alternative language on March 17, 2011, May 4, 2011, February 14, 2012, and March 14, 2012. Each of these submissions was intended as a less burdensome alternative to the staff proposal, which itself was being continually weakened with each iteration. And each time, the California Farm Bureau Federation only made its alternative available to the public during a presentation at the Regional Board meeting where it was to be considered, thus preventing the public from being able to meaningfully review and consider it in advance of the meeting or to effectively respond to it.

Outreach, Public Hearings, and Meetings with Staff: From May 2010 through March 2012, there were eight full days of public hearings and workshops. Hundreds of in-person

comments and scores of stakeholder group presentations were made to the Regional Board during the public hearings and many hundreds of written comments were submitted. In addition, the Regional Board staff conducted extensive outreach to grower organizations, and repeatedly offered to meet with anyone. *See* Central Coast Water Board – Agricultural Order Renewal, Stakeholder Outreach Meetings and Events (updated Feb. 14, 2012), available at http://www.waterboards.ca.gov/rwqcb3/water_issues/programs/ag_waivers/docs/ag_order/outreach_021412.pdf. Indeed, the Regional Board and staff have commented that the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands was given the most extensive and thorough public process in the Board’s history.

On March 15, 2012, with all members present, the Board unanimously adopted the Order No. R3-2012-0011 (along with specific monitoring criteria for each of the three tiers of enrolled dischargers in Orders Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03).

ARGUMENT

A. Agricultural Petitioners Will Not Suffer Substantial Harm in the Absence of a Stay.

1. The Declarations Submitted by Petitioners Do Not Demonstrate Substantial Harm or Hardship.

Agricultural Petitioners complain that they will incur “substantial” compliance costs if a stay is not granted. But the cost of complying with a Regional Board order cannot properly be the basis for a stay – or virtually every petition for review would justify a stay. Even assuming that Agricultural Petitioners’ self-proclaimed expense estimates were properly documented as true and accurate – an assumption that is not supported by any credible evidence, as discussed below – the cost of coming into compliance with the Porter-Cologne Act does not impose an unreasonable burden or support a stay request. The Order’s modest requirements appropriately

target the most environmentally risky farm operations, leaving the vast majority of growers with few, if any, new obligations. These incremental requirements are appropriately intended to compel the most polluting growers to begin internalizing the enormous environmental costs associated with their activities, costs they have been effectively externalizing for decades, to the detriment of our natural resources and the public. Given the lucrative nature of the region's agricultural industry – with annual food crop production in the four major Central Coast agricultural counties valued at well over *six billion dollars*¹ – the industry's complaints of financial hardship are not compelling, particularly in the face of the pollution burden created by its activities.

In arguing for a stay, Agricultural Petitioners both fail to provide credible quantitative analysis or other evidence to support their expense estimates and ignore the critically important context for their self-serving estimation of compliance costs. For instance, petitioner RC Farms submits a declaration by Dennis Sites, described only as a "Consultant" without further description or supporting credentials, which summarily states that "[t]o comply with these regulations, RC Farms will incur substantial costs, estimated to be over \$100 per acre" for its 500-plus acre farming operations. Declaration of Dennis Sites at ¶ 5. Mr. Sites provides no

¹ See, e.g., Monterey Co. Department of the Agricultural Commissioner, *Monterey County Crop Report 2011*, available at http://ag.co.monterey.ca.us/assets/resources/assets/252/cropreport_2011.pdf (valuing Monterey County crops at \$3,850,000,000 in 2011); Santa Barbara Co. Agricultural Commissioners Office, *Agricultural Production Report 2011 Santa Barbara County*, available at <http://www.countyofsb.org/uploadedFiles/agcomm/crops/CR2011Final.pdf> (valuing Santa Barbara County crops at \$1,194,379,00 in 2011); San Luis Obispo Co. Department of Agriculture, *Protecting Our Resources, 2011 Annual Report*, available at <http://www.slocounty.ca.gov/Assets/AG/croprep/2011CropReport.pdf> (valuing San Luis Obispo County crops at \$736,000,000 in 2011); Santa Cruz Co. Office of the Agricultural Commissioner, *Santa Cruz County 2010 Crop Report*, available at http://www.agdept.com/content/cropreport_10.pdf (valuing Santa Cruz County crops at \$532,526,000 in 2010).

analysis to support his conclusory statement. Dale Huss, Vice-President of Artichoke Production for Petitioner Ocean Mist Farms, submits an almost identical – and equally unsupported – declaration stating that Ocean Mist Farms will incur costs “estimated to be between \$50.00 and \$100.00 per acre.” Declaration of Dale Huss at ¶ 5. Even taking these unsupported estimates at face value, the proffered costs of compliance must be considered in context for these Salinas area growers. In 2011, some 289,523 acres in Monterey County were planted in major vegetable and fruit crops, yielding a value of \$3,148,989,000 – or roughly \$10,876 per acre planted.² Thus, declarants’ estimated compliance costs constitute, at most, less than one percent of the annual planted value of their crops – hardly an economic hardship. Neither of the declarants provides the kind of revenue or profit figures that would be necessary for the Board to grant these individual operations a stay of the Order.

Indeed, although Agricultural Petitioners collectively repeat the mantra throughout their papers that “excessive” compliance costs will cause “substantial harm” to growers, they have artfully crafted their arguments and declaration testimony to avoid any actual claim or showing of comparative economic hardship. For instance, Peter Aiello, the owner and operator of Uesugi Farms in Gilroy, provides unsupported cost estimates for compliance with the new requirements on the 2,300 acres under production by his firm, but no profit context in which to understand them. Declaration of Peter C. Aiello at ¶ 1. Assuming for the sake of argument that his unsupported estimates are accurate, he declares that his cost of compliance between now and December 2013 will be \$40,000 – or \$17.39 per acre ($\$40,000 / 2,300$ acres), roughly 0.2

² Monterey Co. Department of the Agricultural Commissioner, *Monterey County Crop Report 2011* at 6, available at http://ag.co.monterey.ca.us/assets/resources/assets/252/cropreport_2011.pdf.

percent of the average planted value. *Id.* at ¶ 7. Bob Campbell, the Lompoc owner and operator of Bob Campbell Ranches, Inc., testifies that the 38 farms/ranches operated by his company will likely fall within Tier 2 and that the cost of compliance between now and December 2013 will range *between \$60 and \$80 per acre* – or no more than 0.7 percent of the averaged planted value. Declaration of Bob Campbell at ¶ 7. Similarly, although Salinas grower Dave Costa does not state how many acres he has under production, but does testify that he owns 34 ranches divided into 414 blocks/farms that include 1350 plantings per year and that he averages 2.1 crops per acre per year. Declaration of Dave Costa at ¶¶ 4-5. Like other declarants, Mr. Costa does not provide any calculations or analysis for his estimates, but he concludes that between now and December 2013, his total cost of compliance per acre for the 34 ranches that will likely fall within Tier 2 will range *between \$46 to \$66 per acre*. *Id.* at ¶ 7. For the two ranches that he believes will fall into Tier 3, Mr. Costa estimates costs of compliance between now and December 2013 to range *between \$100 and \$148 per acre* – a little over one percent of the average planted value for the most environmentally risky lands subject to the Order. *Id.* at ¶ 6. Gary L. McKinsey, owner of B&D Farms, Inc. in Arroyo Grande, estimates (again, without supporting documentation or calculation) that five of his six ranches will be subject to Tier 2 (and none will be subject to Tier 3) and that the cost of compliance for those Tier 2 lands between now and December 2013 will range *between \$55.39 and \$78.89 per acre planted*. Declaration of Gary L. McKinsey at ¶ 5. Because none of these declarations include particular revenue or profit numbers, the Board reasonably should assume that the value of declarants' fruit and vegetable crops is similar to the Monterey County average of nearly \$11,000 per acre.³ Put

³ Cost estimates by the remaining declarants are in the same ballpark, as a percentage of average

in proper comparative context, then, Petitioners' claims of financial harm are not compelling.

In short, even taking all declarants as credible and representative of the larger farming community (despite the absence of supporting analysis or documentation to support these assumptions), the Board must conclude that the near-term financial burden on growers to comply with the Order's minimal and commonsense environmental protections (farm plans, backflow devices, etc.) represents only a fraction of planted crop value, even for the highest risk operations with facing the most stringent requirements, on what is some of the most profitable farmland in the nation. Growers need to stop complaining about the cost of complying with the Porter-Cologne Act and begin to take the same initial steps to reduce harmful pollution-loading that industrial facilities took decades ago. Had they chosen simply to comply with the Order, instead of employing an army of high-priced lawyers to file hundreds of pages of meritless legal arguments, Agricultural Petitioners could already be well on their way to satisfying the modest, incremental first steps of the Order.

2. The Barbeau Report Does Not Demonstrate Substantial Harm or Hardship.

Agricultural Petitioners' reliance on the economic analysis produced by J. Bradley Barbeau and Kay L. Mercer is equally misplaced. That report, *Economic and Cost Analysis of the Proposed Ag Waiver and Ag Alternative* (Aug. 1, 2011) (hereinafter "Barbeau Report"), is constrained in many significant respects and does not support the grant of a stay. For one thing,

value per planted acre. Declarant Robert Martin provides an unsupported cost estimate range of \$134 to \$221 per planted acre (\$519,082 / 3866 acres to \$853,924 / 3866 acres). Declaration of Robert Martin at ¶¶ 1, 7. Thus, even the declarant with the highest per acre cost estimates, and even taking as credible and accurate the highest end of his estimate range, near-term implementation costs would constitute at most 2 percent of his crop value. (Declarant Dirk Giannini does not provide information on total acreage under production and thus his estimate cost per acre cannot be computed from his testimony.)

the interviews on which the report is based were conducted before the Regional Board's July 2011 revisions, Barbeau Report at 7-8, and the report was prepared in August 2011, before the Board made final revisions to the Order that further reduced requirements on growers. The report's conclusions, therefore, are not applicable to the actual Order adopted on March 15, 2012.

More important, the Barbeau Report is methodologically flawed in fundamental ways. As a threshold matter, the report suffers from apparent selection bias. As the report itself explains, the authors did not use a "random" or representative sample, but rather selected for interview (in some unspecified way)⁴ 12 growers with a total of 26,448 acres under production. Roughly 60 percent of this acreage would likely fall within the Tier 3 category, according to the report authors, even though the Regional Board estimates that less than 3 percent of the farmed acreage in the region will be subject to Tier 3 requirements. Thus, the study – like the declarations discussed above – is not representative of the financial burden imposed by the Order on the vast majority of affected growers, roughly half of whom will likely fall within Tier 1 and actually see their regulatory obligations reduced under the new Order. The data on which the report relies were obtained through voluntary (and self-selected) participation by growers with some of the largest operations. There is no reason to believe, based on what little information is disclosed about the study methodology, that these operations are representative in any way of the 97 percent of farms that fall outside the Tier 3 classification. Indeed, the authors concede that

⁴ How the authors actually selected which 12 growers to interview is not revealed anywhere in the report. Given that the study was funded by farming interests who are now using the report to argue against regulatory requirements, the lack of selection transparency renders the results highly suspect.

every farm is somewhat different, and large operations are likely quite different from smaller farms, the vast majority of which will be subject to fewer, not greater, obligations under the new Order. And because compliance with the more stringent Tier 3 requirements for the highest risk operations is phased in over several years, the study's focus on Tier 3 obligations does not provide an appropriate basis for an immediate, short-term stay of the Order.

Equally significant is the Barbeau Report's reliance primarily on self-reported cost estimates from interviews with self-interested growers, rather than on objective cost calculations formulated by independent third-party experts. This flaw is compounded by the authors' explicit recognition that growers were required to "speculate on what it would take to comply," thereby injecting "some level of uncertainty" into their estimates. Barbeau Report at 8. Adding to this uncertainty, and rendering the report's quantitative conclusions even less reliable, is the highly speculative nature of many of the cost estimates used by the report's authors. For instance, the study states that "[l]ining water containment ponds presents a significant expense to some growers," potentially up to \$240,000 for 1 of the 12 interviewed growers who farms 5,500 acres and has 16 such ponds. *Id.* at 13. The authors concede that "[o]ther growers who do not use containment ponds avoid this expense," but they make no attempt to determine what percentage of dischargers subject to the Order actually use containment ponds; depending on that number, the "average" costs for compliance could fall dramatically. Moreover, the authors acknowledge a subsequent Regional Board clarification that the containment provision is not a "stand-alone requirement," but they do not adjust their analysis in any way to address this clarification, stating only that "this information was received too late to be included in this analysis." *Id.*

These methodological biases, questions, errors, and uncertainties are reflective of the

study's serious limitations as scientific analysis and render its conclusions – through nicely packaged in precise-looking charts and graphs – virtually meaningless for purposes of the Agricultural Petitioners' stay request. In fact, the report actually demonstrates how grower self-reporting – of the same kind contained in the declarations submitted by Agricultural Petitioners – is inherently inaccurate and unreliable. *See, e.g.*, Barbeau Report at 13 (explaining how 1 of the 12 interviewed growers, based on erroneous assumptions, included a \$575,000 cost estimate for compliance with one item that other growers considered to require a small or no expense).

In sum, Agricultural Petitioners have not come close to meeting their burden of showing substantial harm in the absence of a stay. The fact that there will be some costs associated with compliance, especially for the largest polluters and the most environmentally risky farms, is neither surprising nor unreasonable. Despite the unequivocal mandate of the Porter-Cologne Act, the agricultural community has continued for decades to discharge harmful pollutants and degrade water quality throughout the Central Coast. With hundreds of water bodies in the region now impaired for agricultural pollutants, especially in the Salinas Valley, the Regional and State Boards must act expeditiously to begin the cleanup process. The Regional Board's efforts over the last decade to obtain voluntary pollution reductions have been largely unsuccessful because growers have not stepped up and made the necessary pollution reduction investments that virtually every other industrial sector has. Further delay is not warranted by the relatively insignificant costs – as compared to the market value of the polluting activity – to begin the long process of bringing harmful farming practices into compliance with the Porter-Cologne Act.

B. The Public Interest Will Be Substantially Harmed by Issuance of a Stay.

The Regional Board has thoroughly documented the ongoing harm to the public and the

environment that is occurring every single day. Agricultural Petitioners offer nothing but conclusory statements to dispute these facts, nor could they. Petitioners Ocean Mist Farms et al. and Jensen Family Farms, Inc. et al. say nothing in their respective stay papers about the ongoing harm. Petitioners California Farm Bureau Federation et al. offer a single, incomprehensible sentence: “Interested persons and the public interest will not be substantially harmed if a stay is granted as water quality will still be regulated.” Petition for Review at 69. Petitioners Grower-Shipper Association of Central California et al. provide more words, but no more substance. They argue that “most of the provisions for which a stay is requested are monitoring and reporting provisions” and that these informational requirements do not result in water quality improvements. Request for Stay at 16. This argument, of course, ignores the fact that monitoring is a necessary precursor to implementing water quality improvements; the longer it is delayed, the slower the cleanup process. With respect to those provisions or management prescriptions in the Order that Petitioners concede will directly affect water quality, they contend (i) that because compliance will “take decades,” a short-term delay will not substantially harm the public, and even less comprehensible (ii) that “[s]taying the specific management practices as requested does not remove any requirements with respect to implementing management practices that must improve and protect water quality. Thus, the public will not be harmed.” *Id.* at 17-18. None of these oddly circular and cryptic arguments in any way overcomes the Regional Board’s meticulously documented analysis of the real, ongoing environmental harm that is occurring and will continue to occur if a stay is granted.

The extensive agency record supporting adoption of the Order is replete with evidence of ongoing harm from agricultural discharges. In its March 2011 staff report on the proposed

Order, the Regional Board explains that while not all nutrient and pesticide pollution in Central Coast waters originates from agricultural land, “research projects and monitoring programs have shown high levels of chemicals leaving agricultural areas and entering the waters of our Region.” Central Coast Regional Board, *Water Quality Conditions in the Central Coast Region Related to Agricultural Discharges* at 4 (March 2011), available at http://www.waterboards.ca.gov/rwqcb3/board_info/agendas/2011/march/Item_14/14_att7.pdf. This agricultural pollution problem was evident when the 2004 agricultural waiver was issued, and more recent data have confirmed agricultural areas as the source of significant pollution. *Id.* Data collected throughout the region between 1998 and 2009 indicate that the two areas with the most degraded water quality are the lower Salinas area and the lower Santa Maria area, both of which are intensely farmed. *Id.* at 5. Of the 51 (out of 250) sampled Central Coast sites with the worst water quality scores, 82 percent are in these two areas, and all of the sites with the worst toxicity scores are in these areas. *Id.* at 6. The Central Coast region has 704 water bodies listed as impaired under section 303(d) of the Clean Water Act, 77 of which are in the lower Santa Maria area and 119 of which are in the lower Salinas area. *Id.*

Nitrate contamination is the most widespread and serious water pollution problem on the Central Coast, with 30 percent of the 250 sampled surface water sites exceeding the 10 mg/L drinking water standard, some by five-fold or more. *Id.* at 6-8. For the 20 worst sites, where nitrate levels ranged from 33 to 94 mg/L, row crop acreage averaged 48.4 percent of the catchment area and 27.1 percent of the upstream watershed. *Id.* at 8. Nitrate contamination of groundwater, upon which many local communities rely, is also widespread and serious. *Id.* at 23-25. The source of this contamination is attributable primarily to irrigated agriculture and the

over-application of commercial fertilizer. *Id.* at 31. A very recent U.C. Davis study confirms the significance of nitrate contamination from agriculture in the Salinas Valley Groundwater Basin. Center for Watershed Studies, *Addressing Nitrates in California's Drinking Water, With a Focus on Tulare Lake Basin and Salinas Valley Groundwater* (Jan. 2012), available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf> (“Cropland is by far the largest nitrate source, contributing an estimated 96% of all nitrate leached to groundwater (Table 1). The total nitrate leached to groundwater . . . is four times the benchmark amount, which suggests large and widespread degradation of groundwater quality.”).

With respect to toxicity and pesticides, the Regional Board has summarized the situation as follows:

The levels of toxicity found in ambient waters of the Central Coast far exceed anything allowed in permitted point sources discharges. The California Toxics Rule allows only one acute and one chronic toxic test every three years on average for permitted discharges to surface waters. We have drainages in agricultural areas of the Region that are toxic virtually every time they are measured.

Water Quality Conditions in the Central Coast Region Related to Agricultural Discharges at 9.

Of the 80 streams monitored in the region for toxicity, “[s]ome measure of lethal effect (as opposed to growth or reproduction) has been observed at 65 percent” of them. *Id.* Fifteen water bodies on the section 303(d) list for the Central Coast are impaired for water column and soil toxicity and another 14 are listed for water toxicity alone. *Id.* at 10. Of these toxicity listings, 73 percent are located in either the lower Salinas area or the lower Santa Maria area. *Id.* Thirty-six percent of the sampled sites are “severely toxic” and 90 percent of these are in the same two intensive agricultural areas. *Id.* Follow-up studies and other research have “documented a strong relationship between concentrations of diazinon and chlorpyrifos pesticides and water

column toxicity in the lower Salinas and Santa Maria areas.” *Id.* The breakdown products of these pesticides are “ten to 100 times more toxic to amphibians than the products themselves.” *Id.* Sediment toxicity was found in 64 percent of the sites sampled, with 20 of the 23 most toxic sites located in the lower Salinas and Santa Maria areas. *Id.* “[S]ediment toxicity appears to be highly related to pyrethroid pesticides and chlorpyrifos, at least in the lower Salinas and Santa Maria areas.” *Id.*

A recent Cooperative Monitoring for Agriculture follow-up study found the “highest average pyrethroid and chlorpyrifos concentrations in the lower Santa Maria area, where they were detected at all sites,” and the “second highest average chemical concentrations were found in the Salinas tributaries and Reclamation Canal.” *Id.* at 11. In a statewide comparative study of four agricultural areas (Salinas, Sacramento, San Joaquin, and Imperial valleys), conducted by the Department of Pesticide Regulation, “the Salinas study area had the highest percent of sites with pyrethroid pesticides detected (85 percent), the highest percent of sites that exceeded levels expected to be toxic (42 percent), and the highest rate (by three-fold) of active ingredients applied (113lbs/acre).” *Id.* In another recent Surface Water Ambient Monitoring Program summary report issued in 2010, where toxicity data were collected for each region of the state, 22 percent of the 109 water toxicity sites on the Central Coast were “highly toxic,” which “was the highest percentage of any region.” *Id.* (comparing Central Coast to the Central Valley, where only 2.3 percent of the sample sites were highly toxic).

The Regional Board staff report also summarized ongoing turbidity, temperature, and ammonia concerns on the Central Coast, *id.* 13-14, and water quality trends. Although in some areas water quality is improving, in other areas it is actually degrading. For instance, in some

areas with very poor nitrate contamination conditions, the situation is getting worse, with that worsening concentrated in the lower Salinas and lower Santa Maria areas. *Id.* at 15. Moreover, “[i]n the lower Salinas and lower Santa Maria areas common measures of benthic macro-invertebrate community health and habitat health score low, especially compared to upper watershed monitoring sites and other high quality sites in the Central Coast Region.” *Id.* at 16.

As the Regional Board summarized:

These findings indicate that streams in areas of heavy agricultural use are typically in poor condition in terms of benthic community health and that habitat in these areas is often poorly shaded, lacking woody vegetation, and heavily dominated by fine sediment. Invertebrate community composition is sensitive to degradation in both habitat and water quality. In some cases, the fine sediment dominating stream substrate is likely the largest influence on benthic community composition, but in areas where sediment and water toxicity is common, chemical impacts to the native communities are also probable. Heavily sedimented stream bottoms can result from the immediate discharge of sediment from nearby fields, the loss of stable, vegetated stream bank habitat, the channelization of streams and consequent loss of floodplain, as well as from upstream sources.

Id. at 17.

With respect to surface water contamination, the situation is extremely problematic and necessitates immediate action:

Staff has examined a large amount of data from both CCAMP and the CMP. We have found that many of the same areas that showed serious contamination from agricultural pollutants five years ago, particularly nitrate and toxic pesticides, are still seriously contaminated. We have seen evidence of improving trends in some parameters in some areas. Dry season flow volume appears to be declining in many areas of intensive agriculture. However, we are not seeing widespread improvements in nitrate concentrations in areas that are most heavily impacted, and in fact a number of sites in the lower Salinas and Santa Maria areas appear to be getting worse, at least in terms of concentration. Invertebrate toxicity remains common in both water and sediment. Statistical trends in toxicity are not yet typically apparent, in part because of smaller sample sizes, but a few sites show indications of improvement. Persistent summer turbidity in many agricultural areas implies that water is being discharged over bare soil and is moving that soil into creek systems. Dry season turbidity is getting worse along the main stem of

the Salinas River. High turbidity limits the ability of fish to feed. Bioassessment data shows that creeks in areas of intensive agricultural activity have impaired benthic communities, with reduced diversity and few sensitive species. Associated habitat is often poorly shaded and has in-stream substrate dominated by fine sediment. In general, staff finds poor water quality, biological and physical conditions in many waterbodies located in, or affected by, agricultural areas in the Central Coast Region.

Id. at 21-22.

If anything, the situation is even more bleak with respect to groundwater, especially as it relates to nitrate contamination of drinking water and the attendant public health and economic impacts:

At this time, the largest contributing source of nitrate loading to groundwater in the Central Coast Region, fertilizer application from irrigated agriculture, is virtually unregulated. Nitrate loading to groundwater from fertilizer application is significant and ongoing and the documented impacts are widespread and severe. The combination of historical and ongoing nitrate loading from fertilizer application continues to impact major portions of entire groundwater basins that act as a sole source of domestic and municipal water supply resulting in a growing and significant number of drinking water systems being impacted with nitrate above the public health drinking water standard. Of particular concern is the potentially significant number of domestic water supply wells impacted with nitrate and the people who are unknowingly drinking water that doesn't meet public health standard for nitrate.

...
... the ongoing and significant discharges of nitrate to groundwater from irrigated agriculture as documented in this report are contributing to an already alarming level of impacts to the beneficial uses of groundwater. Unfortunately, nitrate concentrations are likely to increase in many deeper aquifers over the next several years or even decades even if nitrate loading is completely stopped. This is because high levels of nitrate already in the vadose zone and shallow groundwater will continue to move downward into the aquifers with irrigation return flows and recharge from rainfall or flooding events. Consequently, reduced loading at the ground surface will likely take years to decades to result in lower nitrate concentrations in groundwater because of the typically slow rate of groundwater recharge within many groundwater basins. Nonetheless, significant measures need to be implemented now to reverse the current trend in nitrate loading with the ultimate goal of improved groundwater quality years or even decades in the future.

Id. at 59-60.

The report goes on to conclude that, despite extensive research, education and outreach efforts, “[i]t appears very little has been done in the last thirty years to seriously address the nitrate problem since it was definitively identified as the biggest water quality problem in the State as well as within portions of the Region.” *Id.* at 61. Moreover:

At this time available data indicate an ongoing and significant trend in nitrate loading to groundwater from irrigated agriculture and an increase in the extent and severity of nitrate impacts to the beneficial uses of groundwater. Nitrate loading to groundwater from irrigated agriculture constitutes a discharge of waste to waters of the State and is subject to waste discharge requirements and enforcement actions pursuant to the California Water Code. Whereas discharges of nitrate to groundwater from municipal, industrial, domestic and other point sources are regulated in the Region, agriculture has been selectively excluded from similar regulation to date. Until such time as this significant gap in regulatory oversight is addressed, beneficial uses of groundwater will not be adequately protected. Consequently, regulatory programs need to be developed requiring the implementation of nitrogen and irrigation management practices to reduce nitrate loading to groundwater and require monitoring to document whether progress is being made to reduce nitrate loading.

Id. Agricultural Petitioners’ requests for stay will only delay the inevitable and allow the already alarming surface water and groundwater contamination problem to worsen day by day, further harming public health, fish and wildlife, the ecosystem, and the larger public interest.

C. Agricultural Petitioners Do Not Raise Substantial Issues of Law or Fact.

In hundreds of pages of briefing, Agricultural Petitioners advance a kitchen sinkful of legal arguments, citing everything from the writings of James Madison to the participation of Steve Shimek. None of these arguments raise substantial concerns, either legal or factual, concerning the thorough public process that led to adoption of the Order. It is clear that Agricultural Petitioners would prefer a watered-down version of the Order, or none at all. That policy preference, however, does not constitute a legitimate legal argument. The Regional Board

conducted a protracted and inclusive public process, revising the draft conditional waiver order time and again to accommodate the comments and concerns of the agricultural industry. Staff meticulously responded to public input, explaining in writing why the industry proposal could not possibly satisfy the requirements of the Porter-Cologne Act. As their petitions for review make abundantly clear, nothing short of complete capitulation to their demands will satisfy the Agricultural Petitioners. Under the law, however, the Regional Board simply does not have the authority or ability to accept the industry's weak proposal, no matter how many frivolous procedural and constitutional issues its lawyers dream up.

The Porter-Cologne Act is clear: Waste discharge requirements may be waived *only* if the State or Regional Board "determines . . . that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest." Cal. Water Code § 13269(a)(1). Moreover, any waiver must be conditioned on verification and effectiveness monitoring, with monitoring results made available to the public. *Id.* § 13269(a)(2). As the Regional Board explained in painstaking detail, the industry proposal does not meet these requirements because, among other things, the third-party monitoring provisions are inadequate and the proposal does not require compliance with water quality standards. Central Coast Regional Board, *Staff Report for Regular Meeting of September 1, 2011* at 8 (Aug. 10, 2011). Especially given the highly degraded condition of surface and subsurface water quality throughout the region and the lack of progress in reducing agricultural pollution, the Regional Board's substantive judgment on necessary conditions is neither arbitrary nor unreasonable, and the State Board should affirm it.

On the question of the Order's legality, Agricultural Petitioners' laundry list of alleged

procedural errors is meritless. Their lengthy arguments under the California Environmental Quality Act (“CEQA”) are particularly ludicrous given Petitioners’ desire to weaken the environmental protections contained in the Order. As a threshold matter, Agricultural Petitioners’ interest in a less environmentally protective waiver is not within the zone of beneficial interests protected by CEQA and, therefore, does not confer CEQA standing on these parties.⁵ In any event, the Regional Board followed appropriate CEQA procedures here. Building off the prior CEQA review and documentation for the 2004 waiver, the Regional Board provided an updated, supplemental CEQA analysis for the more environmentally protective new Order and circulated it for public review and comment. As part of that review, the Regional Board analyzed economic impacts and, to the extent possible under the Porter-Cologne Act, incorporated measures to mitigate those impacts. Nothing more is required by CEQA.

Agricultural Petitioners’ regulatory takings arguments are even more specious. Use of and discharge into state waters is a privilege, not a right. If growers elect to irrigate their land, they have a number of options: They can choose not to discharge wastewater at all, they can seek individual WDRs for their operations, or they can enroll in the conditional waiver put in place by the Order. For growers who choose the third option, their participation is conditioned, as the Porter-Cologne Act requires, on compliance with runoff, erosion control, and other requirements necessary to protect water quality from the highly toxic and environmentally damaging pollutants they generate. There is nothing unconstitutional about the Regional Board’s requirement that landowners take steps to mitigate their pollution loading to waters of the state,

⁵ For instance, Petitioners Ocean Mist Farms et al. argue that the Regional Board should have assessed potential mitigation for biological impacts of the Order, even as they are pressing for a waiver that would have greater biological impacts, not fewer.

notwithstanding Petitioners' appeals to the works of James Madison, Arthur Lee, and John Steinbeck.

Nor does the Order violate section 13360 of the Water Code, as several Petitioners contend. The Regional Board has the authority to structure compliance requirements that minimize polluted runoff. In the Order, the Board exercises this authority by requiring dischargers to (1) "implement water quality protective practices (*e.g.*, source control or treatment) to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place"; (2) "minimize the presence of bare soil vulnerable to erosion and soil runoff to surface waters and implement erosion control, sediment, and stormwater management practices in non-cropped areas, such as unpaved roads and other heavy use areas"; (3) "maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste [and] maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste"; and (4) where it is necessary to disturb aquatic habitat, "implement appropriate and practicable measures to avoid, minimize, and mitigate erosion and discharges of waste, including impacts to aquatic habitat." Order at 20-21, ¶¶ 36, 37, 39, 40. The constraints of section 13360 do not apply to such general performance standards, which are akin to "the installation of surface and underground drainage facilities to prevent runoff from entering the disposal area or leakage to underground or surface waters, or other reasonable requirements to achieve the above or similar purposes" and thus permissible under the statute. Cal. Water Code § 13360(a)(1). The courts have been clear that performance provisions designed to reduce runoff

do not violate section 13360. *See Tahoe Sierra Preservation Council v. State Water Resources Control Board*, 210 Cal. App. 3d 1421, 14 (1989) (upholding waste discharge requirement for erosion control plan).

Several of the Agricultural Petitioners argue that the monitoring requirements in the Order are unlawfully onerous. This argument is absurd, both legally and factually. As a threshold matter, in order for any discharger to obtain a “waiver” from the normal permitting requirements, the Regional Board must ensure that adequate verification and efficacy monitoring are performed. Industrial dischargers obtaining individual WDRs face rigorous monitoring and reporting requirements as conditions of their permits. The monitoring provisions in the Order are less stringent, allowing enrolled Tier 2 and Tier 3 dischargers to electronically submit a single Annual Compliance Form. Order at 27-28, ¶¶ 67-68. High nitrate loading growers who fall into Tier 3 must engage in somewhat more sophisticated nitrate planning and must report that activity on their annual forms, but these requirements are imminently reasonable in light of the enormous nitrate contamination problem created by agricultural dischargers. If Petitioners are unhappy with the monitoring conditions in the Order, they remain free to apply for individual WDRs.

Finally, Agricultural Petitioners attempt to gin up an argument that Regional Board members engaged in improper ex parte communications. This argument is fatuous. Petitioners’ argument rests on the contention that there was an improper “indirect” ex parte communication between Steve Shimek and Board Member Michael Johnston because compromise ideas suggested by Mr. Shimek to Regional Board staff was later taken up by Mr. Johnson as a possible way to address the agricultural industry’s publicly expressed concerns with the proposed

waiver. That transmittal of policy ideas from the public to the staff to the decisionmakers was not in any way improper or “ex parte”; it was precisely the way that policy development should work and has worked throughout the waiver renewal process. As he testifies under oath in the declaration submitted with this opposition, Mr. Shimek did not have any communication with Mr. Johnston before the March 15, 2012 Board vote regarding his compromise ideas.

Declaration of Steve Shimek (“Shimek Decl.”) at ¶ 10.

The actual facts – rather than the fanciful storyline that Agricultural Petitioners weave – are straightforward and not in the least suspect. Having attended a February 24, 2012 Senate committee hearing where growers voiced a number of specific concerns about the proposed new waiver – even after it had been significantly weakened through two years of staff revisions – Mr. Shimek developed a handful of ideas that he believed might address those concerns and allow the waiver process to finally conclude. Shimek Decl. at ¶¶ 3-4. These ideas were not intended to make the proposed waiver more environmentally protective, but to address specific industry concerns with some of its provisions. *Id.* Pursuant to the Regional Board’s policy of meeting with individual stakeholders concerning development of the waiver, Mr. Shimek met with staff on March 7, 2012 to convey his compromise ideas. *Id.* at ¶ 5. That same day, he spoke by telephone at length with Rick Tomlinson of the California Strawberry Commission about his ideas. *Id.* Mr. Tomlinson agreed to share these ideas with others in the agricultural community and get back to Mr. Shimek. *Id.* at ¶ 6. Mr. Tomlinson subsequently confirmed that he had spoken to many others in the agricultural community about Mr. Shimek’s ideas. *Id.* at ¶ 7. Thus, Agricultural Petitioners’ claim that they were somehow blind-sided by Mr. Shimek’s ideas is patently false.

Moreover, Mr. Shimek and the Regional Board followed precisely the same public input process that had occurred throughout the development of the waiver, a process used repeatedly by the agricultural industry. Shortly after hearing the industry's latest concerns expressed in a public hearing, Mr. Shimek made an appointment to meet with staff and, in a short meeting, conveyed his compromise ideas. Shimek Decl. at ¶ 5. This meeting was consistent with established procedures, where staff has met dozens of times with agricultural industry representatives and others to obtain stakeholder input. Mr. Shimek did not attempt in any way to conceal his ideas from the agricultural industry; to the contrary, he willingly discussed them with industry representatives in the hope of finding a way to address their expressed concerns. Mr. Shimek did not include his ideas during his March 14, 2012 presentation to the Board because other organizations on whose behalf he was speaking did not entirely agree with them, but he was aware that the agricultural community was familiar with the proposed compromise ideas. Shimek Decl. at ¶¶ 7-8. These circumstances stand in sharp contrast to the approach of the industry, which presented dozens of proposed textual changes during the March 14, 2012 hearing that had not been shared with other stakeholders or the public. Shimek Decl. at ¶ 9. Many of these textual changes were incorporated into the final Order adopted by the Regional Board the next day, even though environmental stakeholders and the public did not have any meaningful opportunity to review or respond to them. *Id.*

In sum, there is no merit to the factual and legal issues raised by Agricultural Petitioners. Accordingly, they fail to satisfy the criteria for a stay.

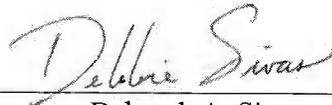
CONCLUSION

There are no grounds for a stay of the Order. It is beyond dispute that agricultural pollution is causing tremendous harm to the environment and public health. Every day of delay prolongs this substantial injury. In contrast, Agricultural Petitioners' own submissions demonstrate that the cost of complying with the Order while the State Board considers their petitions for review is negligible as compared to the market value of their crops. Moreover, a stay or partial stay of the Order will call into legal question the status of each grower's compliance with the Porter-Cologne Act. The prior waiver has expired and no longer protects growers from liability for their daily discharges into waters of the state. The agency's failure to regulate these discharges under either an effective conditional waiver or individual WDRs would constitute an unprecedented breach of its statutory and public trust obligations to the people of California. There is no legitimate or defensible basis for throwing years of work by the Regional Board into such regulatory chaos. Accordingly, Petitioners Monterey Coastkeeper, San Luis Obispo Coastkeeper, and Santa Barbara Channelkeeper urge the State Board to deny all requests for a stay of the Order, without further briefing or hearing.

Dated: July 13, 2012

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: 

Deborah A. Sivas

Counsel for Environmental Petitioners
MONTEREY COASTKEEPER, SAN LUIS
OBISPO COASTKEEPER, and SANTA
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SAN LUIS OBISPO COASTKEEPER

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Adoption of Order No. R3-2012-0011, by the Central Coast Regional Water Quality Control Board for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

SWRCB/OCC FILES A-2209(a)-(e)

**DECLARATION OF STEVE
SHIMEK IN OPPOSITION TO
REQUESTS FOR STAY OF
CALIFORNIA REGIONAL
WATER QUALITY CONTROL
BOARD ORDER NO. R3-2012-
0011**

I, Steve Shimek, declare as follows:

1. I am the Monterey Coastkeeper and the Chief Executive of the Otter Project. In that capacity, and as a concerned resident of the Salinas Valley, I have participated for several years in public processes related to the development and ultimate adoption of the Central Coast Regional Water Quality Control Board ("Regional Board") Order No. R3-2012-0011 ("2012 Ag Waiver"). This declaration is offered in support of the opposition of Monterey Coastkeeper, San Luis Obispo Coastkeeper, and Santa Barbara Channelkeeper to the various requests to stay

implementation of the 2012 Ag Waiver adopted by the Regional Board on March 15, 2012. The matters set forth herein are stated on my personal knowledge and if called upon to testify, I could and would testify competently as to them.

2. Beginning in 2008 and continuing through final adoption of the 2012 Ag Waiver, the Regional Board invited broad input from a wide range of stakeholders through a variety of outreach processes and fora, including an advisory panel, individual meetings with various stakeholders, interested party workshops, public meetings and hearings, and official comment periods. After receiving substantial community input, Regional Board staff prepared a new draft waiver to replace the expiring conditional waiver and presented it at a public meeting of the Board on February 1, 2010. Throughout the next two years, staff continued to solicit input and continued to revise its draft waiver to accommodate and address concerns raised by the agricultural industry. Revised versions of the draft waiver were presented at Board meetings on November 19, 2010, March 17, 2011, May 4, 2011, and September 1, 2011. With each new version, the draft waiver became, in my judgment, less environmentally protective.

3. Despite these numerous revisions to reduce the requirements on growers, some members of the agricultural industry still remained unhappy with the draft waiver. On February 24, 2012, I attended a California Senate Agriculture Committee hearing in Salinas, California, with Senator Anthony Cannella presiding. The topic of the hearing was "Regulatory Impacts on Agriculture" and one of the agenda items was the 2012 Ag Waiver, which was scheduled for adoption by the Regional Board on March 15, 2012. At that Committee hearing, Mr. Dirk Giannini and Mr. Norm Groot gave extended presentations about their concerns with the proposed waiver and with water quality regulation. In their presentations, I understood them to make the following points:

- There was a deep distrust of Central Coast Regional Board staff;
- There was no language in the draft waiver that made it possible for a grower to move to a lower, less regulated tier;
- There was no provision for group efforts (such as the Los Huertos concept);
- There was no incentive for longer-term water quality investments such as tailwater ponds or engineered wetlands, nor was there a provision for allowing extra compliance time to install such investments; and
- There was a fear that individual farm water quality reporting would make growers vulnerable to a third-party lawsuit.

4. Soon thereafter, I began work on a set of new ideas intended to address the specific concerns expressed by growers at the February 24 committee hearing. To be clear, these ideas were not intended to provide more environmental protection or more stringent regulation, even though I believed that more environmentally protective conditions were appropriate and necessary. Rather, each was intended only to provide a potential solution to the problems or concerns raised by growers at the February 24 Committee hearing about then-current version of the draft waiver. Specifically, my ideas included:

- Creation of an independent but balanced committee to review group proposals, thereby taking the burden away from Regional Board staff;
- An express acknowledgement in the waiver that growers can move to a lower, less burdensome tier;
- An express provision in the waiver encouraging group proposals and specifically calling out the Los Huertos and Clark concepts;
- An extended project-specific compliance timeline for group proposals; and
- An express provision allowing for project efficacy monitoring for group projects instead of edge of the field monitoring for individual growers.

5. Consistent with the open-door process that Regional Board staff had established with both agricultural and environmental stakeholders over the last several years, on March 7, 2012, I met with Regional Board Executive Officer Roger Briggs and program staff Lisa McCann and Angela Schroeter in their San Luis Obispo office to present the ideas identified in paragraph 4 above. This meeting was conducted in similar fashion to my prior meetings with staff, including

an explanation of why I was there and a brief discussion of my ideas. To the best of my recollection, the meeting lasted less than an hour.

6. Later in the day on March 7, 2012, a full week before the next scheduled Regional Board hearing on the 2012 Ag Waiver, I participated in a telephone call with Mr. Rick Tomlinson of the California Strawberry Commission. It was clear to me that Mr. Tomlinson had reviewed my proposed ideas. We discussed the concepts and many specifics, and I answered many questions. Mr. Tomlinson said he would think about and discuss my ideas with others and get back to me.

7. On March 13, 2012, I received an email from Mr. Tomlinson stating that he had discussed my ideas with many other people. A true and correct copy of that email is attached hereto as Exhibit A.

8. On March 14, 2012, I gave a presentation at the Regional Board hearing on the 2012 Ag Waiver representing the collective views of Monterey Coastkeeper, San Luis Obispo Coastkeeper, Santa Barbara Channelkeeper, and the Environmental Defense Center. Our group position was in support of the original version of the waiver presented by staff on February 1, 2010. The coalition on whose behalf I was speaking did not entirely support the compromise ideas I communicated to Mr. Briggs and Mr. Tomlinson on March 7. For that reason, I did not present them at the public meeting.

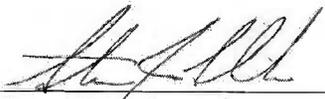
9. In their presentation at the same hearing, representatives of the agricultural industry offered literally dozens of new and specific substantive textual changes to the language of the September 1, 2011 version of the waiver. There was no practical opportunity for me or anyone else to respond to these dozens of language changes during the March 14 hearing, and to the best of my knowledge, none of the environmental stakeholders had been given advance notice of

these proposed changes before the hearing, unlike the agricultural industry's advance notice of the ideas I presented to Mr. Briggs and discussed at length with Mr. Thomlinson on March 7. Nevertheless, after the close of public comment hearing, Regional Board staff incorporated many of the agricultural industry's proposed changes into the 2012 Ag Waiver that was ultimately adopted by the Board on March 15, 2012.

10. At no time before the Regional Board's March 15 vote to adopt the 2012 Ag Waiver did I communicate my March 7 ideas or any language to any member of the Regional Board.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2012 at Monterey, California.



Steve Shinek

EXHIBIT A

From: [Rick Tomlinson](#)
To: [Steve Shimek](#)
Subject: Re: ag waiver
Date: Tuesday, March 13, 2012 11:47:37 PM

Hi Steve

I wanted to let you know that there was considerable discussion about your proposal. Several farm groups reached out to environmental stakeholders to try and resolve some of the language issues we discussed. While many of your colleagues expressed support for either the staff proposal or the new proposal, they also expressed interest in the Ag proposal.

The Ag group also felt that seven days was just not enough time to get input, especially since the Ag proposal had been publicly available for nearly four months, and Dr. Los Huertos report available for the past two months. We felt that after that extensive public comment and consensus efforts on the ag proposal, that it would be inappropriate to push forward the proposal you made available without the opportunity for any public input.

Thanks
Rick Tomlinson
California Strawberry Commission
(916) 445-3335

Bashaw, Jeannette@Waterboards

From: G.R. Hensley <g.r.hensley@sbcglobal.net>
Sent: Tuesday, July 10, 2012 3:22 PM
To: Bashaw, Jeannette@Waterboards
Subject: Request to Stay SWRCB/OCC Files A-2209(b)-(e)
Attachments: 12.07.10 StayResponse.SWRCB.PDF

Dear Ms Bashaw,

Attached is San Luis Obispo Coastkeeper's submission regarding Petitioner Request to Stay SWRCB/OCC Files A-2209(b)-(e).

San Luis Obispo Coastkeeper is a petitioner/party [SWRCB/OCC Files A-2209(a)] and we write urging a denial of the request for the stay and a hearing.

Thank you for the opportunity to comment on this important issue.

Gordon Hensley

 Please consider the environment before printing this e-mail

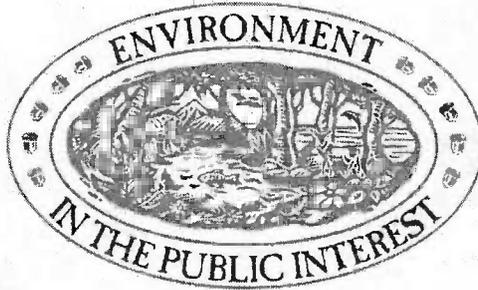
Gordon R. Hensley, San Luis Obispo COASTKEEPER®
Environment in the Public Interest
EPI-Center, 1013 Monterey St., Suite 202
San Luis Obispo, CA 93401

email: coastkeeper@epicenteronline.org

Ph: 805-781-9932

www.Epicenteronline.org

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Phone: 805-781-9932 • Fax: 805-781-9384

San Luis Obispo **COASTKEEPER**[®]

Jeannette L. Bashaw, Legal Assistant
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

July 10, 2012

Via email: jbashaw@waterboards.ca.gov

SUBJECT: Petitioner Response to Request to Stay SWRCB/OCC Files A-2209 (b)-(e)

Dear Ms Bashaw,

On behalf of San Luis Obispo **COASTKEEPER**[®] (SLO Coastkeeper) I am writing to express opposition to the requests from petitioners (b) – (e) to stay some or all of the listed orders issued by the Central Coast Board on March 15, 2012. SLO Coastkeeper urges denial of the requested stay and hearing.

San Luis Obispo Coastkeeper [petitioner/party in SWRCB/OCC Files A-2209 (a)] has consistently participated in the ag waiver update process since 2004, submitting written comment and attending RWQCB3 hearings. In addition, SLO Coastkeeper has partnered with our sister Keeper Organizations (Santa Barbara Channelkeeper and Monterey Keeper) to more fully voice the public interest in protecting water quality on the Central Coast Region. As such SLO Coastkeeper believes the Regional Board has provided a lengthy, 8-year, public process during which all of the petitioners requesting the current stay fully participated, provided testimony, and suggested modifications which shaped the final Conditional Order R3-2012-0011.

SLO Coastkeeper further believes the complete record for Conditional Order R3-2012-2011 is clear that the impacts of concern alleged by those requesting a stay are less than significant and would be unlikely to cause substantial harm to the petitioner or the public if the stay is not granted. As noted in the Staff Report for the Regular Meeting of March 14-15, 2012 at page 20... "With respect to Agricultural Resources, the Final SEIR concludes that adoption of the



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proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale termination of agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern."

Alternatively, the record is equally clear that substantial harm to the public is likely if the requested stay is granted:

"Since the issuance of the initial Agricultural Order in 2004, the Water Board compiled additional and substantial empirical data demonstrating severe groundwater and surface water pollution caused in large part by irrigated agricultural practices, including the following:

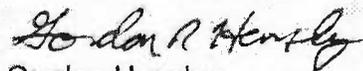
- Large-scale degradation of drinking water aquifers due to nitrate from fertilizer use, and a corresponding increasing risk to public health in areas with intensive irrigated agriculture.
- Widespread surface water and sediment toxicity due to pesticides.
- Widespread degradation and loss of riparian and wetland habitat.

The data show that these problems are severe and getting worse, especially with respect to degradation of drinking water aquifers and the resulting threat to public health in rural areas. Staff is proposing that the Water Board renew an updated Draft 2012 Agricultural Order that requires measurable pollutant load reduction to surface water and groundwater, and allows dischargers the necessary flexibility to achieve compliance and resolve the severe water quality problems in the agricultural areas of the Central Coast Region."

(Staff Report for the Regular Meeting of March 14-15, 2012 at page 1.)

Additional legal analysis will be submitted under separate cover by our legal representatives the Stanford Law Clinic, Environmental Defense Center, and our fellow petitioners and Keeper partners in support of our comments urging denial of the request for a hearing and stay of Conditional Order R3-2012-0011.

Thank you for the opportunity offer input to the process.



Gordon Hensley,
San Luis Obispo COASTKEEPER



Bashaw, Jeannette@Waterboards

From: Steve Shimek <exec@otterproject.org>
Sent: Friday, July 13, 2012 8:54 AM
To: Bashaw, Jeannette@Waterboards
Subject: Central Coast Ag Order. Against stay request
Attachments: TOP MCK Against Stay.pdf

Jeanette,

Please acknowledge receipt of our policy statement against the Central Coast Ag Order stay request. You will be receiving a more formal legal document later this morning from Stanford.

Thank you!

Steve Shimek
Monterey Coastkeeper and The Otter Project



The Otter Project

www.otterproject.org

475 Washington Street, Suite A
Monterey, CA 93940
831/646-8837

July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Via E-mail: jbashaw@waterboards.ca.gov

Re: Requests for Stay, SWRCB/OCC FILES A-2209(a)-(e)

Dear Mr. Lauffer and Water Board staff,

Thank you for the opportunity to address the "Stay Request" and "Request for Hearing" presented by various growers and grower affiliated associations in regards to the Central Coast Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order Numbers R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02, R3-2012-0011-03, and resolution R3-2012-0012 (collectively referred to here as the "Ag Waiver"). This letter represents a "policy statement" offered by Monterey Coastkeeper (Monterey Coastkeeper is the water quality program of The Otter Project); a more comprehensive legal response will be submitted on our behalf by the Stanford Environmental Law Clinic.

The Monterey Coastkeeper does not believe a stay is appropriate or warranted in any way and we request that a hearing not be granted and the request for stay be summarily dismissed.

The Monterey Coastkeeper has been a very active participant in the Central Coast Ag Waiver process. We followed and spoke in favor of the first 2004 Ag Waiver. In 2008, we were asked by the Central Coast Regional Water Quality Control Board (CCRWQCB) to participate in the Agricultural Stakeholders Group and we attended each monthly meeting, except for one, for nearly two years. We also attend nearly every CCRWQCB meeting and we have attended every hearing related to the Ag Waiver. We have offered comment and presentations on many occasions. When the growers walked out of the SWRCB facilitated CCRWQCB stakeholder process, The Monterey Coastkeeper advocated for a renewed process, supported by the Packard Foundation and facilitated by Judge Richard Silver (ret.). The Ag Waiver process was lengthy and deliberate. The CCRWQCB convened a stakeholder panel in November of 2008, over six months before expiration of the 2004 Ag Waiver in July of 2009. In July 2009 the Ag Waiver was extended for a year in order to give the stakeholder group more time to work. After the stakeholder group disintegrated in November 2009, the CCRWQCB staff released a draft order on February 1, 2010. In April 2010 three whole-cloth alternatives were offered, including an alternative from the environmental caucus group Monterey Coastkeeper was part of and an alternative championed by the California Farm Bureau Federation. Immediately, rumors spread that another alternative, again championed by the Farm Bureau Federation, had been drafted by growers. That alternative was not formally offered until December 2010; and then it was offered as a work in progress. At nearly every subsequent meeting CCRWQCB Board meeting and Ag Waiver hearing the Ag Alternative morphed into something new; the Ag Alternative was a moving target impossible to comment on

because it kept changing. The CCRWQCB staff proposal responded to the Alternative's gyrations by incorporating some of agriculture's language and ideas; the result being that each CCRWQB staff proposal becoming less protective of public health and the environment, requiring less of the agricultural community, and applying to fewer and fewer growers. Two years and eight months after the expiration of the original 2004 Ag Waiver, a new Ag Waiver, staff iteration five, was finally adopted.

With the exception of ground water monitoring, Tier 1 growers will have fewer requirements than in the 2004 Ag Waiver. With the exception of ground water monitoring, Tier 2 growers will have about the same requirements. And Tier 3 growers, estimated to be just a few more than 100 farms, will have slightly greater requirements.

The various growers and affiliated associations base their stay request on three points:

1. They will be financially harmed
2. The public or the environment will not be harmed
3. There were various errors in the process that warrant delay.

We disagree, and will address each of these points in order.

1. The growers will not be harmed

- a. Cost per acre. The growers claim they will somehow be harmed by the costs of complying with the Ag Waiver. It must be noted that the declarations in support of the stay are from the major growers in the Salinas and Santa Maria Valleys and are far from representative of all growers. Except for one, they all have tier 3 lands; tier 3 lands and crops have a disproportionate impact on water quality and consequently are asked to do more to reduce or mitigate their impacts. The growers offering declarations provide absolutely no support for their annual cost-per-acre estimates of compliance through December of 2013 and the estimates vary widely:
 - i. Grower estimate for Tier 2: \$46/acre - \$212/acre. m= \$105
 - ii. Grower estimate for Tier 3: \$110/acre - \$310/acre. m=\$197

The cost of compliance for the top three ranked crops in Monterey County¹ are:

- i. Leaf lettuce: 1.3-2.5% of gross crop revenues per acre
- ii. Strawberries: .13 - .30% (note decimal)
- iii. Head lettuce: .8 - 1.5%

The growers maintain in their request that these costs cannot be passed on to buyers and consumers. We simply disagree with this unsupported assertion. These unsupported and wildly disparate cost estimates, from those with the most to lose, are insufficient justification to invalidate over three years of unprecedented regional effort.

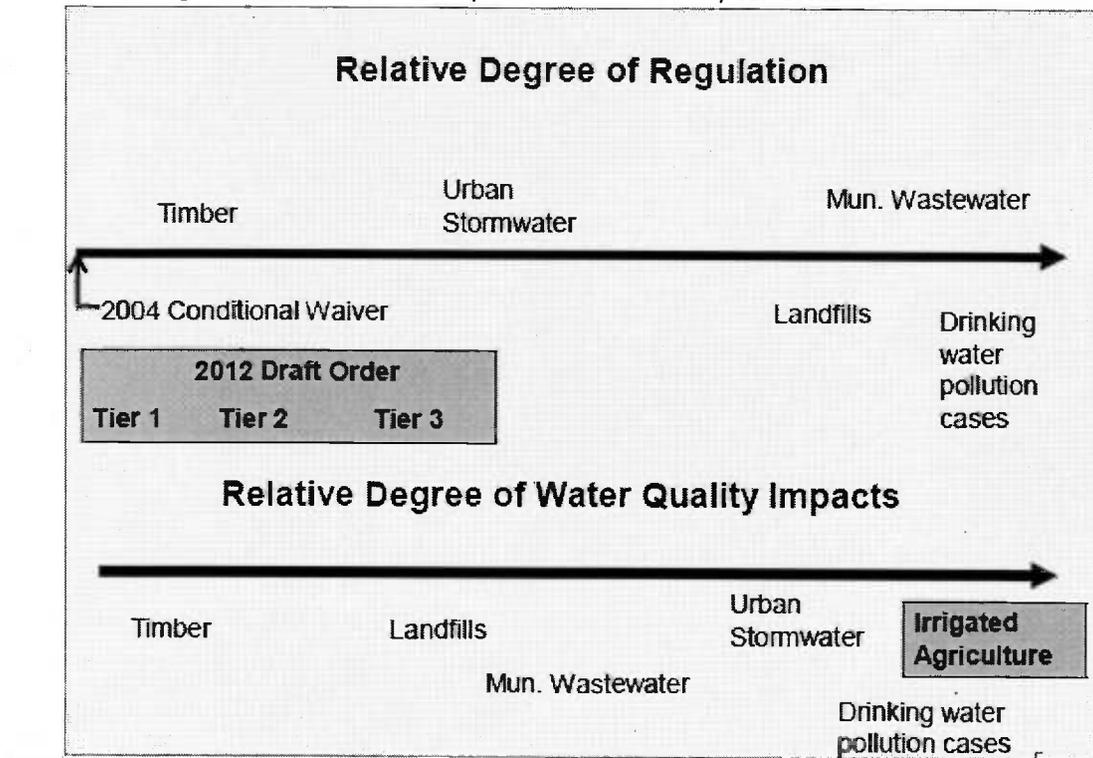
- b. Data Quality assurance costs. Declarations by Mr. Johnson and Mr. Suverkrupp offer estimates for development of a data quality assurance plan or QAPP. They offer estimates of \$28,800 and \$17,000 per ranch respectively, while the CCRWQCB staff estimates a cost of \$750 using a QAPP template. The SWRCB website offers a template

¹ Cost of compliance was calculated by using the mean cost per acre divided by the gross revenue per acre. Gross revenue per acre was calculated using data found on pg 6 of the Monterey County Agricultural Commissioner's 2011 Crop Report found at http://ag.co.monterey.ca.us/assets/resources/assets/252/cropreport_2011.pdf.

and video tutorial at http://swamp.waterboards.ca.gov/swamp/qapp_advisor/. The USEPA offers another free template at http://www.epa.gov/glnpo/quality/training/handouts/HO_QAPP_template_062310.pdf. The Otter Project has used these templates and was able to create a useful QAPP in less than two days.

- c. **Sampling costs.** Mr. Suverkrupp offers in his declaration that any grower using Diazinon or chlorpyrifos will have monitoring costs of \$7000 to \$11,000. No basis is given for this calculation as to number of monitoring sites, acreage, or whether there is even any tailwater to monitor. If Mr. Suverkrupp is referring to the cost of the lab test, it should be noted that the CCRWQCB staff requested lab costs from a variety of labs throughout the region and found that the additional cost to test for Diazinon and chlorpyrifos (both organophosphates) to be \$250. Tier 3 growers are required to sample four times per year for a cost of \$1000.

We do not believe that unsubstantiated and wildly varying costs estimated by a small slice of the growers representing the greatest threat to water quality constitute real harm. Further, we feel that the cost of compliance must be measured against the burden experienced by other dischargers asked to step up and protect water quality. The Otter Project/Monterey Coastkeeper has a range of experience working with Phase 1 and Phase 2 municipal stormwater, Combined Animal Feed Operation (“CAFO”), aquaculture and aquarium, timber, and Areas of Special Biological Significance (“ASBS”) dischargers. Throughout the CCRWQCB Ag Waiver process, CCRWQCB staff offered a comparison of the relative degree of regulation and relative degree of water quality impacts of various discharges. The CCRWQCB’s comparison feels intuitively correct to us:



Specifically in our discussions with stormwater and ASBS dischargers we have repeatedly heard "Why are we being required to do so much while agriculture is allowed to pollute our water?" Monterey City Manager Fred Meurer requests the CCRWQCB Board: "keep in mind striking a reasonable balance between what you are requiring the urban areas to do under their storm water NPDES permits and the pollutant loads resulting from urban areas and the pollutant loads that are received from agricultural lands." Meurer further states: "Both the agricultural interests and the municipal permittees should be held to the same Maximum Extent Practicable (MEP) standard." (see attachment from City of Monterey). Burden must be shared and it is past time agriculture be regulated commensurate with its impact on water quality.

2. The public will not be harmed

- a. Public health. After over three years of shared experience, the grower declarants inexplicably claim: "I have not received any information that suggests interested persons or the public interest will be substantially harmed if a stay is granted, and on that basis, I believe that a stay will not cause substantial harm to interested persons or to the public interest." (Huss and Sites declarations). Growers, environmentalists, and environmental justice advocates all heard the repeated statements of farm workers and rural residents suffering rashes, hair loss, gastro-intestinal upset, and sickness from drinking from groundwater sources. The California Department of Public Health (CDPH) is supportive of the CCRWQCB Ag Waiver because it addresses public health threats (see attachment). The CDPH states: "Protection against continued nitrate contamination of the groundwater in the Central Coast region will minimize the need for additional treatment of public water supply sources from this contaminant which poses a significant public health threat." And although it was distributed the day before the March 14 hearing, we simply cannot ignore the UC Davis groundwater report.² That report states:
 - i. "Public health concerns for those exposed to nitrate contamination in drinking water; in California's Tulare Lake Basin and Salinas Valley, roughly 254,000 people are currently at risk for nitrate contamination of their drinking water."
 - ii. "Financial costs of nitrate contamination include additional drinking water treatment, new wells, monitoring, or other safe drinking water actions; over 1.3 million people are financially susceptible because nitrate in raw source water exceeds the MCL, requiring actions by drinking water systems."

Public health and welfare are being harmed and future generations will be harmed if agricultural discharges are not abated and water quality not improved.

- b. Environment. Many regularly sampled monitoring sites test toxic to *Ceriodaphnia dubia* (invertebrate toxicity of water) and *Hyalella azteca* (invertebrate survival in sediment) every single test.³ *Hyalella azteca* is native to Central Coast waters leaving little doubt that Central Coast aquatic habitats are impacted. The pesticides currently in use and impacting Central Coast waters are Diazinon and chlorpyrifos, both restricted use

² UC Davis Report for the SWRCB SBX2 1 Report to the Legislature found at <http://groundwaternitrate.ucdavis.edu/>

³ Central Coast Ambient monitoring data and Cooperative Monitoring Program data can be found at www.ccamp.org. Referenced data can be viewed by selecting data browser and then selecting from the dropdowns: either Salinas (309) or Santa Maria (312), toxicity, and then the referenced analyte.

pesticides only available for commercial application. Both pesticides degrade in a matter of weeks or a few months and if discharge of these toxic chemicals is abated, harm will decrease immediately. Continued failure to regulate will result in continued harm.

- c. Sea Otters. A core concern for our organization is health of the sea otter population. In 2010 a paper was published directly linking microcystis poisoning to the death of otters.⁴ Further, the paper linked the sea otter deaths spatially to three nutrient impaired rivers in the Monterey Bay area. Continued discharge of nutrients will harm endangered sea otters.

Public health and the environment will be harmed by a stay.

3. Errors in process

- a. Shimek. The requests for a stay suggest that there was inappropriate ex-parte communication between Steve Shimek and board members of the CCRWQCB – this is simply not the case. On February 24, 2012 Mr. Dirk Giannini and Mr. Norm Groot made presentations to a hearing of the Senate Agriculture Committee held in Salinas. In their presentations they made the following points:
 - i. There was a deep distrust of CCRWQCB staff;
 - ii. There was no language in the draft Ag Waiver that made it possible for a grower to move down in tier;
 - iii. There was no provision for group efforts (such as the Los Huertos and Ross Clark concepts);
 - iv. There was no incentive for longer-term water quality investments such as tailwater ponds or engineered wetlands, nor was there a provision for allowing extra compliance time to install such investments;
 - v. There was a fear that individual farm reporting would make growers vulnerable to a third-party lawsuit.

Soon after the Committee Hearing, Shimek began working on a compromise proposal addressing the grower's concerns including:

- i. Creation of an independent but balanced committee to review group proposals;
- ii. Specifically stating that it was possible to move down in tier;
- iii. Specifically encouraging group proposals and specifically calling out the Los Huertos and Clark concepts;
- iv. Specifically saying that a group proposal could be given a project-specific timeline for compliance;
- v. Specifically stating that group projects could monitor project efficacy instead of discharge at the edge of individual fields.

On March 7, 2012 the proposal was passed on to Mr. Roger Briggs, Executive Officer at the CCRWQCB. Present at the meeting were Shimek, Roger Briggs, Lisa McCann, and Angela Schroeter. It is important to note that the meeting was just like three previous meetings when staff and environmental stakeholders met to discuss ideas and

⁴ Evidence for a Novel Marine Harmful Algal Bloom: Cyanotoxin (Microcystin) Transfer from Land to Sea Otters. Abstract found at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0012576>.

competing language for inclusion in the Ag Waiver. The CCRWQCB staff also had 21 meetings with agricultural stakeholders as detailed in the "List of Stakeholder Meeting and Events" found on the CCRWQCB at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/outreach_021412.pdf.

- b. Plenty of deference and consideration were given to Ag Alternative. The requests for stay state that not enough deference and consideration was given to the Ag Alternative Proposal. We believe too much deference was given to the Ag Alternative. This is a case of agriculture not hearing what they wanted to hear; as opposed to not being heard at all. The Ag Alternative was first day-lighted in December of 2010. In March 2011 the Ag Alternative proposal was amended and the changes were allowed into the process. In May 2011 the proposal was amended yet again and the changes were again allowed into the process. And finally, at the March 14 2012 adoption meeting, extensive changes were suggested yet again by the Ag Alternative proponents.

With each new proposal offered by agricultural interests, CCRWQCB staff responded by weakening their proposal. Four iterations of the staff proposal along with a few key attributes can be summarized as follows:

<u>Iteration</u>	<u>Individual monitoring</u>	<u>Pesticide List</u>	<u>Nitrate discharges to groundwater</u>	<u>Buffer from impaired waters of the state.</u>
<u>February 2010</u>	All	Comprehensive list of 50+ pesticides that can cause toxicity	Reduce to DWS in 6 year	50, 75, and 100 feet.
<u>November 2010</u>	Tier 3 only	Diazinon and chlorpyrifos only	Tier 3: Achieve nitrate balance ratio within 3 years. DWS compliance in discharge within 4 years.	30 feet.
<u>March 2011</u>	Tier 3 Only	Diazinon and chlorpyrifos only	Tier 3: Nitrate balance ratio within 3 years; annual reduction in loading to groundwater	Protect existing habitat.
<u>March 2012</u>	Tier 3 only	Diazinon and chlorpyrifos only	Nitrate balance ratio reported but no compliance standard	Protect existing habitat.

In addition to these substantive changes, timelines before reporting and compliance were lengthened for nearly every measure.

And finally, in response to the Ag Alternative presentation made at the adoption hearing of March 14, 2012, dozens of word-for-word language changes were made to the staff proposal adopting the Ag Alternative's language.

The Ag Waiver process, while not ideal, could serve as a good model for public debate, deliberation, and decision.

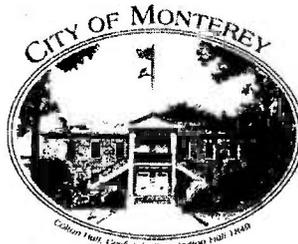
- i. The CCRWQCB Ag Waiver process lasted for three years five months.
- ii. The process began with an exhaustive stakeholder process lasting over one year.
- iii. When stakeholders could not agree, the staff offered their proposal.
- iv. Stakeholders offered competing visions and language.
- v. The staff proposal was iteratively modified and evolved throughout the process.
- vi. Throughout the process there were numerous opportunities for public debate.
- vii. Throughout the process there were numerous opportunities to meet with staff.
- viii. Finally, comment was closed and the Board mixed and matched visions, options, and language to the best of their abilities and made a final decision.

The Monterey Coastkeeper does not believe a stay is appropriate or warranted in any way. We request that a hearing not be granted and the request for stay be denied. We do not believe that unsubstantiated and wildly varying costs estimated by a small slice of the growers representing the greatest threat to water quality are credible evidence of sufficient harm. Public health and the environment will be demonstrably harmed by a stay. The Ag Waiver process was lengthy and deliberative, and resulted in a thoroughly considered decision. That decision should not now be set aside, nor its implementation delayed.

Sincerely,



Steve Shimek
Chief Executive



Mayor:
CHUCK DELLA SALA

March 16, 2011

Councilmembers:
LIBBY DOWNEY
JEFF HAFFERMAN
NANCY SELFRIDGE
FRANK SOLLECITO

City Manager:
FRED MEURER

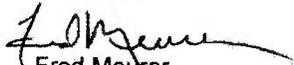
Jeffrey S. Young, Chair
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

Subject: Conditional Waiver of Waste Discharge Requirements from Irrigated
Lands (Ag Waiver) and Urban Storm Water Regulations

Dear Chair Young:

I am writing to ask, as you and your fellow Board members consider this item during your meeting on March 14, 2011, that you also keep in mind striking a reasonable balance between what you are requiring the urban areas to do under their storm water NPDES permits and the pollutant loads resulting from urban areas and the pollutant loads that are received from agricultural lands. Urban areas such as Monterey are being required to comply with ever-stringent requirements including the extreme requirements of the Areas of Special Biological Significance. Yet recent research conducted by the State Water Resources Control Board and the Southern California Coastal Water Research Program has disclosed that in most cases the ocean waters off of our coast are being polluted from sources outside of our urban control. Agricultural is one of those sources. Both the agricultural interests and the municipal permittees should be held to the same Maximum Extent Practicable (MEP) standard.

Sincerely,


Fred Meurer
City Manager



MARK B HORTON, MD, MSPH
Director

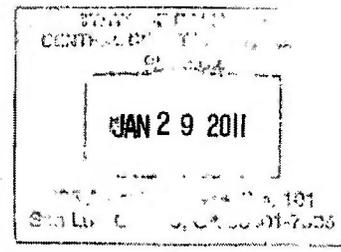
State of California—Health and Human Services Agency
California Department of Public Health



EDMUND G. BROWN JR.
Governor

January 26, 2011

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



RE: DRAFT AGRICULTURE ORDER NO. R3-2011-0006

Dear Ms. Schroeter,

The California Department of Public Health's Division of Drinking Water and Environmental Management has reviewed the Central Coast Regional Water Quality Control Board's proposed draft Agriculture Order. Implementation of the outlined Best Management Practices will enhance the protection of both surface water and groundwater in the Central Coast Region from fertilizer, pesticides and nitrate contamination.

The Department of Public Health supports the requirements outlined in the draft Agriculture Order and encourages the adoption of the Order by your Board. Protection against continued nitrate contamination of the groundwater in the Central Coast region will minimize the need for additional treatment of public water supply sources from this contaminant which poses a significant public health threat.

Thanks for allowing the Department to participate in the preparation of the Order and provide comments. Please contact me at (559)447-3130 if you have any questions.

Sincerely,

Cindy A. Forbes, P.E., Chief
Southern California Field Operations Branch
DIVISION OF DRINKING WATER & ENVIRONMENTAL MANAGEMENT

Southern California Drinking Water Field Operations Branch
265 W. Bullard Ave., Suite 101, Fresno, CA 93704
(559)447-3300
Internet Address: www.cdph.ca.gov



July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
Sacramento, California 95812-0100

RE: SWRCB/OCC Files A-2209(b)-(e) Request For Stay

The Environmental Defense Center (EDC) submits this preliminary response to requests from the petitioners in SWRCB/OCC Files A-2209(b)-(e) to stay some or all provisions of the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2012-0011 ("Conditional Waiver" or "Ag Order").

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting Santa Barbara, San Luis Obispo and Ventura Counties. EDC has participated in every stage of the process that lead to the promulgation of the 2012 Ag Order, and on July 6, 2012, EDC submitted a request for party status regarding the above-referenced State Board proceedings. We urge you, however, to dispense with the requests for a stay immediately and without further hearings or process. The evidentiary record supports denial of the stay requests, and any delay in implementing the 2012 Ag Order will result in significant and ongoing harms to the public interest.

BACKGROUND

Hundreds of water segments and many drinking water sources within the jurisdiction of the Central Coast Regional Water Quality Control Board (Regional Board) have been contaminated with nitrates, pesticides, sediment and other pollutants as a result of agricultural activities.

Porter-Cologne Water Quality Control Act

In California, the Porter-Cologne Water Quality Control Act (Porter-Cologne) interacts with the federal Clean Water Act to regulate the discharge of pollutants to waters of the state. Under Porter-Cologne, "any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state" must file a

report with the appropriate Regional Water Quality Control Board. The Regional Board must then “prescribe requirements as to the nature of any proposed discharge [or] existing discharge.” (Cal. Water Code § 13260.)

In the absence of a Waste Discharge Requirement (WDR), the discharge of pollutants is generally prohibited. (Cal. Water Code § 13264(a).) Regional Boards may conditionally waive WDRs, however, where “the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.” (Cal. Water Code § 13269(a)(1).)

A conditional waiver may not exceed five years in duration, but may be renewed by the State Board or the Regional Board. (*Id.* at §§ 13269(a)(2), (f).) The conditions of a waiver must include water quality monitoring requirements, and “monitoring results shall be made available to the public.” (Cal. Water Code § 13269(a)(2).)

Regulation Of Agriculture

For twenty years, agriculture on the Central Coast operated under an “implied” conditional waiver. In 1999, the California Water Code was amended, causing all conditional waivers that existed on January 1, 2000, to expire on January 1, 2003. Prior to 2003, water quality in the Central Coast’s agricultural areas was “shown to be impaired by such constituents as pesticides and nutrients, lending further urgency to the need to adopt additional requirements for irrigated operations.” (Central Coast Regional Board Staff Report for July 8, 2004, p. 1.)

In 2003, the Regional Board convened an Agricultural Advisory Panel (AAP) comprised of stakeholder representatives from agricultural interests and environmental organizations, including EDC. The AAP agreed on a general framework, and the first Central Coast Ag Waiver was adopted on July 9, 2004.

Regional Board staff forecast that “at the end of the first [five-year] waiver cycle, the program [would] be evaluated and revised as necessary as part of the waiver review process.” (Staff Report for July 8, 2004, *supra*, p. 17.) The 2004 Order itself states that in time “increased reporting and monitoring may be required in order to ensure that water quality is improving.” (Central Coast Regional Board Order No. R3-2004-0117, p. 3.)

During the five-year term of the 2004 Order, many growers were able to demonstrate compliance with the conditional Ag Waiver, including compliance with requirements for continuing education. Staff noted in 2008, however, that water quality conditions were generally unimproved; in some areas conditions were getting worse.

When the Regional Board convened a second AAP (which also included EDC) in December 2008, staff stated that “new requirements” are “necessary to directly address and resolve the major water quality issues associated with irrigated agriculture.” (Letter from Central Coast Regional Board Staff to AAP, Dec. 12, 2008, at p. 1.) Staff stated that the 2004 Order would be revised to:

- * Eliminate toxic discharges of agricultural pesticides to surface waters and groundwater;
- * Reduce nutrient discharges to surface waters to meet nutrient standards;
- * Reduce nutrient discharges to groundwater to meet groundwater standards;
- * Minimize sediment discharges from agricultural lands; and
- * Protect aquatic habitat (riparian areas and wetlands) and their buffer zone.

Id. Initially, the AAP was convened to meet five times between December 2008 and April 2009. The AAP actually met on a monthly basis from December 2008 to September 2009. On July 10, 2009, the Regional Board renewed the 2004 Order in its extant form for one additional year. The stated purpose of this “renewal” was to allow more time for the AAP to meet and achieve consensus. Members of the AAP were ultimately unable to reach consensus, however, and the AAP dissolved at the conclusion of its September 22, 2009, meeting.

Regional Board staff released a Draft Order for public comment on February 1, 2010. The Draft Order included components that are necessary for the waiver to be consistent with Water Code Section 13269, including enumerated water quality standards, explicit timelines for compliance, riparian setbacks and vegetated buffers, individual discharge monitoring and protections for drinking water. These provisions were also consistent with the proposed updates to the 2004 Order that staff described to the second AAP.

In a staff report accompanying the February 2010 Draft Order, Regional Board staff set forth overwhelming evidence that the 2004 Order was inconsistent with water quality plans and standards, and was not in the public interest. (Central Coast Regional Board Staff Preliminary Draft Report, Feb. 1, 2010.) The 2004 Order was intended to “regulate discharges from irrigated lands to ensure that [dischargers] are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.” Six years after it was adopted, however, there was “no direct evidence that water quality is improving due to the 2004 Conditional Waiver.” (*Id.* at p. 7.)

In fact, many water segments throughout the region are listed as impaired under Clean Water Act Section 303(d), nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain “well documented, severe, and widespread” despite the fact that a number of dischargers have enrolled under the 2004 Order. For this reason, Regional Board staff concluded that “[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.” (*Id.* at p. 4.)

Despite staff’s recommendations and an overwhelming preponderance of evidence, the Regional Board declined to adopt the February 2010 Draft Order and instead renewed the 2004 Order for a second time on July 8, 2010.

In November 2010, Regional Board staff released a second Draft Order. This draft was rejected by representatives of the agricultural community, so on March 2, 2011, staff released a third Draft Order. The Regional Board met on March 17 to consider the third

Draft Order but was not able to constitute a quorum for the purpose of decision-making, and on March 29, the Regional Board's Executive Officer renewed the 2004 Order for a third time.¹

The Regional Board continued its March hearing on May 4, 2011, but was still not able to constitute a quorum for the purpose of decision-making. The Regional Board was scheduled to consider the Conditional Waiver on September 1, 2011, but was yet again unable to constitute a quorum for purposes of decision-making, and on September 30, the Regional Board's Executive Officer renewed the 2004 Order for a fourth time.

Since 2008, the Regional Board:

- * Convened a stakeholder panel (the second AAP);
- * Hosted at least three public workshops;
- * Held at least three public hearings;
- * Accepted thousands of pages of comment on the Ag Order; and
- * Granted time extensions, accepted "new" evidence and allowed time for consultation and negotiation.

By the time the new Ag Order was adopted on March 15, 2012, the original (five-year) Order was almost eight years old, and stakeholders had been discussing it for more than three years. The 2012 Ag Order will itself be subject to revision in five years or less, and the Regional Board has jurisdiction to revisit components of the program at any time between now and then. Additional time spent debating the finer points of the 2012 Order – and consequently delaying its implementation – is time wasted. It is time to move forward.

STAY REQUEST(S)

California Code of Regulations Title 23, Section 2053(a) states:

A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of all of the following:

- (1) substantial harm to petitioner or to the public interest if a stay is not granted,
- (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and
- (3) substantial questions of fact or law regarding the disputed action.

Petitioners in the instant case have failed to prove any (much less *all*) of the above.

¹ This was the third "renewal" of the 2004 Ag Order, although it was the first time that the Executive Officer used his "delegated authority" to "administratively" extend the Ag Order. This action (and the subsequent "administrative" renewal by the Central Coast Regional Board's Executive Officer) is the subject of a separate, outstanding petition for State Board review of the Regional Board's action.

Substantial Harm To Petitioners

Petitioners have failed to submit proof that they or the public interest will be substantially harmed by the 2012 Ag Order.

Petitioners state:

The Petitioners and their members are aggrieved by the conditions and limitations contained in the Conditional Waiver, which are more stringent or onerous than required by or provided for under current law These requirements will threaten the economic survival of many agricultural lands (sic) owned or operated by Petitioners and their members in the region. The Petitioners' members will or may be required to spend limited private resources to comply with . . . Conditional Waiver conditions. Alternatively, the Petitioners' members may not (sic) longer be able to maintain economically viable agricultural operations. In that case, the Petitioners' members include registered (sic) will be harmed because their services will no longer be required. Given that the resources of private landowners are limited Petitioners are aggrieved when forced to comply with requirements

Farm Bureau, et al., Petition for Review, p. 10. Petitioners offer no concrete evidence of substantial harm in the above rambling, incoherent allegations, and they have failed to offer such evidence throughout the Ag Order update process.

Petitioners did submit a report to the Regional Board that discussed "evidence" of the costs of the 2012 Ag Order, along with a comparison of costs between the 2012 Ag Order and an alternative program designed by representatives of agriculture. However:

The report is flawed in several ways . . . and therefore is not an actual cost analysis or cost comparison, and cannot be evaluated as such. The conclusions of the cost analysis provided by agricultural representatives . . . shows that costs for a farm, or per acre to comply, range widely, depending on the farm. It also acknowledges that many factors are uncertain and were difficult to estimate; therefore, the authors made several assumptions. Some of the assumptions overestimate Therefore, the cost information submitted by agricultural representatives seems to compare "apples and oranges" and does not adequately explain the costs or relative costs of the [2012 Ag Order] or the Agricultural Proposal.

Staff Report for March 14-15, 2012, p. 17.

Substantial Harm To The Public Interest

Petitioners have not demonstrated that the public interest will *not* be harmed by a stay; in fact, there will be substantial harm to the public interest if a stay is granted.

As noted above, the original (2004) Ag Order required significant revisions in order

for it to be considered consonant with the public interest. Data gathered by the Regional Board makes it clear that agriculture causes “widespread and serious impacts on people and aquatic life” on a regular and ongoing basis. (Regional Board Staff Report for March 17, 2011, Item No. 14, p. 1.) Public water supplies have been significantly contaminated with nitrates and other agricultural pollutants, in many cases at levels that far exceed applicable drinking water standards. Similarly, toxic surface water discharges from irrigation ditches continue to regularly violate water quality standards, despite claims of significant enrollment under the 2004 Order. And trends in the use of riparian vegetation buffers to protect against sedimentation, nutrient loading, and temperature increases are going in exactly the wrong direction. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010, p. 16.) In addition:

The cost to municipalities and the public for treating drinking water polluted by nitrate is estimated to be in the hundreds of millions of dollars, and the cost is increasing over time as the pollutant loading continues.

Staff Report for March 14-15, 2012, *supra*, p. 8.

The severity of the problem is demonstrated by the existing Section 303(d) impaired waterbodies list for the Central Coast region and by the Regional Board’s July 2009 recommendations for updating that list. On the existing (2006) list, water segments with agriculture as a source of impairment include:

Alamo Creek, Alisal Creek (Salinas), Blanco Drain, Bradley Canyon Creek, Carpinteria Creek, Carpinteria Marsh (El Estero Marsh), Cholame Creek, Chorro Creek, Elkhorn Slough, Espinoza Slough, Los Osos Creek, Love Creek, Main Street Canal, Moro Cojo Slough, Moss Landing Harbor, Newell-Creek (Upper), Nipomo Creek, Old Salinas River Estuary, Orcutt Creek, Oso Flaco Lake, Pacific Ocean at East Beach (mouth of Mission Creek, Santa Barbara County), Pacific Ocean at Jalama Beach (Santa Barbara County), Salinas Reclamation Canal, Salinas River (lower, estuary to near Gonzales Rd crossing, watersheds 30910 and 30920), Salinas River (middle, near Gonzales Rd crossing to confluence with Nacimiento River), Salinas River (upper, confluence of Nacimiento River to Santa Margarita Reservoir), Salinas River Lagoon (North), San Lorenzo Creek, Santa Maria River, Santa Ynez River (below city of Lompoc to Ocean), Santa Ynez River (Cachuma Lake to below city of Lompoc), Tembladero Slough, Tequisquita Slough, Valencia Creek, Watsonville Slough, and Zayante Creek.

(2006 Clean Water Act Section 303(d) List, Central Coast Region, *available at* http://www.swrcb.ca.gov/rwqcb3/water_issues/programs/tmdl/index.shtml.) In short, water quality in the Central Coast region is continuing to degrade, especially in those waterbodies affected primarily by agricultural discharges. The 2004 Order was not adequate to protect water quality from toxic discharges and harmful pesticide pollutants, as required by the Basin Plan. The Regional Board’s continued reliance on the 2004 Order would constitute a substantial harm to the public interest, as manifested by impacts to the environment and to human health. Order No. R3-2012-0011 is, however, consistent with the Basin Plan and Water Code Section 13269(a)(1), and its implementation is critical to regional attempts to

improve water quality. The 2012 Ag Order is fundamentally in the public interest.

Questions Of Fact Or Law

There are no outstanding substantial questions of fact or law related to the 2012 Ag Order. Petitioners have attacked the 2012 Ag Order for not complying with the California Environmental Quality Act (CEQA), the California Water Code and other statutes. These allegations, however, are spurious and unworthy of the State Board's attention. In fact, Petitioners' so-called "legal" arguments are a waste of the State's (and stakeholders') time and resources.

For example, Petitioners complain that the Regional Board "used 'highest water quality' as the standard in determining [among other things] staff's ultimate decision on the preferred alternative." Farm Bureau, et al., Petition for Review, p. 54. Putting aside the fact that the Regional Board, not staff, made the ultimate decision on the 2012 Ag Order, note that Petitioners Farm Bureau, et al. base their analysis on a paragraph in the Additional Findings which states: "The purpose of this Order is to is [sic] focus on the *highest water quality priorities and maximize water quality protection . . .*" Petitioners ignore or misread the phrase "highest water quality priorities" – "highest" modifies "priorities" and not "water quality" – and assume that priorities equate to "standards." Similarly, Petitioners ignore that the Water Board's vital mission is:

To preserve, enhance, and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

The words "preserve, enhance, and restore" do indeed indicate that the Regional Board is tasked with maintaining and/or achieving the highest possible water quality for the benefit of all users.

Petitioners also allege that the Regional Board failed to comply with CEQA. In fact, the 2012 Ag Order is designed to result in beneficial environmental impacts and would not result in negative impacts to the environment.

Petitioners state that "the SEIR relies on an inadequate project description in that the scope of the project is not supported by substantial evidence in the administrative record." Farm Bureau, et al., Petition for Review, p. 17. Petitioners state:

The 2004 Agricultural Order is a separate project from the 2012 Conditional Waiver. In addition, the conditions, restrictions, and regulations within the 2012 Conditional Waiver are different from, more extensive than, and entirely brand new from those contained in the 2004 Agricultural Order.

Farm Bureau, et al., Petition for Review, p. 19. Petitioners then allege that impacts under the 2012 Ag Order will be different than those under the 2004 Ag Order. Petitioners fail,

however, to identify a single impact that would emanate from the 2012 Order (and which was not addressed in the context of environmental review for the 2004 Order).

Petitioners' primary contention is that the 2012 Order will result in the conversion of agricultural lands. As the courts have held, however, a significant impact to agriculture occurs with the *physical* conversion of agricultural lands. See *California Farm Bureau v. California Wildlife* 143 Cal.App.4th 173:

Describing the environmental benefits of changing the use of agricultural land to habitat, the State Agencies contend this Project does not cause a significant adverse effect on the environment.

These arguments are premised on an underlying factual assumption that this Project involves merely a change in the use of the property from agriculture to habitat. In fact, this Project is not a mere passive change in use, a cessation of farming on the property. This Project involves the physical reshaping of the land to create wetlands and uplands for habitat.

Id. at 185. Similarly, the monitoring requirements of the 2012 Ag Order will not cause impacts. Throughout the process, Petitioners and others have drawn a tenuous line between the "increased costs" of complying with monitoring (and other) requirements and the collapse of the Central Coast region's agricultural industry, which would then lead to the eventual sale and urbanized development of agricultural lands. While EDC and other organizations are concerned about the unnecessary and inappropriate conversion of agricultural lands for development, Petitioners have not offered substantial evidence that these impacts will flow directly from the Conditional Waiver.

While the estimated costs of regulatory programs must be discussed under certain statutes, CEQA does not require consideration of economic impacts.² As such, economic costs associated with farmland conversion are not appropriate for consideration in a CEQA document. Potential for significant *environmental* impacts related to farmland conversion is discussed below.

CEQA Guidelines Section 15070(a) provides that where there is no substantial evidence that a project will have a significant effect on the environment, a responsible public agency should prepare a Negative (or Mitigated Negative) Declaration.

As noted above, the Regional Board approved a Negative Declaration when it adopted Order No. R3-2004-0117 in July 2004. In doing so, the Regional Board noted that the 2004 Order was "designed to reduce discharges of agricultural pollutants and improve water quality." The Draft Order would "not require or allow any changes in practices that could degrade the quality of the environment or have environmental effects that could cause

² CEQA Guidelines § 15064(e). "Economic and social changes resulting from a project shall not be treated as significant effects on the environment."

substantial indirect or direct adverse effects on human beings.” (2004 Negative Declaration, at p. 34.) The same finding holds true today, with respect to the February 2010 Draft Order.

The 2004 Negative Declaration also provides guidance for analysis of farmland conversion:

Many [best management practices] may actually improve agricultural resources by reducing the loss of topsoil or improving soil quality

Conservation practices that could affect the amount of land used for producing crops include vegetating farm roads, installing vegetated filter strips along creeks and at the ends of field rows, planting cover crops, and installing sediment detention basins. The Regional Board has reviewed the potential cost of some commonly used practices that might be employed by growers. Practices vary widely in both their initial installation costs and in long-term costs associated with maintenance and reduced cropping area. In some cases practices can result in improved productivity that will offset costs associated with taking some land out of production for conservation practices. Some practices, such as improved irrigation efficiency and nutrient management, can result in cost savings over time.

(2004 Negative Declaration, at p. 29-30.) Consequently, potential conversion of farmland was (and should be) considered a less-than-significant impact.

Petitioners have also raised due process and other procedural complaints to support their requests for a stay. For example, Petitioners Grower-Shipper Association, et al. argue that impermissible “indirect” ex parte communications poisoned the Regional Board’s proceedings. It is clear, however, that the Regional Board acted appropriately when it adopted the new Ag Order in March 2012.

Petitioners fail to explain how the communications under question constitute “indirect” and impermissible ex parte communications, and it is actually disingenuous for Petitioners to object to the specific provision which they had requested for more than two years. Petitioners and others criticized the Regional Board for failing to provide a “third-party” or “collective” avenue for compliance with the new Ag Order; when the Regional Board finally acquiesced to this request, Petitioners complained that their exact language was not adopted. Had it been, they likely would not be complaining about inappropriate ex parte communications today.

CONCLUSION

It is clear that some, largely “industrial,” agricultural operations cause “widespread and serious impacts on people and aquatic life” on a regular and ongoing basis. Domestic and public water supplies have been significantly contaminated with nitrates and other agricultural pollutants, in many cases at levels that far exceed applicable drinking water standards. Similarly, toxic surface water discharges from irrigation ditches continue to regularly violate water quality standards, despite claims of significant enrollment under the

existing Conditional Waiver. And trends in the use of riparian vegetation buffers to protect against sedimentation, nutrient loading, and temperature increases are going in exactly the wrong direction. (Regional Board Staff Preliminary Draft Report, Feb. 1, 2010, p. 16.)

The severity of the problem is demonstrated by the existing Section 303(d) impaired waterbodies list for the Central Coast region. Order R3-2012-0011 represents an opportunity to fix the problems on our Central Coast and make sure that we all have water for drinking, for agriculture and for habitat, for the long and foreseeable future.

Petitioners' attempt to delay implementation of the 2012 Ag Order threatens human health and our environment; in fact, Petitioners' short-sighted view of the "costs" of the Conditional Waiver ignore the very real threat that agricultural discharges pose *to agriculture itself*. Agriculture, as Petitioners and others have pointed out, is completely dependent on reliable supplies of fresh, clean water. The public interest depends on clean water, and both the State and Regional Boards are tasked with protecting and enhancing water quality.

We urge you to deny this stay request and subsequently dismiss these various petitions for review.

We appreciate this opportunity to comment. Please do not hesitate to contact me with questions or concerns.

Sincerely,



Nathan G. Alley
Staff Attorney



July 6, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
Sacramento, California 95812-0100

RE: Request For Party Status

The Environmental Defense Center (EDC) hereby requests that the State Water Board designate EDC as a party to proceedings related to the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2011-0006 ("Ag Order") as provided in California Code of Regulations, title 23, section 2053, subdivision (b)(2). In particular, we would like the opportunity to participate in any process related to a request to stay the Ag Order.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EDC's service area includes Santa Barbara and San Luis Obispo Counties. EDC protects and enhances the environment through education, advocacy and legal action.

EDC participated in a stakeholder process which informed the original Ag Order in 2004. EDC also participated in the stakeholder process convened by Regional Board staff in 2009. EDC has submitted numerous comments on the updated Ag Order, participated in every public meeting related to the Ag Order update and concurrently participated with a small number of other stakeholders in a confidential negotiation related to the Ag Order update. In sum, EDC has been a primary participant in the 2009-2012 update process and deserves to be at the table as this issue is discussed by the State Board.

EDC is unique among the stakeholders who participated in the Ag Order update process, due to EDC's nature as a public interest law firm. While there are other environmental and conservation organizations who are already party to this proceeding, those organizations have relied on and benefited from EDC's unique expertise throughout the update process.

Thank you for acting upon this request. Please contact me with any questions or concerns.

Sincerely,

Nathan G. Alley



SAN JERARDO COOPERATIVE, INC.

July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Via E-mail: jbashaw@waterboards.ca.gov

Re: Requests for Stay, SWRCB/OCC FILES A-2209(a)-(e)

Dear Ms. Bashaw,

We are writing on behalf of the above listed organizations, which represent, work for, and stand with rural communities impacted by groundwater contamination. Most of us have provided consistent input into the development of the Central Coast Conditional Waiver of Waste Discharge from Agriculture Land ("Ag Waiver") to ensure that it takes adequate measures to protect public health and community drinking water supplies. We are writing to oppose the request for a stay of implementation of the Ag Waiver and its associated MRP, and ask that the request for a hearing on this matter be denied as well.

A key prerequisite for approving a stay request is that the stay "not cause substantial harm to other interested persons or the public interest." In this case, granting a stay order would reinstate the 2004 Ag Waiver, which does not include groundwater in its regulatory framework. Central Coast communities are heavily dependent upon groundwater for their drinking water supplies. The Central Coast Water Board staff has provided substantial evidence that nitrate contamination of drinking water is serious and widespread in the region. Moreover, the UC Davis Nitrate Report, commissioned by the State Water Board and released in March of this year, confirms that agriculture is the overwhelming source of nitrate contamination in the Salinas Valley, and that, if unchecked, current patterns of fertilizer use will impact the water quality of an increasing number of communities. It is clear that nitrate contamination is impacting public health, and that agriculture is the primary cause. Therefore, failure to promptly enact a program that is protective of groundwater will impact public health and harms the public interest.

Clean Water Action
(415) 369-9160

111 New Montgomery St., Ste. 600
San Francisco, CA 94105



SAN JERARDO COOPERATIVE, INC.



The argument that a delay to consider the merits of the Ag Waiver will not substantially impact groundwater is incorrect. The development of this program has been marked by a series of delays that have resulted in continuing discharges of high levels of nitrate to groundwater. The Porter Cologne Water Quality Act, adopted in 1968 directs that “the quality of all waters of the state shall be protected for use and enjoyment by the people of the state.” Waters of the state specifically included groundwater, yet for decades no efforts were made to protect the groundwater supplies for hundreds of thousands of residents in the state’s agricultural regions. In 1999, Senate Bill 390 (Alpert), placed a 2003 sunset on agriculture’s exemption from Porter Cologne, yet when a conditional waiver was established by the Central Coast Water Board in 2004, once more ground water was not protected. The 2004 conditional waiver expired in 2009, but was extended for nearly three years until the current program was adopted in March of this year. This continuing pattern of delay has cost communities dearly in the form of contaminated water supplies and higher water bills. Taxpayers have also borne the burden of contaminated water, as millions of dollars in grants and loans have been expended to replace water supplies contaminated with nitrate. Rural residents reliant on domestic wells are at increasing risk of nitrate contamination and bear the full economic burden of testing and treating their water supply.

Our organizations would have preferred stronger groundwater regulations, and advocated for greater groundwater protections throughout the process of developing the current Ag Waiver. We support the current program because it provides the basic groundwork of a regulatory program – information on groundwater quality and on agricultural nitrogen inputs – that currently do not exist, and because in adopting the Ag Waiver, the Central Coast Water Board has finally set a date to begin the implementation and enforcement of a regulatory program to protect groundwater. Approval of the stay request, and the subsequent delay in program implementation, must trigger a reconsideration of our support for the program. We urge you to reject the request.

Sincerely,

Jennifer Clary
Water Policy Analyst
Clean Water Action
jclary@cleanwater.org

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San Francisco, CA 94105



SAN JERARDO COOPERATIVE, INC.



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Phoebe Seaton
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Rev. Lindi Ramsden
Unitarian Universalist Legislative Ministry, CA
lramsdn@uulmca.org

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Bashaw, Jeannette@Waterboards

From: Linda Graham <Linda.Graham@bbklaw.com>
Sent: Friday, July 13, 2012 11:17 AM
To: Bashaw, Jeannette@Waterboards
Cc: 'dsitesagmgt@aol.com'; WilliamThomas; 'Dale Huss'; Hoppin, Charles@Waterboards; Lauffer, Michael@Waterboards; Wyels, Philip@Waterboards
Subject: Comment Letter re Request for Rationale of Stay
Attachments: Comment Letter to SWRCB re Stay.PDF

Ms. Bashaw:

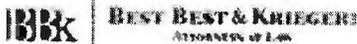
Please see the attached comment letter on behalf of Ocean Mist and RC Farms regarding the Board's request for rationale in support of a stay. We respectfully request that you please provide copies of this letter to the Board Members also.

If you have any questions, please contact us.

Thank you,
Linda Graham

Linda Graham | Legal Secretary

William Thomas - T. Brent Hawkins - Sam Emerson - Kevin Wang
500 Capitol Mall, Suite 1700, Sacramento, California 95814
916.325.4000 Office | 916551.2083 Direct | 916.325.4010 Fax



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William J. Thomas
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william.thomas@bbklaw.com
File No. 82418

July 12, 2012

Via Email to:
Jeannette L. Bashaw, Legal Analyst
jbashaw@waterboards.ca.gov

Charlie Hoppin, Chair
Frances Spivy-Weber, Board Member
Tam Doduc, Board Member
Steven Moore, Board Member
Michael A.M. Lauffer, Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Response to SWRCB request for rationale in support of a stay to Central Coast Regional Water Board Resolution R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02; R3-2012-03; R3-2012-0012

Dear Chair, Members and Mr. Lauffer:

We represent Ocean Mist and RC Farms in this appeal.

The challenged waiver was passed March 15, 2012. We are now into July, some 105+ days hence; however, the State Board may not act on the appeal for a total of 270 days, another 165 days, which will not bring a decision until just a few days prior to Christmas.

As further highlighted in the attached statements by Dale Huss and Dennis Sites, many actions are compelled by the challenged waiver prior to the end of this appeal period.

The regulations require that by October 1, 2012, long before this Board may and should overturn this waiver dischargers must develop and implement farm water quality management plans (Farm Plans). Such plans require the determination of the volume of discharge, identification of each pesticide and fertilizer used, and identification of all management practices (Finding 44). Finding No. 14 also compels farmers to make an immediate election as to either sampling individually or collectively.

The Resolution compels dischargers to file certain documents and NOIs by October 1, 2012, including options to monitor groundwater, farm tier groupings, chemical use, and total acreage farmed. (Finding Nos. 55, 56.)



BEST BEST & KRIEGER
ATTORNEYS AT LAW

July 12, 2012

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Finding 58 compels the farmer to make an immediate election as to which tiers each ranch will fall into. Finding 67 also requires election of these tiers by October 1, 2012, and even more problematic is the requirement that each discharger must determine their nitrate loading risk for each separate farm field. It has been far from clear how possibly farmers must calculate this nitrate risk, and farmers are presently wrestling with this requirement and how to staff up with new hires for this extraordinary duty. There also remains serious uncertainty as to how to implement the University Nitrate Hazard Index, and there is no confidence in utilizing this academic formula. (Attachment A, ¶ 51.)

Tier 1 and Tier 2 farms cannot use chlorpyrifos and cannot grow many vegetable crops. Consequently, farmers wanting to so qualify and thereby be relieved from the debilitating, restrictive and costly Tier 3 regulations are making such cropping and pest control decisions presently. (Findings 15, 16, 17.)

The Tier system is predicated on a political concept that big agriculture is bad irrespective of the widely recognized reality that the professional farm operations more effectively handle irrigation runoff. Similarly, if one uses a particular chemical, they are thrust to Tier 3, notwithstanding that they may not discharge water whatsoever. These problems are the core of the appeal before the Board.

The Findings also call for dischargers to coordinate with one another on a local or regional scale for water treatment strategies (Findings, Section 11), and to coordinate as to tile drain management practices (Findings, Section 12). All these requirements are new and subject to the appeal before the Board.

By October 1, 2012, Tier 2 dischargers will have to submit forms with a dozen elements, many of which are new and extensive, including the nitrate in the irrigation water, management practices (including six separate components: irrigation, pesticide, nutrient, salinity, storm water and salinity management plans) and to calculate nitrate load risk factors. For operations with high nitrate risk (i.e., vegetables) they must calculate the total nitrogen efficiency on each ranch. (Tier 2, page 13; Tier 3, pp. 10/11.)

Tier 3 farmers soon thereafter also have to submit these same data, plus additional requirements, including demonstration of short term and long term trends, notwithstanding that no trends can be demonstrated during this several month appeal period. (Tier 3, pp., 7, 8.)

The new waiver also calls for surface water monitoring to commence within the appeal period. The representative surface water monitoring requirement was part of the preceding waiver and therefore would not generally support a stay other than inclusion of the new and controversial requirement that farmers must monitor their agricultural irrigation water directly off the field. (Tier 1, Tier 2, Tier 3.)



BEST BEST & KRIEGER
ATTORNEYS AT LAW

July 12, 2012
Page 3

Growers are also required to implement a monitoring plan to sample their private domestic wells and irrigation wells shortly after the appeal period runs. Such growers are presently making those arrangements with well drillers, sampling agencies and laboratories (Tier 1, pg. 8; Tier 2, pg. 8; Tier 3; pp. 3, 8, 16.)

By October 2012, Tier 3 dischargers with high nitrate loads must report total N applied and nitrate loads to groundwater and information concerning their reduction of nitrate.

The three-tier system is arbitrary and simplistic with no factor linked to increased risk. The election of tiers is called for presently and, depending on tier structure, the waiver compels many growers to monitor their irrigation water directly off the farm field. These are specific elements in the appeal.

Nutrient management plans are immediately required and are proving to be complex and uncertain. (Page 27, ¶¶ 68, 75, 77, 78.) October 2012 is also the trigger for demanding photo monitoring. (Table 2 and Table 3; Tier 2, pg. 14; Tier 3, pp. 13, 14.)

Finding No. 42 acknowledges the extensive requirement that farmers must abandon farming 30-foot vegetative zones around their fields and that this will likely force abandoning farming many of these fields or abandoning farming altogether. (Finding 39)

Even though it is not required for a few months after the 270 days appeal period expires, growers are presently trying to understand and prepare for the restrictions on the amount of nitrogen they may apply on each crop. (Findings 74-76, et. seq.)

On balance, the waiver calls for many activities to be engaged or abandoned or to be planned for long before the State Board may act on this appeal, which directly involves many of these specific actions. This is compelling grounds for imposition of a stay pending the appeal.

Sincerely,

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

attachments

cc: Philip Wyels

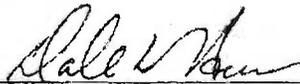
STATEMENT BY DALE HUSS ON BEHALF OF OCEAN MIST FARMS

The following are major Ag Waiver points which demand initiating a stay of this waiver.

1. The waiver is very complex and confusing. We are evaluating whether we will need to hire an individual who will exclusively focus on water quality compliance. Estimated cost - \$125,000 to \$150,000.
2. The tiering system is based on acres farmed, crops grown, chemicals used, and proximity to water bodies. It does not take into account whether you actually impact a water-body or groundwater with your current practices. We have landlords that have specifically requested that their properties not be "grouped" so as to avoid being placed into tier 3 - the most costly and difficult tier to comply with. Tier 3 properties are considered "devalued" because of the additional sampling costs to comply. As a result, we have changed our notice of intent to reclassify properties held by different landlords and by crops grown.
3. Tile Drains are very important to growing successful crops in our region - especially where water used for irrigation contain high levels of salt. We use recycled water both from the Castroville Sea Water Intrusion Project and the Watsonville Water Recycling Project to irrigate our crops. The water is higher in sodium salts than many other sources. We use drain tile to remove excess salts from the root zone of our crops. A recent study done by Michael Cahn, UC Irrigation Extension agent in Monterey County suggests that in some areas of the Salinas Valley - a 50% leaching fraction needs to be applied to properly irrigate the crop. That means we need to use higher rates of nitrogen since nitrogen moves with irrigation water. Drain tile makes Ag properties more valuable because you are able to grow high value crops like lettuce and strawberries where you couldn't otherwise because of salt buildups in the soil. The waiver places these tile drains in jeopardy.
4. The order repeatedly talks about using certified professionals that can make recommendations and approve crop irrigation and fertility plans. Furthermore, we are experiencing that there are not enough of these "experts" to handle the entire Central Coast.
5. We are compelled to determine crop Nitrogen uptake by October 1, 2013. Nitrogen uptake varies depending on crop, environmental factors, and time of year. Nitrogen is a key ingredient to a successful crop. If there is not enough Nitrogen present at a critical stage of the crop - the potential loss could be in the tens of thousands of dollars - if the crop doesn't make. These calculations will have to be made prior to planting the 2013 crops. Those cropping decisions are being made now.
6. Develop and implement a new farm plan by October 1, 2012, which complies with the new waiver terms.

7. New backflow prevention devices on each well must be in place by October of 2012.
8. We must also implement management practices to control discharges and protect water quality.
9. We also are compelled to submit photo documentation of adjacent water bodies if impaired by sediment, turbidity, or temperature – how can this be accomplished by October 1?
10. We must update our electronic Notice of Intent and submit an annual compliance form by October 1.
11. The waiver calls for us to calculate risk of loading nitrate to groundwater by October 1. The science, however, is not there to support these calculations.
12. We must further conduct groundwater monitoring by a third party of one Ag well and one drinking water well on each property by Sept/March.

Each of the above new duties are under challenge in the appeal and should be stayed until the State Board rules on our appeal.



DALE HUSS

7/10/12

Dated

STATEMENT BY DENNIS SITES ON BEHALF OF RC FARMS

RC Farms needs to do the following to comply with the Ag Waiver between now and the end of the year. There are also several things that need to be put into place to comply with this waiver going forward beyond 2012.

RC has eleven ranches that have been classified by Region 3 as Tier 2 ranches. These comprise a total of 1852.5 acres. RC has three ranches that have been classified as Tier 3. These ranches total 1728.5 acres. Some of these ranches have been combined to facilitate harvest crews, pesticide and fertilizer companies and simplify the permitting process. Now RC is faced with re-mapping, entering new leases and re-submitting many documents to Region 3 to change these tiers. The cost for all of this is unknown at this time.

The following are requirements for RC Farms that have to be done by the end of 2012.

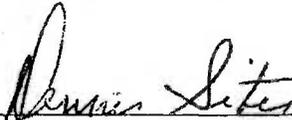
1. Submit surface receiving water quality results. All of our primary wells will need to be sampled by a third party. We don't know the availability of a third party or who would qualify. The cost of this for fourteen ranches is unknown, but substantial.

2. Submit photo documentation of riparian or wetland habitat. This needs further definition. We don't have wetlands or riparian habitat on most ranches. However, in some cases the ranch property extends to the middle of a river or slough. The time and effort to determine what's needed to be in compliance is unknown at this time.

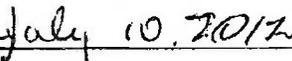
3. Calculate the Nitrate loading risk for each ranch. These are vegetable crop ranches which rotate crops and cultural practices at least two times a year. We don't know how we will comply with the ever-changing landscape.

These are the most pressing requirements before the end of 2012. In addition, by the end of 2013 we are required to determine crop nitrogen uptake and initiate surface water discharge monitoring. We do not have people currently on staff to meet these requirements. We will need staff if the current waiver stands as is. It will take time to hire people and train them, and we can't wait until the deadlines are upon us. It would be inappropriate to hire and train a staff to deal with Ag Waiver issues and then be faced with terminating them if the requirements change.

We need a stay granted, so issues like the tiering system, Nitrate Hazard loading risk factor, tile drains and buffer zones (to name a few) can be more thoroughly vetted, and to maintain the status quo during the appeal period.



Dennis Sites
RC Farms Consultant



Dated



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Via US Mail and Email

jbashaw@waterboards.ca.gov

July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I St., 22nd Flr.
Sacramento, CA 95814

**Re: SWRCB/OCC Files A-2209(a) – (e)
Letter in Support of Request for Stay**

Dear Ms. Bashaw:

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 (“Regional 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"). In conjunction with Farm Bureau's preliminary points and authorities, Farm Bureau supported the Request For Immediate Stay submitted by the Grower-Shipper Association of Central California, *et al.* Farm Bureau continues to support that Request For Immediate Stay, as well as the Request for Stay submitted by Ocean Mist Farms and RC Farms, and respectfully asks the State Board to grant the requests for stay while reviewing the Petitions submitted on this matter.

Farm Bureau's members, as well as other growers and ranchers throughout the Central Coast region, will suffer irreparable harm in the near future and their ability to continue farming will be negatively impacted by the immediate and near-term prescriptive provisions within the 2012 Ag Order. Compliance with these provisions while the State Board reviews the Petitions will inflict substantial economic harm and immediate exposure to legal liability and possible penalties. Irreparable harm will likely arise as evidenced in the following examples, which are not exhaustive:

- Economic harm due to excessive costs for implementing Tier 2 and 3 requirements between now and December 2013. For example, an individual Sampling and Analysis Plan and Quality Assurance Project Plan for Tier 3 growers will likely cost between \$17,000 and \$28,800. An individual sampling event of five to ten locations is likely to cost between \$7,000 and \$11,000.
- Immediate exposure to liability due to the 2012 Ag Order's requirement of immediate compliance with water quality standards and the Regional Board's Water Quality Control Plan ("Basin Plan").
- Immediate requirements to prevent existing containment structures from percolating any waste to groundwater, requiring the costly design and construction of new containment structures.
- Requirement for all growers to describe and include results of methods used to verify practice effectiveness and compliance with the 2012 Ag Order by October 1, 2012.
- The difficulty in finding appropriate consultants to help comply with the reporting requirements of the 2012 Ag Order.
- Irreversible management practices or decisions that must be made in the near-term to comply with the requirements of the 2012 Ag Order. Given the nature of farming, in which growers must plan in advance, growers must make decisions now as to what will happen on their farms for both the short-term and long-term. Thus, decisions must be made now even for those 2012 Ag Order requirements that do not arise for another six months to twelve months. Such immediate actions include retaining experts and consultants to develop management plans, installation and maintenance of backflow prevention devices and containment

structures, and training and hiring of additional employees to perform the new requirements under the 2012 Ag Order. Growers cannot recoup these costs once decisions are made and irreversible management practices are employed.

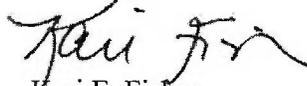
- Improper dictation of management practices requiring growers to install and/or maintain backflow prevention devices; maintenance of all existing, naturally occurring, riparian vegetative cover; and maintenance of filter strips of appropriate widths.
- Requirement to submit an Annual Compliance Form for Tier 2 and Tier 3 growers by October 1, 2012, notwithstanding the fact that the form's specific protocols and requirements have yet to be made public or shared with growers.
- Requirement for Tier 2 and Tier 3 growers to conduct photo monitoring and reporting requirements consistent with yet-to-be established protocols, and demonstrate compliance with erosion and sedimentation requirements by October 1, 2012.
- Requirement for certain growers to evaluate and report the nitrate loading risk factors and the Nitrate Loading Risk level for high nitrate crops for each ranch/farm by October 1, 2012. Given the different crops grown, different soil types, pH types, and other variables by farm, and the difficulty in finding appropriate experts to conduct the necessary studies and calculations, these determinations will be both costly and time consuming.
- Requirement to develop and implement an Irrigation and Nutrient Management Plan by October 1, 2013. Currently, there are no nutrient management plan templates for vegetable crops in California, thus providing no guidance to growers as to what is required by the Regional Board or how to even achieve the terms of the 2012 Ag Order. Rather, growers must spend valuable time and monetary resources to find and hire experts to create such plans. Given the difficulty, the regulatory deadline of October 1, 2012 will be hard to meet.

As currently proscribed in the 2012 Ag Order, growers must spend a significant amount of irretrievable time, money, and private resources to comply with the provisions of the 2012 Ag Order and Monitoring and Reporting Programs prior to the State Board's review and resolution of the Petitions. The burden, including the associated costs, of preparing the above technical and monitoring reports, as well as those required but not listed above, does not bear a reasonable relationship to the need for the reports. (Wat. Code, § 13267(b)(1).) Further, the Regional Board has not provided evidence that supports the need for each and every required technical and monitoring report outlined within the 2012 Ag Order. Notwithstanding the Regional Board's lack of showing of a statutorily required "need," the agricultural community has provided substantial evidence showing the immediate and unreasonable burdens produced by the 2012 Ag Order. Such evidence by the agricultural community supports the requests for stay.

Letter to Jeannette L. Bashaw
July 13, 2012
Page 4

It is in the public's interest for the stays to be granted in order to allow growers and the Regional Board to become informed during this time, develop workable compliance forms and templates, and provide appropriate and needed outreach. It is hoped that a future Ag Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari E. Fisher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kari E. Fisher
Associate Counsel

KEF/pkh

July 11, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

VIA E-mail: ibashaw@waterboards.ca.gov

RE: Request for stay of Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control

Ms. Bashaw:

I am a cherry grower in Hollister, California who supports the efforts of several organizations that have filed requests for a stay of the Conditional Waiver Order (R3-2012-0011) that was adopted by the Central Coast Regional Water Quality Control Board (RWQCB) in March, hereinafter called Waiver, and, request that the State Water Resources Control Board (SWRCB) approve the requested "stay".

I understand that to have standing in order to file this letter in support of the requested stay, I must inform you of my family's membership in the San Benito County Farm Bureau.

The Conditional Waiver, as written, will have significant negative impacts upon my cherry growing operations, and, on the farming operations of Trical's customers. I submitted letters to the RWQCB to explain several major problems with its draft Ag Waiver, but, these concerns were not resolved by the RWQCB in its adopted Waiver.

In my two June 2010 letters and my August 2011 letter to Mr. Young, I expressed concerns with his preliminary draft agricultural order. In those letters, I explained why I and other farmers need to leach our soils to move salts, sodium and other compounds and elements out of the root zone, in order to grow our crops. I did so, because the February 1, 2010 draft order included the following requirements:

"2. Dischargers must implement appropriate irrigation scheduling duration and frequency, in consideration of weather factors such as wind and precipitation, to reduce or eliminate the discharge of irrigation runoff and to minimize percolation of water and waste below the root zone."

"6. Dischargers that use leaching to control salt in the soil profile must not cause or contribute to exceedance of water quality standards. Leaching must not be performed to wash nitrate based salts from the soil profile."

"Wastes discharged to groundwater were required to be free of toxic substances in excess

of maximum contaminant levels (MCLs) for primary and secondary drinking water standards established by USEPA and CDPH, whichever is more stringent; taste, odor, or color producing substances; and nitrogenous compounds in quantities which could result in a groundwater nitrate concentration (as nitrate) above 45 mg/L.”

I explained to Mr. Young that his then-current Proposed Agricultural Order and Addendum to Staff Report for an Updated Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, Draft Agricultural Order No. R3-2011-0006; Evaluation of New Information Provided by Agricultural Industry Representatives on March 17, 2011 and May 4, 2011 (Staff Addendum) did not address, much less resolve, my concerns about the above quoted restrictions that it places on farmers’ ability to leach salts or other elements, minerals or compounds below the root zone. The Proposed Agricultural Order made particular mention of not leaching “nitrate based salts” below the root zone, but, made no mention of how a farmer is to leach non-nitrate based salts, while, specifically, not leaching nitrate based salts. I do not know how this would be possible. One might say, well, “just apply no more nitrate based fertilizers than the crop requires.” But, that raises a question - “Who is to determine that amount and how is one to prevent any of it from subsequent leaching, due to normal irrigation, rainfall and forced leaching to remove other salts, elements, and compounds from the root zone?” Therefore, I brought this issue to his attention, again.

Also, he did not address my comments about my and other cherry growers’ need to make timely fertilizer applications to our trees in late January or early February. His proposed restrictions on when we could make such applications could prevent us from making this necessary application on a timely manner. I asked him to review my letter and resolve my concerns. Specifically, I asked him to allow us to make the applications as necessary, without consideration of recent or predicted rainfall that, according to the proposed Order, would make timely applications illegal.

Immediate Hardship, if the requested stay is not approved: if the stay is not approved, and, the SWQCB does not act to resolve my problem with this restriction on timely fertilizer applications, before this coming winter, my 2013 crop will be impacted, as follows:

- 1) My trees will bloom late and cause me to miss my market window. Specifically, my cherries are among the very last California cherries to ripen, and, without an appropriate fertilization program, my cherries will ripen much later and at the same time as the early Northwest cherries. When the Northwest begins to harvest, most of the pickers and all of the buyers move to the Northwest and the California packing houses shut down, leaving me with no pickers and no home for my crop.
- 2) An appropriate fertilization of cherry trees causes the trees to bloom more uniformly, so that harvest can be performed more efficiently and a larger portion of the crop being harvested. This is important, because multiple “pickings” result in having to pay the picking contractor more per harvested pound, resulting in higher harvesting costs, and, less revenues per acre, due to unharvested crop that is left on the trees.

Regarding the salts issue, I supplied some definitions that are useful in understanding my arguments on “salts”, as I think that the board and its staff misunderstood what a “salt” is and did not understand the implications of not allowing “salts”, and, other elements, minerals and compounds to be leached below the root zone. In my letter, I supplied the definition of “salt”, so that he and others on the RWQCB and staff could understand the following:

When farmers add gypsum (a "salt") to their soils, they intend for the Calcium in the gypsum to be exchanged with the Sodium in the soil to create NaSO_4 , another salt, just like the commonly understood table salt (NaCl), and, free Calcium. The Sodium in NaSO_4 is in a compound that is leachable, in comparison to free Sodium in the soil that is not leachable. Also, farmers may apply elemental Sulfur, referred to as "Soil Sulfur", to their soils, in order to leach Sodium, via another chemical reaction. Specifically, there are microbes in the soil that will convert elemental Sulfur into Sulfuric Acid (SO_4), which then combines with the Calcium in the soil to create the Gypsum (a "salt") that reacts with the Sodium to create NaSO_4 (another "salt") that will be leachable. This is another case where a salt would be created and then leached below the root zone.

Free Sodium in the soil causes the clay particles in the soil to "dissociate" i.e., not bind together to form clumps that allow water and air to move through the soil. When the Sodium is removed from the soil, the clay particles will bind together in clumps and create voids around and between these clumps through which air and water can move. This is important in allowing the Sodium, in the form of NaSO_4 , to be leached from the soil, and, as a result, for water and air to move into and through the soil and be available for the plants' roots. Also, the free Calcium that is left behind is a very important element that the plants need, in order to grow and produce a good quality crop.

The point is that one can not just require that farmers not leach salts below the root zone and/or to groundwater. The use of gypsum to solve this problem is a common and extremely important and needed practice. Soils that develop high levels of Sodium and salts in them, usually due to Sodium and salts in the irrigation water (usually from wells) become unproductive and must be abandoned. Without the ability to leach salts, and, Sodium with gypsum applications and subsequent leaching with rain or irrigation, many soils would become un-farmable, and, is the reason why some civilizations have vanished in the past.

My reading of the earlier draft indicated that I could not apply gypsum to my soil annually, in order to leach from my soil the sodium that gets into it from my groundwater. As an example of the consequences of such a restriction, I did not apply Gypsum to the soil in my cherry orchard and the soil became so contaminated from the sodium in my well water that one of my orchards died. There was a large cost to remove the dead trees, my orchard was reduced in half and I suffered a great financial loss. This will happen to other farmers, if they are not allowed to apply gypsum and leach the Sodium in the form of NaSO_4 below the root zone.

In my June 21, 2010 letter to Mr. Young, I referenced and attached articles from the Colorado State University Cooperative Extension, titled Managing Saline Soils, by G. E. Gordon, et. al., and, from the University of California, Department of Agriculture and Natural Resources, titled Abiotic Disorders of Landscape Plants, by Laurence R. Costello, et. al. These documents contain much valuable information that is directly applicable to California agricultural conditions, needs and practices, and, confirms what I stated in that letters and above, as to why leaching of agricultural soils is necessary. I asked Mr. Young to enter these articles into the record, for consideration in the drafting of the Agricultural Order, and, am asking the SWRCB now to include them in the record and to consider their content its consideration of the stay request. Copies are attached.

Immediate Hardship, if the requested stay is not approved: I lost a ten acre orchard already, because my water is so high in salts, alkali boron, chloride and sodium, before I learned the importance of applying gypsum to my soil. I thought that I could do without it, and, I was not advised of its importance by a soils lab that I had consulted regarding the condition of my orchard. I learned that "hard way". If the requested stay is not approved, and, if the SWQCB does not amend the Waiver, before the up-coming fall when I need to apply gypsum, in a manner that allows me to apply Calcium Sulfate (a salt) to my soil in order to leach the Sodium from the root zone via the chemical reaction with gypsum that creates another "salt" Sodium Sulfate that can be leached with water that is applied by winter rainfall and/or excess irrigation water, then, my remaining and replanted orchards will be injured further and again by unleached Sodium. I can not afford any further injury to my trees.

Also, in my June 21, 2010 letter, I pointed out that the water that I draw from my well for irrigation purposes does not meet drinking water quality standards, and, through the irrigation process and subsequent required leaching, most of the compounds and elements that are in my well water will be leached out of the root zone, by irrigation and/or rainfall. Also, when I and other farmers add Gypsum to our soil, as described above, we are adding a salt that creates another salt, that will leach below the root zone and to groundwater. The compounds and elements in my well water that are of concern include: Boron, Sodium, Chloride, Nitrate and Sodium Sulfate (NaSO₄). Over the decades, these may return to the ground water from which they came. Therefore, if I understand the Waiver correctly, I am prevented from irrigating my land with my well water.

Immediate Hardship, if the requested stay is not approved: If the above is a correct interpretation of the adopted Waiver and the SWRCB does not approve the requested Waiver, then, I must not use my well to irrigate my orchard. This is an untenable situation. The SWRCB must approve the requested Waiver, so that I may continue to use my only water source legally. Waiting until the SWRCB considers this issue in due time will leave me operating illegally. I do not believe that this was either Mr. Young's or the Board's intention, and, hope that the adopted Waiver will allow me and other farmers to apply to our farms such well water that does not meet drinking water standards. But, unless and until the issue is resolved, the requested stay will allow me to use my well and operate legally.

Another issue of grave importance to me is that by using Diazinon or Chlorpyrifos, I am raised from Tier 1 to Tier 2. I need to use Diazinon to control Black Cherry Aphids and Chlorpyrifos to control Peach Tree Borers. Left uncontrolled, these pests would kill my trees. I need to apply these products no more often than once per year. However, by monitoring their populations, I am able use them less often. Without Diazinon, I must apply several applications of other pesticides to control Black Cherry Aphid, each of which provide partial control only. There is no other pesticide that is registered for control of Peach Tree Borers on cherries. This is a hardship to me, because of the extra cost of the additional applications of other materials to control the Aphids, and, the big significance of my having to make additional applications of these materials. Because I have a full-time, off-the-farm job, and, all of my pesticide applications must be made at night, when it is cool and not windy, the applications begin after sundown and do not end until about 2:00 a.m. Then, I have to be back on my day job at 8:00 a.m. I am 69 years old and this type of schedule is physically draining on me and dangerous because of my age. This is a common problem for other farmers.

The use of Diazinon and Chlorpyrifos puts one into Tier 2 automatically. The RWQCB believes that every farm on which they are applied should be under stricter control, in order to prevent them from getting into surface and ground waters, and, being in Tier 2 will assure this. However, there is no way in which these products could do such a thing from use on my farm, because I am downhill from the closest water body and 8 miles from the next closest, with higher elevations in between it and all others.

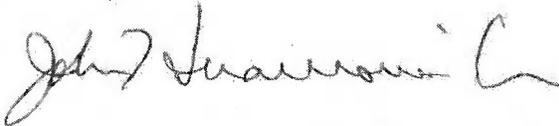
Because of the extra time and cost to comply with Tier 2 requirements versus Tier 1, I have tried to get by without Diazinon this year. However, I am having trouble controlling Black Cherry Aphids and am considering going back to it. Also, I have no alternatives to Chlorpyrifos and, since I have not used it for control of Peach Tree Borers for several years, I will need to do so this summer.

Immediate Hardship, if the requested stay is not approved: I will be placed into Tier 2 and have to spend additional time and money on complying with the Tier 2 requirement, since the SWRCB will not be able to consider the Waiver, before my planned use of these two products. As a small farmer with a full-time, off-the-farm job, I can not afford this extra time commitment or the cost of complying.

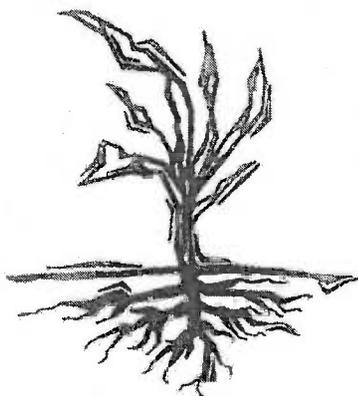
Please consider these comments, in evaluating the requested stay.

Thank you for your time and understanding.

Sincerely,

A handwritten signature in cursive script, appearing to read "John T. Ivancovich".

John T. Ivancovich
2420 Buena Vista Road
Hollister, CA 95023



C R O P S E R I E S

SOIL

Managing Saline Soils

no. 0.503

by G.E. Cardon, J.G. Davis, T.A. Bauder, and R.M. Waskom¹⁽²⁰⁰⁷⁾

Quick Facts...

An estimated 980,000 acres of irrigated land in Colorado are affected by salts.

Crop losses may occur with irrigation water containing as little as 700 to 850 mg/L TDS (total dissolved solids) or EC>1.2 dS/m.

Salt-affected soils may inhibit seed germination, retard plant growth, and cause irrigation difficulties.

Saline soils cannot be reclaimed by chemical amendments, conditioners or fertilizers.

Saline soils are often reclaimed by leaching salts from the plant root zone.



Extension

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Salinity problems are caused from the accumulation of soluble salts in the root zone. These excess salts reduce plant growth and vigor by altering water uptake and causing ion-specific toxicities or imbalances. Establishing good drainage is generally the cure for these problems, but salinity problems are often more complex. Proper management procedures, combined with periodic soil tests, are needed to prolong the productivity of salt-affected soils.

This fact sheet describes techniques for managing saline soils. Management for sodic soils may differ and is described in fact sheet 0.504, *Managing Sodic Soils*. You also may want to review fact sheet 0.521, *Diagnosing Saline and Sodic Soil Problems* to determine if you have a saline soil, sodic soil or perhaps another problem in your field.

Salt Sources

Saline soils are found throughout Colorado. These salts originate from the natural weathering of minerals or from fossil salt deposits left from ancient sea beds. Salts accumulate in the soil of arid climates as irrigation water or groundwater seepage evaporates, leaving minerals behind. Irrigation water often contains salts picked up as water moves across the landscape, or the salts may come from human-induced sources such as municipal runoff or water treatment. As water is diverted in a basin, salt levels increase as the water is consumed by transpiration or evaporation.

Table 1. Common salt compounds.

Salts are ionic crystalline compounds consisting of a cation and an anion.

Salt compound	Cation (+)	Anion (-)	Common name
NaCl	sodium	chloride	halite (table salt)
Na ₂ SO ₄	sodium	sulfate	Glauber's salt
MgSO ₄	magnesium	sulfate	epsom salts
NaHCO ₃	sodium	bicarbonate	baking soda
Na ₂ CO ₃	sodium	carbonate	sai soda
CaSO ₄	calcium	sulfate	gypsum
CaCO ₃	calcium	carbonate	calcite (lime)

Measuring Soil Salinity

Saline soils contain large amounts of water soluble salts that inhibit seed germination and plant growth. The salts are white, chemically neutral, and include chlorides, sulfates, carbonates and sometimes nitrates of calcium, magnesium, sodium and potassium (Table 1).

Salinity is measured by passing an electrical current through a soil solution extracted from a saturated soil sample. The ability of the solution

Table 2. Terms, units and conversions.

Symbol	Meaning	Units
<i>Total Salinity</i>		
TDS	Total dissolved solids	mg/L ^a ppm ^b
EC	Electrical conductivity	dS/m ^c mmho/cm ^d µmho/cm ^e

Conversions

1 dS/m = 1 mmho/cm = 1000 µmho/cm

1 mg/L = 1 ppm

^amg/L = milligrams per liter^bppm = parts per million^cdS/m = deciSiemens per meter at 25° C^dmmho/cm = millimhos per centimeter at 25° C^eµmho/cm = micromhos per centimeter at 25° C

to carry a current is called electrical conductivity (EC). EC is measured in deciSiemens per meter (dS/m), which is the numerical equivalent to the old measure of millimhos per centimeter (Table 2). The lower the salt content of the soil, the lower the dS/m rating and the less the effect on plant growth.

Yields of most crops are not significantly affected where salt levels are 0 to 2 dS/m. Generally, a level of 2 to 4 dS/m affects some crops. Levels of 4 to 5 dS/m affect many crops and above 8 dS/m affect all but the very tolerant crops (Table 4).

Treatment of Saline Soil

Saline soils cannot be reclaimed by chemical amendments, conditioners or fertilizers. A field can only be reclaimed by removing salts from the plant root zone. In some cases, selecting salt-tolerant crops may be needed in addition to managing soils.

There are three ways to manage saline soils. First, salts can be moved below the root zone by applying more water than the plant needs. This method is called the **leaching requirement** method. The second method, where soil moisture conditions dictate, combines the leaching requirement method with **artificial drainage**. Third, salts can be moved away from the root zone to locations in the soil, other than below the root zone, where they are not harmful. This third method is called **managed accumulation**.

Leaching Requirement

For most surface irrigation systems in Colorado (furrow and flood), irrigation inefficiency (or over-irrigation) generally is adequate to satisfy the leaching requirement. However, poor irrigation uniformity often results in salt accumulation in parts of a field or bed. Surface irrigators should compare leaching requirement values to measurements of irrigation efficiency to determine if additional irrigation is needed. Adding more water to satisfy a leaching requirement reduces irrigation efficiency and may result in the loss of nutrients or pesticides and further dissolution of salts from the soil profile.

Leaching is accomplished on a limited basis at key times during the growing season, particularly when a grower may have high quality water available. Surface water in most areas of the state tend to have lower salinity than shallow, alluvial groundwater. Deep groundwater may have an even lower salinity than either shallow groundwater or surface water. In situations where a grower has multiple water sources of varying quality, consider planned leaching events at key salinity stress periods for a given crop.

Most crops are highly sensitive to salinity stress in the germination and seedling stages. Once the crop grows past these stages, it can often tolerate and grow well in higher salinity conditions. Planned periodic leaching events might include a post-harvest irrigation to push salts below the root zone to prepare the soil (especially the seedbed/surface zone) for the following spring. Fall is the best time for a large, planned leaching event because nutrients have been drawn down. However, since each case is site-specific, examine the condition of the soil, groundwater, drainage, and irrigation system for a given field before developing a sound leaching plan.

Leaching Plus Artificial Drainage

Where shallow water tables limit the use of leaching, artificial drainage may be needed. Cut drainage ditches in fields below the water table level to channel away drainage water and allow the salts to leach out. Drainage tile or plastic drainpipe can also be buried in fields for this purpose. Proper design and construction of a drainage system is critical and should be performed by a trained professional, such as your local USDA-Natural Resources Conservation Service (NRCS).

Table 3. Estimated water application needed to leach salts.

Percent Salt Reduction	Amount of Water Required
50%	6 inches
80%	12 inches
90%	24 inches

Example: If a soil's electrical conductivity is 8 mmhos/cm, and you want to reduce it to 4 mmhos/cm. This represents a 50 percent reduction in salts. Therefore, 6 inches of water would be required.

With all artificial drainage systems you must also consider disposal of the drainage water. Restrictions on the discharge of drain water to streams may apply in certain situations and should be investigated through the Colorado Department of Public Health and Environment. In the case of regulated discharge, treatment or collection and evaporation of the water on site may be required and may add significant costs.

The advantage of artificial drainage is that it provides the ability to use high quality, low salinity irrigation water (if available to a grower) to completely remove salts from the soil. However, artificial drainage systems will not work where there is no saturated condition in the soil. Water will not collect in a drain if the soil around it is not saturated.

After drainage appears adequate, the leaching process can begin. Table 3 shows how much water is required to leach salts. Actual salt reduction depends upon water quality, soil texture and drainage.

Managed Accumulation

In addition to leaching salt below the root zone, salts can also be moved to areas away from the primary root zone with certain crop bedding and surface irrigation systems. Figures 1 and 2 illustrate several ways to manage salt accumulation in this manner. The goal is to ensure the zones of salt accumulation stay away from germinating seeds and plant roots.

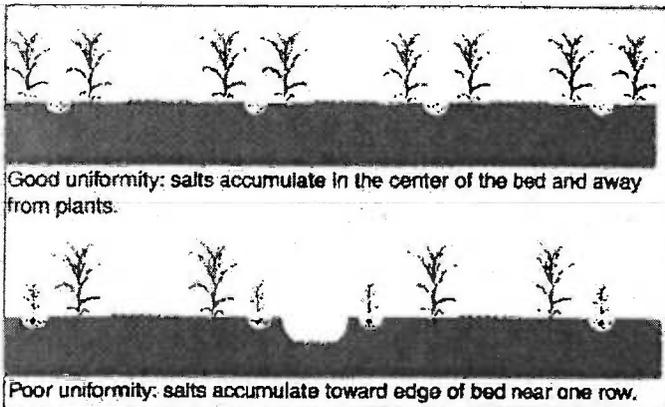


Figure 1. Salt management in double-row bed system.

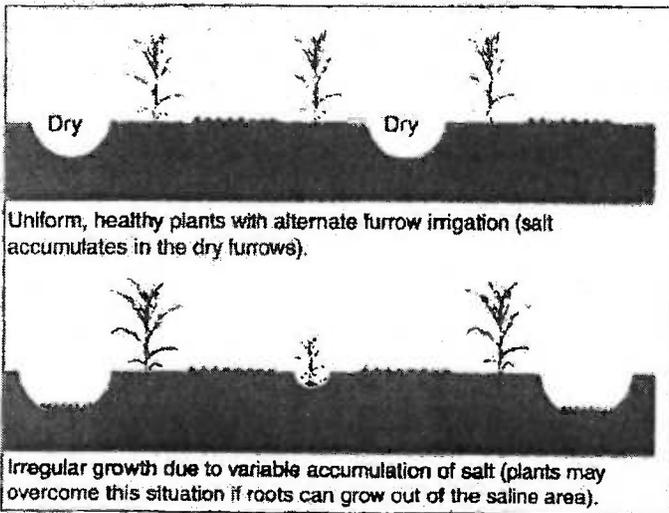


Figure 2. Salt management in single-row bed systems.

is essential with this method. Without uniform distribution of water, salts will build up in areas where the germinating seeds and seedling plants will experience growth reduction and possibly death.

Double-row bed systems require uniform wetting toward the middle of the bed. This leaves the sides and shoulders of the bed relatively free from injurious levels of salinity. Without uniform applications of water (one furrow receiving more or less than another), salts accumulate closer to one side of the bed. Periodic leaching of salts down from the soil surface and below the root zone may still be required to ensure the beds are not eventually salted out.

Alternate furrow irrigation may be desired for single-row bed systems. This is accomplished by irrigating every other furrow and leaving alternating furrows dry. Salts are pushed across the bed from the irrigated side of the furrow to the dry side. Care is needed to ensure enough water is applied to wet all the way across the bed to prevent build up in the planted area. This method of salinity management can still result in plant injury if large amounts of natural rainfall fill the normally dry furrows and push salts back across the bed toward the plants. This phenomenon also occurs if the normally dry furrows are accidentally irrigated.

Sprinkler Irrigation

Sprinkler-irrigated fields with poor water quality present a challenge because it is difficult to apply enough water to leach the salts and you cannot effectively utilize row or bed configurations to manage accumulation. Growers should monitor the soil EC

and irrigation water salinity. Where adequate irrigation water exists above crop requirements, a leaching fraction (or percent of additional water needed above crop requirements) can be calculated for sprinkler irrigated fields using this equation:

In this equation, EC max is the maximum soil EC wanted in the root zone. (See Table 4.)

$$\%Leaching\ requirement = \frac{EC_{water}}{2 \times EC_{max}} \times 100$$

Apply this leaching fraction to coincide with periods of low soil N and residual pesticide. Again, fall is an optimal time to move salts below the root zone.

Crop Tolerance to Soil Salinity

Excessive soil salinity reduces the yield of many crops. This ranges from a slight crop loss to complete crop failure, depending on the type of crop and the severity of the salinity problem.

Although several treatments and management practices can reduce salt levels in the soil, there are some situations where it is either impossible or too costly to attain desirably low soil salinity levels. In some cases, the only viable

management option is to plant salt-tolerant crops. Sensitive crops, such as pinto beans, cannot be managed profitably in saline soils. Table 4 shows the relative salt tolerance of field, forage, and vegetable crops. The table shows the approximate soil salt content (expressed as the electrical conductivity of a saturated paste extract (EC_s) in dS/m at 25 degrees C) where 0, 10, 25, and 50 percent yield decreases may be expected. Actual yield reductions will vary depending upon the crop variety and the climatic conditions during the growing season.

Fruit crops may show greater yield variation because a large number of rootstocks and varieties are available. Also, stage of plant growth has a bearing on salt tolerance. Plants are usually most sensitive to salt during the emergence and early seedling stages. Tolerance usually increases as the crop develops.

The salt tolerance values apply only from the late seedling stage through maturity, during the period of most rapid plant growth. Crops in each class are generally ranked in order of decreasing salt tolerance.

Other Management Options

Residue Management

Crop residue at the soil surface reduces evaporative water losses, thereby limiting the upward movement of salt (from shallow, saline groundwater) into the root

Table 4. Potential yield reduction from saline soils for selected crops.

Field crops	Relative yield decrease %			
	0	10	25	50
Barley	8.0	10.0	13.0	18.0
Sugarbeets*	7.0	8.7	11.0	15.0
Wheat	6.0	7.4	9.5	13.0
Sorghum	4.0	5.1	7.2	11.0
Soybean	5.0	5.5	6.2	7.5
Corn	1.7	2.5	3.8	5.9
Bean	1.0	1.5	2.3	3.6
Forages				
Tall wheatgrass	7.5	9.9	13.3	19.4
Wheatgrass	7.5	9.0	11.0	15.0
Crested wheatgrass	3.5	6.0	9.8	16.0
Tall fescue	3.9	5.8	8.6	13.3
Orchardgrass	1.5	3.1	5.5	9.6
Alfalfa	2.0	3.4	5.4	8.8
Meadow foxtail	1.5	2.5	4.1	6.7
Cloveralsike, red, ladino, strawberry	1.5	2.3	3.6	5.7
Bluegrass and other turf**				
Vegetables				
Broccoli	2.8	3.9	5.5	8.2
Cucumber	2.5	3.3	4.4	6.3
Cantaloupe	2.2	3.6	5.7	9.1
Spinach	2.0	3.3	5.3	8.6
Cabbage	1.8	2.8	4.4	7.0
Potato	1.7	2.5	3.8	5.9
Sweet corn	1.7	2.5	3.8	5.9
Lettuce	1.3	2.1	3.2	5.2
Onion	1.2	1.8	2.8	4.3
Carrot	1.0	1.7	2.8	4.6

*Sensitive during germination and emergence, EC_s should not exceed 3dS/m at this time. Excerpted from R. S. Ayers and D.W. Westcot, 1976, Water Quality for Agriculture, Irrigation and Drainage Paper 29, FAO, Rome. Crop salt tolerance data in the table were developed, almost entirely, by the U.S. Salinity Laboratory, Riverside, CA.

**For specifics on turfgrass species, see Colorado State University Cooperative Extension fact sheet 7.227, Growing Turf on Salt-Affected Sites.

zone. Evaporation and thus, salt accumulation, tends to be greater in bare soils. Fields need to have 30 percent to 50 percent residue cover to significantly reduce evaporation. Under crop residue, soils remain wetter, allowing fall or winter precipitation to be more effective in leaching salts, particularly from the surface soil layers where damage to crop seedlings is most likely to occur.

Plastic mulches used with drip irrigation effectively reduce salt concentration from evaporation. Sub-surface drip irrigation pushes salts to the edge of the soil wetting front, reducing harmful effects on seedlings and plant roots.

Pre-plant Irrigation

As mentioned before, most crop plants are more susceptible to salt injury during germination or in the early seedling stages. An early-season application of good quality water, designed to fill the root zone and leach salts from the upper 6 to 12 inches of soil, may provide good enough conditions for the crop to grow through its most injury-prone stages.

Irrigation Frequency Management

Salts are most efficiently leached from the soil profile under higher frequency irrigation (shorter irrigation intervals). Keeping soil moisture levels higher between irrigation events effectively dilutes salt concentrations in the root zone, thereby reducing the salinity hazard.

Most surface irrigation systems (flood or furrow systems) cannot be controlled to apply less than 3 or 4 inches of water per application and are not generally suited to this method of salinity control. Sprinkler systems, particularly center-pivot and linear-move systems configured with low energy precision application (LEPA) nozzle packages or properly spaced drop nozzles, and drip irrigation systems provide the best control to allow this type of salinity management.

Summary

Under irrigated conditions in arid and semi-arid climates, the build-up of salinity in soils is inevitable. The severity and rapidity of build-up depends on a number of interacting factors such as the amount of dissolved salt in the irrigation water and the local climate. However, with proper management of soil moisture, irrigation system uniformity and efficiency, local drainage, and the right choice of crops, soil salinity can be managed to prolong field productivity.

G.E. Cardon, former associate professor, soil and crop sciences; J. Davis, Colorado State University Extension soils specialist and professor, soil and crop sciences; T.A. Bauder, Extension water quality specialist; and R.M. Waskom, Extension water resource specialist.

Abiotic Disorders of Landscape Plants

A DIAGNOSTIC GUIDE

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University of California
Agriculture and Natural Resources

Publication 3420

TABLE 5.10. Methodology and criteria used in evaluating salinity and boron tolerance in selected references cited in table 5.7, cont.

References	Relative Tolerance			Methodology/criteria
	Low	Moderate	High	
Francois and Clark 1978	<3.0	3.0-6.0	6.0-9.0	Rating criteria: <50% growth reduction; no leaf plants aesthetically appealing. Experiment run in sandy loam soil. Plants irrigated with NaCl added to yield EC _e of 0.7 (control), 4.4, and 7.0 mmhos/cm. Average EC _e was 1.0, 4.3, and 7.0 mmhos/cm. Soil salinity was uniform with depth throughout the root zone during summer.
Glatstein 1989	—	—	—	No methods stated; authors assumed plants included were in "moderate" category.
Harivandi 1988	<4.0 dS/m	4.0-8.0	8.0-16.0	—
Morris and Devitt 1990	—	—	—	Plants grown for 8 years in silty clay loam soil with saline groundwater. EC _e 26.0-40.0 at 3-foot depth in root zone 8.0-13.0 mmhos/cm. Authors ranked by appearance.
Boron: EC_w				
Eaton 1944	<1.0	5	10.0-25.0	Plants grown from seed, outdoors, in large sand. Irrigated with 0.09, 1, 5, 10, 15 and 25 ppm boron. Adapted from Eaton 1935.
Farnham, Ayers, and Hasek 1985	0.5-1.0 mg/l	1.0-2.0	2.0-10.0	—
Francois and Clark 1978	0.5	2.5	7.5	Plants grown outdoors in sand culture. Classification based on growth reduction and overall plant appearance.
Questa 1987	—	—	—	Inventoried plants growing in Concord, CA, palm trees were irrigated with high-boron water. Species were evaluated for injury and ranked according to severity based on boron concentration in soil and water and severity of toxicity symptoms.
San Diego 1963	—	0.75-3.0	—	Observations at landscapes in San Bernardino County, CA, irrigated with boron water; ratings based on soil and leaf injury.

Source: After Matheny and Clark 1998.

Soil salinity affects irrigation management. As the soil dries, the concentration of salts is increased, which increases the potential for toxicity. Keeping soil moist reduces the potential for toxicity. In addition, osmotic tension decreases the availability of water to plants in saline soils. It may be necessary to increase irrigation frequency and/or duration when irrigating with saline water or managing a saline soil.

Care should be taken to avoid heavy applications of fertilizer, as they contribute to soil salinity. Where salinity is of concern, select high-analysis formulations with low salt hazard. Animal manures, mushroom

compost, and sewage sludge should be tested for salts before applying to landscapes. If misapplications of fertilizer made or saline soil amendments applied, leach with good-quality water to move salts below the root zone.

Salt deposits on foliage can be washed off with good-quality water. When irrigating with saline water, avoid application of sprinklers.

Treating sodic soils requires providing a soluble source of calcium. Gypsum (CaSO₄·2H₂O) is the material commonly used. The calcium in gypsum displaces sodium in the soil, freeing the sodium to

leached below the root zone of the plant. Excessive use of gypsum can cause problems, however, so test the soil first to make sure that sodium is excessive. A soil-testing laboratory can determine how much gypsum is required to reclaim sodic soil. If sodic soils are also saline, gypsum should be incorporated before leaching treatments are applied. There is no need to apply gypsum to soils that are simply alkaline (high pH) or calcareous. If the soil is calcareous (containing CaCO_3), sulfur can be applied to release the calcium for displacement of sodium. The reaction may take several months to several years (Cardon and Mortvedt 1999). See "Problems Related to pH," below, for more information. A summary of salt-related problems is provided in table 5.11.

Fig. 5.56. The lower foliage of this coast live oak (*Quercus agrifolia*) suffered salt damage when it was wetted with saline water through the irrigation system.

Table 5.11. Summary of salt-related problems

Problem or Symptom	Symptoms	Diagnosis	Occurrence and aggravating factors	Look-alike disorders	Treatment
			Soil		
Saline	Stunted growth; chlorosis; leaf tip and marginal burn; defoliation; death.	Test soil for EC_e ; saline soils have EC_e greater than 4 dS/m. If irrigation water could be the source of salts, test water for total dissolved solids (TDS) and EC_w .	Species sensitivity to salts; low soil moisture; high water table; poor drainage; irrigation with saline water; application of deicing salts; heavy application of fertilizer or saline soil amendment.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Correct drainage problems; leach with good-quality water; select tolerant plants.
Sodic	Stunted growth; chlorosis; necrosis; death. May be white or black crust on soil surface. Water may pond on soil surface.	Test soil for sodium adsorption ratio (SAR) or exchangeable sodium percentage (ESP). Sodic soils have SAR >6 and ESP >10.	Species sensitivity to sodium; high water table; poor drainage; irrigating with water high in sodium; using softened water; application of NaCl as deicing salt.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Incorporate gypsum, or sulfur in calcareous soils; leach with good-quality water.
Saline-sodic	Stunted growth; chlorosis; necrosis; death. May be white or black crust on soil surface. Water may pond on soil surface.	Test soil for EC_e and sodium adsorption ratio (SAR). Saline-sodic soils have EC_e >4.0 dS/m and SAR >6.	Species sensitivity to sodium and salt; high water table; poor drainage; irrigating with water high in sodium and salt; using softened water; application of NaCl as deicing salt; low soil moisture.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Incorporate gypsum, or sulfur in calcareous soils; leach with good-quality water.
Chloride	Stunted growth; necrosis of leaf tips or margins; bronzing; premature yellowing and abscission of leaves; chlorosis.	Test soil and tissue for Cl.	Species sensitivity to salts; low soil moisture; high water table; poor drainage; irrigation with high-Cl water; application of deicing salts; heavy application of chloride-containing fertilizer; close proximity to swimming pool.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Correct drainage problems; leach with good-quality water; select tolerant plants.

TABLE 5.11. Summary of salt-related problems, cont.

Problem or condition	Symptoms	Diagnosis	Occurrence and aggravating factors	Look-alike disorders	Treatment
Soil, cont.					
boron	Yellowing of leaf tip, followed by progressive chlorosis and necrosis of margins and between veins; necrosis is black and may appear as small spots near leaf margin.	Test soil or leaves for boron.	Species sensitivity to boron; irrigation with high-boron water; application of certain sewage effluent wastes; application of borate-containing herbicides.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Correct drainage problems; leach with good-quality water; select tolerant plants.
sodium	Mottled and interveinal chlorosis progressing to necrotic leaf tips, margins, and between veins.	Test soil and/or leaves for sodium.	Species sensitivity to sodium; irrigation with chemically softened water or other water high in sodium; application of NaCl as deicing salt.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution; high light exposure.	Incorporate gypsum, or in calcareous soils leach with good-quality water.
ammonium	Reduced growth; chlorosis; small necrotic spots on leaves.	Test soil for ammonium.	Species sensitivity to ammonium; heavy application of ammonium fertilizer; incorporation of soil amendment high in ammonium.	Mineral deficiency; herbicide toxicity; high light exposure.	Leach with good-quality water.
Leaves					
deicing salts	Damage occurs on the side of the plant facing the road, and to the splash height. In conifers, needles turn brown from tips downward. In broad-leaves and conifers, bud, twig, branch, and whole plant death may occur.	Test foliage for salts.	Species sensitivity; length of exposure and concentration of salts in spray.	Herbicide toxicity.	Wash off foliage. Use less-toxic deicing salt.
sprinkler irrigation	Leaf necrosis; damage occurs on foliage wetted by sprinkler.	Test foliage and water for chloride.	Irrigation water with >100 mg/l Cl; species sensitivity.	Drought; herbicide toxicity; wind burn; acute air pollution.	Wash off foliage with good-quality water.
ocean spray	Foliage necrotic on windward side of plant.	Test foliage for chloride.	Exposure of salt-sensitive species to wind-driven spray.	Mineral deficiency; drought; herbicide toxicity; wind burn; acute air pollution.	Wash off foliage with good-quality water.



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July 13, 2012

Via Electronic and U.S. Mail

Ms. Jeannette L. Bashaw
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jbashaw@waterboards.ca.gov

Re: SWRCB/OCC File Nos. A-2209(a)-(e); Opportunity to Respond to Requests for Stay

Dear Ms. Bashaw:

Somach Simmons & Dunn represents the Grower-Shipper Association of Central California, Grower-Shipper Association of San Luis Obispo and Santa Barbara Counties, and Western Growers (collectively, "Grower-Shippers") in their Request for Stay of Petition for Review of certain provisions of Order No. R3-2012-0011 *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver). On June 26, 2012, Mr. Michael Lauffer issued a notice that provides the opportunity for all Parties and Interested Persons to Respond to Requests for Stay, including the Request for Stay filed by Grower-Shippers. Although the notice states that Petitioners are not expected to submit additional supporting evidence, the notice does not preclude such Petitioners from providing further comment. Accordingly, we hereby submit the following brief comments on behalf of Grower-Shippers. The comments provided here are with respect to the Request for Stay and do not respond to issues associated with the underlying Petitions for Review.

As a preliminary matter, the growers in the Central Coast Region are entitled to quick resolution of this issue. Further delays in the review of this matter will put growers in substantial jeopardy with respect to complying with certain provisions of the Conditional Waiver. Specifically, the Grower-Shippers' Request for Stay was filed within 30 days of the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) adoption of the Conditional Waiver (i.e., April 16, 2012). Since then, almost 90 days have passed. Compliance with major costly requirements must occur by

Ms. Jeannette L. Bashaw

Re: SWRCB/OCC Files A-2209(a)-(e); Opportunity to Respond to Requests for Stay

July 13, 2012

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October 1, 2012. There is little time for the State Water Resources Control Board (State Water Board) to act.

With respect to making the demonstrations required by the State Water Board's regulations, Grower-Shippers submitted multiple declarations that show substantial harm. In sum, the Conditional Waiver includes substantive requirements that are applicable now, and others that will necessitate the expenditure of funds within the next 30 to 60 days to meet deadlines that occur as early as October 1, 2012. Additional expenditures will also occur to meet other requirements through December 2013. The estimated costs through December 2013 range from \$46 per acre up to \$310 per acre. (See Grower-Shippers' Request for Stay, p. 12:11-12.) For some operations, that means the costs of compliance now through December 2013 are over \$500,000, and upwards to approximately \$850,000. (*Id.*, p. 12:4-7.) These cost estimates, of course, presume that the State Water Board will resolve this matter by the end of December 2013.

Furthermore, there are certain challenged provisions that are in effect today that create liability for Grower-Shippers' members. In particular, there are provisions that require agricultural dischargers subject to the Conditional Waiver to immediately comply with water quality standards. (Grower-Shippers' Request for Stay, p. 15:3-10.) Such immediate compliance is not feasible and may subject growers to immediate harm.

In contrast, granting the stay will not cause substantial harm to the public interest or interested persons. With respect to most of the provisions for which a stay has been requested, they are monitoring and reporting provisions. Such provisions are costly to growers and cause them substantial harm; however, staying them for a period of time while the State Water Board conducts its review will not substantially harm others. For the other operative provisions (i.e., immediate compliance with water quality standards), the Central Coast Water Board recognized that immediate compliance was not feasible, and adopted findings to that effect, which included an understanding that for some water quality objectives it may take decades. (Grower-Shippers' Request for Stay, p. 15:10-19.) Accordingly, there is no substantial harm to others if a stay is granted for a period of time.

Moreover, and as is clearly shown in the underlying Petitions, the Central Coast Water Board's adoption of the Conditional Waiver in its entirety is suspect due to improper ex parte communications. (Grower-Shippers' Request for Stay, p. 18:11-28.) Additionally, there are many other significant questions of fact and/or law associated with many of the adopted provisions. Accordingly, the disputed actions raise substantial questions of fact or law.

Thus, the Grower-Shippers' Request for Stay demonstrates all of the necessary elements as required by the State Water Board's regulations. (See Cal. Code Regs., tit. 23, § 2053(a).) Further, quick resolution of this issue is necessary in light of existing liability, and impending, costly compliance deadlines. Grower-Shippers encourage the State Water

Ms. Jeannette L. Bashaw

Re: SWRCB/OCC Files A-2209(a)-(e); Opportunity to Respond to Requests for Stay
July 13, 2012

Page 3

Board to grant the requested stays as soon as possible to avoid further harm to Central
Coast farmers.

Sincerely,

A handwritten signature in cursive script that reads "Theresa A. Dunham". The signature is written in black ink and is positioned directly below the word "Sincerely,".

Theresa A. Dunham

cc (via email only): Attached Service List

TAD:cr

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SWRCB/OCC File Nos. A-2209(a)-(e)

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No. A-2209(e)]*

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Ms. Pamela Hotz
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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 [File No. A-2209(b)]*

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c/o Matthew S. Hale, Esq.
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matt@haleesq.com
Petitioner [File No. A-2209(e)]

Mr. William Elliott
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Petitioner [File No. A-2209(e)]

Bashaw, Jeannette@Waterboards

From: Bill Ritz <Bill.Ritz@SEN.CA.GOV>
Sent: Friday, July 13, 2012 11:08 AM
To: Bashaw, Jeannette@Waterboards
Subject: Senator Cannella Requests to Stay Support
Attachments: Sen. Cannella Requests to Stay Support.pdf

Dear Ms. Bashaw,

Attached is a support letter for Requests of Stay in regards to the Central Coast Regional Quality Control Board's Ag Waiver Orders passed down on March 15, 2012.

Thank you,

*Bill Ritz
District Representative for
Senator Anthony Cannella
12th Senate District
831-769-8040*

[Sign up for Senator Cannella's newsletters](#)



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California State Senate

SENATOR
ANTHONY CANNELLA
TWELFTH SENATE DISTRICT



COMMITTEES
AGRICULTURE
CHAIR
VETERANS AFFAIRS
VICE-CHAIR
GOVERNMENTAL
ORGANIZATION
NATURAL RESOURCES
AND WATER

July 11, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Bashaw,

I am writing in support of the "Requests for Stay" submitted by the Grower-Shipper Association of Central California, Monterey County Farm Bureau, and Western Growers Association, to the State Water Resources Control Board (SWRCB) to stay some or all of the provisions of the orders issued by the Central Coast Regional Water Quality Control Board on March 15, 2012.

It has come to my attention that substantive new evidence was circulated prior to the March 15th meeting, which was not allowed into the public record. A Stay will allow for an objective review of this evidence during the appeal process, which was missing through the initial adoption period.

Granting the "Requests for Stay" will prevent farmers from potentially suffering irreparable financial harm. Without the stay, farmers will be forced to invest in new management practices and new monitoring and reporting programs, which may be deemed unnecessary after the appeals before the SWRCB are heard.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Cannella".

Anthony Cannella
Senator, District 12

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**ASSEMBLY
CALIFORNIA LEGISLATURE**



LUIS A. ALEJO
ASSEMBLYMEMBER, TWENTY-EIGHTH DISTRICT

COMMITTEES
VICE CHAIR LOCAL GOVERNMENT
BUDGET
BUDGET SUBCOMMITTEE#5 PUBLIC SAFETY
LABOR AND EMPLOYMENT
RULES

JOINT COMMITTEES
LEGISLATIVE AUDIT
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SELECT COMMITTEES
CALIFORNIA-MEXICO BI-NATIONAL AFFAIRS
DELINQUENCY PREVENTION AND YOUTH
DEVELOPMENT
HIGH TECHNOLOGY
HIGH SPEED RAIL FOR CALIFORNIA
REGIONAL APPROACHES TO ADDRESSING
THE STATE'S WATER CRISIS
STATE HOSPITAL SAFETY
SUSTAINABLE AND ORGANIC AGRICULTURE

July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

RE: PETITIONERS REQUESTS TO STAY OF ORDER NO. R3-2012-0011

Dear Ms. Bashaw,

Thank you for the opportunity to submit a response to requests of petitions to stay some or all listed provisions of Order No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for the Discharges from Irrigated Lands adopted March 15, 2012 (Ag Waiver). I am writing to support the requests made for stay of this regulation because I believe the State Water Board must allowed sufficient time to provide objective review of the order during the appeal.

It's appropriate and important that the State Water Board grant the requests for stay to avoid substantial harm for growers while the State Water Board reviews the appeal petition. You received declarations by growers that noted the extraordinary costs (in the multiple hundreds of dollars an acre in some cases) associated with implementing this regulation in the coming 18 months alone.

I am confident that growers of all sizes and demographics will be negatively affected by this order immediately. Specifically, the Annual Compliance form required of Tier 2 and 3 growers and due on October 1, 2012 relays, in some cases, proprietary information only found in the farm plan previously. Additionally, the Regional Board has stated that they won't provide outreach on this form until September 2012, giving growers only a few weeks to provide significant data during peak growing season.

I am concerned that there are a number of growers who would fall into this category who are disenfranchised and won't receive sufficient training on how to submit this information, which now becomes a public record to be used and interpreted by anyone, although the methods of data collection and reporting mandated by this order are not necessarily scientifically valid.

As I've noted in previous letters to the Regional Board, the order adopted by the Central Coast Regional Water Quality Control Board (CCRWQCB) appears to be significantly more burdensome to agricultural producers on the Central Coast than those created or recommended in other regions. This disparity in regulatory standards and requirements will likely put the agricultural industry in the Central Coast at a substantial competitive disadvantage relative to other areas of the State.

Over the past two years, I have repeatedly urged the RWQCB to support the all community stakeholders' process established under the 2004 Ag Waiver and to further examine the economic implications of the RWQCB staff's draft agricultural order. I am deeply disappointed that the RWQCB continued to ignore the recommendations made by local elected officials and the agriculture community. The consequences of developing the Agricultural Order unilaterally, without the contributions of the agricultural industry, are substantial.

I noted in a recent article published by the Monterey County Weekly, a statement attributed to Executive Officer Roger Briggs of the CCRWQCB that deeply troubled me, but also confirmed my suspicions that the agricultural community's concerns and solutions were not given appropriate consideration despite urging by my office and others.

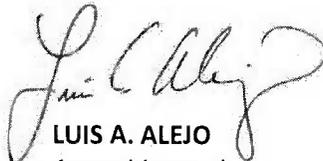
"Central Coast board director Briggs might be the only person who's pleased with the final ag waiver. He says it's not too much of a compromise with ag, and was happy to see the board vote unanimously even after state and federal officials urged them to lean more in ag's favor."

Monterey County Weekly, June 21, 2012

An objective review was sorely missing through the adoption process and I believe that the State Water Board should allow for a more reasoned, collaborative solution-seeking approach for improving water quality. I respectfully request that you consider the request by petitioners to grant a stay of some or all listed provisions of Order No. R3-2012-0011 during the appeal process.

Thank you for your time and attention to this important and critical matter. If you have any questions, please feel free to contact me at (916) 319-2028 or via e-mail at assemblymember.alejo@assembly.ca.gov <<mailto:assemblymember.alejo@assembly.ca.gov>>.

Sincerely,



LUIS A. ALEJO
Assemblymember
28th District

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Assembly
California Legislature



KATCHO ACHADJIAN
ASSEMBLYMEMBER, THIRTY-THIRD DISTRICT

July 13, 2012

Jeanette L Bashaw, Legal Analyst
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E-mail: jbashaw@waterboards.ca.gov

Re: **REQUEST FOR STAY**
SWRCB/OCC FILES A-2209 (a) – (e)

Dear Ms. Bashaw;

Farming operations in the 33rd Assembly District are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of backflow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

Farmers in my district will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that will be incurred in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Khatchik H. Achadjian".

Khatchik H. "Katcho" Achadjian
33rd Assembly District

COMMITTEES
VICE CHAIR: BANKING AND
FINANCE
ACCOUNTABILITY AND
ADMINISTRATIVE REVIEW
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Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

RE: Support for Stay in SWRCB/OCC FILES A-2209(a) (e)

Dear Members of the Board,

I write to you in support of the request to stay the implementation of the Central Coast Regional Water Control Board Irrigated Lands Discharge Waiver.

My office has actively followed the development of the AG waiver and written numerous letters to the regional board regarding their process in developing the waiver and the content of the proposed waiver. On paper, the regional board's process had the appearance of incorporating input from stakeholders. Unfortunately, the proposal that was adopted failed to include much of the important feedback provided by affected stakeholders. But even more concerning is that the most fundamental and important question remains unresolved: will these regulations in fact produce the greatest water quality improvements in the most efficient and cost effective manner? Many industry leaders, community officials and elected representatives are of the shared opinion that there are superior approaches to achieving our water quality objectives.

In 2011 I provided testimony to the Regional Board stating,

"The question is not whether to protect water quality, but how to protect water quality. With California's unemployment reaching record levels and our state's economic recovery trailing the rest of the nation, it is imperative that regulators reject heavy-handed approaches which alienate stakeholders and make it more difficult to achieve the buy-in of the regulated entity.

"Regulations developed in collaboration with the regulated entity, and that take advantage of industry's insights and expertise, are far more likely to achieve meaningful compliance as opposed to regulations that are promulgated in an environment of hostility.

"I am particularly troubled by the proposed heavy-handed approach, as it appears a counterproductive and divisive overreach, and reflects an unnecessarily dismissive

attitude toward the concerns and thoughtful alternatives put forward by the agricultural community. A wholesale rejection of concerns about the economic and jobs impacts of proposed regulations is not in the best interest of a long-term partnership, and certainly unhelpful to protecting the economic viability of our rural community.

“A sustainable environment is interdependent with a strong economy. It is our responsibility as lawmakers and regulators to recognize the consequences of implementing new policies and to proceed judiciously. These dire economic times remind us that economic prosperity and responsible resource stewardship are mutually reinforcing. Economic strength facilitates the incorporation of advanced technologies and innovative management practices necessary to produce our clean water goals. Similarly, the presence of abundant and healthy natural resources provides the ongoing basis for economic prosperity.”

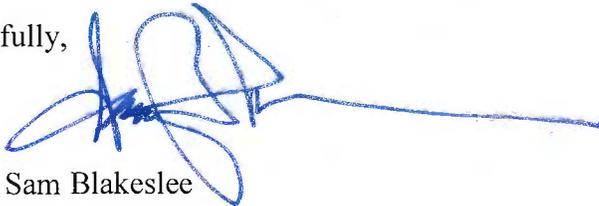
While I share the board’s commitment to improved water quality, I believe that the adopted regulations not only fail to effectively address the environmental goals but will produce substantial harm to the Central Coast agricultural industry resulting in a loss of jobs, a weakened rural economy and disproportionate impacts on small farming operations.

As a scientist I believe there should be external peer-review of the science used to craft regulations such as the AG waiver. In 1998 Cal/EPA issued Policy and Guiding Principles For External Scientific Peer Review. The guidance document noted that peer review is an important and effective mechanism for evaluating the accuracy or validity of technical data, observations, and interpretations, and scientific aspects of regulatory decisions and initiatives. An external peer-review will ensure that science is sound and that as a result we get only the best and most effective regulations that actually achieve their intended goals.

Additionally, I would urge the State Board to review the merits of alternative proposals that would achieve the water quality objectives without producing significant adverse impacts on the economic viability of our local agricultural industry.

I therefore urge you to grant the requested stay and perform a thorough external peer-review of all the scientific data in the AG Waiver and undertake a review of alternative proposals.

Respectfully,



Senator Sam Blakeslee

Bashaw, Jeannette@Waterboards

From: N. Isakson <nisakson@mbay.net>
Sent: Saturday, July 07, 2012 5:51 PM
To: Bashaw, Jeannette@Waterboards
Subject: SWRCB/OCC Files A-2209 (b)- e)
Attachments: SWRCB 070612 ag waiver.pdf; "Certification"

Please see attached letter submitted on behalf of the Salinas Valley Water Coalition and its members in response to the above referenced matter.

Nancy Isakson, President
SVWC
Land Use, Environmental and Government Affairs Consultant
(831) 224-2879

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Salinas Valley Water Coalition



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Transmitted Via Email

Jeannette L. Bashaw, Legal Analyst
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1001 I Street, 22nd Floor [95814]
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E-mail: jbashaw@waterboards.ca.gov

7 July, 2012

Re: SWRCB/OCC Files A-2209(b)-(e)

Dear Ms. Bashaw;

These comments are submitted by the Salinas Valley Water Coalition on behalf of its members. The Salinas Valley Water Coalition (SVWC) is a not-for-profit organization comprised of agricultural landowners, farmers and businesses within the Salinas Valley. One of the SVWC's primary purposes is to assist and promote educational programs for our members with particular emphasis on water associated issues. The SVWC worked with, and supported, your Board and its efforts in developing and implementing the Agricultural Waiver Program in 2005. The development of the first Ag Waiver as adopted by the Region 3 Board and supported by the agricultural community was said to be a model for the State at that time.

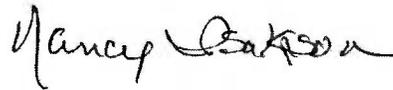
The SVWC submitted comments and participated in the public process during the development and adoption of the 'Conditional Ag Waiver' referenced above. Since its adoption we have attempted to provide assistance to our members seeking guidance on how to comply with the current Ag Order. It is clear to us that there is much confusion on how to comply and what is needed by the individual farmer to be in compliance. Our members are having difficulty finding qualified consultants to assist them in completing their forms. Many members were placed in an incorrect tier level for various reasons (generally not due to their fault) and have submitted a Request for Tier Review. They are waiting to receive a determination regarding their Request for Tier Review prior to completing the required information. There is substantial difference of information and documentation required between certain tiers. As an example, completing the requirements for tier 3 rather than tier 2 significantly increases the time and cost to the individual grower.

Mission Statement: The water resources of the Salinas River Basin should be managed properly in a manner that promotes fairness and equity to all landowners within the basin. The management of these resources should have a scientific basis, comply with all laws and regulations, and promote the accountability of the governing agencies.

The Salinas Valley Water Coalition supports the SWRCB granting the Stay as requested and referenced in your June 26, 2012 letter. We believe failure to grant the stay will create substantial harm to our members and is not in the public's best interest. The public would be better served if the growers are able to fully comply with the Ag Order and its requirements for information and documentation, rather than having inappropriate and insufficient information provided because of the lack of clarity as to what is required, and the lack of determination regarding correct tier placement.

We thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in black ink that reads "Nancy Isakson". The signature is written in a cursive style with a vertical line to the left of the name.

Nancy Isakson, President
Salinas Valley Water Coalition



Kay Mercer
President
750 Shannon Hill Dr.
Paso Robles CA 93446
kmercerc@charter.net

July 6, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Dear Madam:

This letter is written in response to the opportunity to submit preliminary written responses to requests of petitions to stay some or all listed provisions of Order No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for the Discharges from Irrigated Lands adopted March 15, 2012 (Ag Waiver). Thank for you for this opportunity to provide you with feedback on this matter.

I am writing in support of the request for stay because implementing the Ag Waiver compliance timelines as adopted will cause substantial harm to individual growers and does not further the public interest.

The currently adopted Ag Waiver has out-stripped the agriculture industry's ability to respond. Currently, the Ag Community is in chaos. This is not limited to growers, but includes the companies that provide goods and services as well as technical providers who are struggling to provide growers with assistance.

Growers are trying to make decisions about how to respond to both short-term and long-term compliance requirements. Recently, a consultant from the San Joaquin Valley presented a nutrient and irrigation tracking system to vegetable growers. The consultant then provided quotes. One grower, a medium sized broccoli grower with between 400-500 acres, was quoted \$68,000 for these services. This would be an additional input cost of \$136.00 – 170.00/acre, which is a substantial cost when one considers that, according to University of California Cooperative Extension (UCCE) 2012

Sample Costs to Produce Fresh Market Broccoli, the net return above total cost is -\$1,280,00/acre of broccoli. The grower who received this quote is a progressive grower. He has reduced his fertilizer use from over 200 lb/acre/crop to about 150 lb/acre/crop over the term of the 2004 Ag Waiver. He is looking for ways to better track and prepare for nutrient tracking and reporting requirements over the next five years. He did not accept the consultant's proposal, but he reports that some of his neighbors did.

Despite exhortations by the environmental community and CCRWQCB Staff that growers simply "need to adopt practices to protect water quality", the necessary tools to manage nutrients have not been developed. There are no Irrigation and Nutrient Management Plan (INMP) templates or Nutrient Budget templates available in the public domain for broccoli, celery, spinach, cauliflower, Brussels sprouts, artichokes, bok choy, Napa cabbage, strawberries, onions, or other high nitrate-demand crops that create a Tier 3 designation. UCCE has recently developed an irrigation and nutrient tracking system prototype for lettuce. It looks promising. However, it will take a year to beta test and, in the meantime, tools for other crops will not be developed. My understanding is that technical providers are waiting for input from CCRWQCB Staff as to INMP requirements prior to further development of INMP and budgeting tools. It's important to put that timeline into perspective. A cool season vegetable grower only has 3 crops in which to develop his INMP prior to the 2014 submission requirements. Approving the stay would alleviate existing confusion and allow time to create necessary tools that some growers are *mandated* to use and other growers are encouraged to use. Growers would be less likely to waste money today simply because appropriate tools have not been developed yet. Without access to these types of tools in the public domain, smaller and less capitalized growers are at a competitive disadvantage to growers who are able to invest in or develop expensive tools in-house.

Additionally, it is my understanding that CCRWQCB Staff intends to provide outreach about the Annual Compliance Form during September 2012. If Staff waits until September, timing will be short and occur too close to the actual reporting deadline. Growers need to know, *NOW*, what they will be required to report on October 1, 2012 as it takes months for them to prepare. Nevertheless, forms are not currently available. The bottom line is that growers will not be given enough time to prepare for the October 1, 2012 reporting deadline if they do not know the exact reporting requirements until September. Granting the stay will give CCRWQCB Staff additional time to prepare forms, do outreach and better inform the regulated community.

The broccoli grower above is a Tier 1/Tier 2 grower. In other words, he has moderate monitoring and reporting requirements and he did not appeal his Tier Designation. However, for growers who did appeal their Tier designations, it will take 30-60 days for CCRWQB Staff to review these appeals. This means that a grower under appeal will not know exactly what his reporting requirements are until late August or September. He will have insufficient time to prepare prior to the reporting deadline of October 1, 2012.

Approving the stay would give CCRWQCB more time to respond to appeals and to provide adequate outreach before the first major reporting deadline.

Likewise, Tier 2 and 3 growers with farms/ranches adjacent to or containing a waterbody impaired for temperature, turbidity or sediment must submit photo documentation to CCRWQCB Staff by October 1, 2012 in a format specified by the Executive Officer. Unfortunately, the format has not been communicated and growers are presently unsure exactly what will be required of them.

Finally, CCRWQCB states that landowners and operators are equally liable, but, for the most part, landowners have not been informed about the Ag Waiver. The stay would be of assistance to both landowners and tenants as, quite honestly, there is uncertainty between landlords and tenants about how to best divide responsibilities and obligations relative to the Conditional Waiver regulation. In some cases, landowners are discovering that their tenants have not enrolled, or unbelievably, have never heard of the Conditional Ag Waiver. In other instances, landlords have enrolled their tenants without tenants' permissions because of the tight reporting deadlines. The Ag Waiver is affecting leasing relationships detrimentally. Landlords are concerned about tenants with Tier 3 status. Contrarily, tenants are concerned that without properly informed landlords, they must assume responsibility for fixtures and rights that actually accompany the land (e.g. groundwater quality or sediment management land improvements). A stay would provide CCRWQCB more time to apprise landowners of their responsibilities. CCRWQCB could provide some guidance as to their respective expectations for landowners and tenants. A stay would allow more time for landlords and tenants to come to agreement after the Tier Designation appeals are completed.

Granting the stay will not jeopardize the public interest. In fact, it will better protect public interest as current activities are focused more on meeting administrative as-yet undeveloped compliance requirements rather than implementation of water quality protection measures. Granting the stay will provide CCRWQCB Staff more time to focus on water quality management tools (e.g. INMPs and nutrient budgeting tools), develop compliance forms, and provide the outreach necessary to ensure understanding of compliance obligations.

Please feel free to contact me if you have questions or if I may provide further clarification of these points.

Thank you again for the opportunity to provide feedback.

Most Sincerely,

Kay Mercer



**FARM BUREAU
MONTEREY**

July 11, 2012

Jeannette L. Bashaw
Legal Analyst,
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

VIA Email to: jbashaw@waterboards.ca.gov

RE: Central Coast Conditional Waiver of Discharge Requirements R3-2012-0011
SWRCB/OCC Files A-2209(a) - (e)
Request for Stay

Dear Ms. Bashaw:

Monterey County Farm Bureau represents family farmers and ranchers in the interest of protecting and promoting agriculture throughout our County. We strive to improve the ability of those engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of our local resources.

During the process to develop the Central Coast Ag Waiver, Monterey County Farm Bureau participated in workshops and hearings, meetings with Regional Water Board staff, and outreach to farmers on the issues presented. Monterey County Farm Bureau is also party to one of the petitions filed appealing the decision of adoption by the Central Coast Regional Water Quality Control Board.

Throughout this process, we have maintained that the requirements to comply with the Ag Order are confusing and irrational when it comes to on-farm activities. Since the adoption of the Ag Order back in March, we have conducted outreach to farmers and ranchers in our area, providing information on required documents and timelines for implementing water quality monitoring.

To date, there has been wide-spread confusion on the requirements, uncertainty on how to comply with the filings, and concern over timelines for monitoring. Farmers were placed, by Central Coast Water Board staff, into Tiers based on their electronic Notice of Intent filings. Many of the local farmers have disagreed with their Tiering assignments and have appealed those to the agency. With a turn-around time of 30-



FARM BUREAU
MONTEREY

60 days on these appeals, it will place some farmers in a situation of only having 30 days or less to determine what requirements they must satisfy in September, 2012.

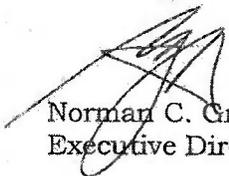
Uncertainty over required elements of compliance makes it difficult for farmers to ascertain what resources are needed to comply. There are no templates for many of the forms the Central Coast Water Board staff is requiring, so farmers are seeking expert help in developing their reporting documents. There simply is not enough expert help available to allow all farmers to comply with the required elements due by October 1st. Farmers understand their need to comply but without expert help to guide them on the needed format for reporting, they will be hard pressed to make any deadlines as required. A Stay of the requirements will provide more time for tools and resources to be developed to help farmers with compliance.

The Ag Order places a shared burden on both landowners and their tenant farmers. Many landowners are not yet aware of this potential liability and some tenant farmers have inadequate information to fully inform their landowners of this shared responsibility. A Tier 3 designation is adversely affecting tenant relationships with their landowners, causing confusion on how a farm can be managed and which crops can be produced. A stay of the requirements will allow landowners to become more aware of the requirements and their responsibilities relating to water quality, and allow tenant farmers to work out reporting requirements with their landowners.

Monterey County Farm Bureau does not believe that a Stay will jeopardize any public interests. A Stay will better protect public interests as farmers work to comply with the administrative requirements; implementation of protection measures does not come within the first compliance requirements this year. Providing additional time for these administrative requirements will lead to a smoother transition to protection measure implementation later.

We support the State Water Control Board issuing a Stay of requirements at this time, prior to the first deadlines in September and October, 2012.

Sincerely,



Norman C. Groot
Executive Director

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PATRICK J. "MIKE" MALONEY

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THOMAS S. VIRSIK

July 13, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

ibashaw@waterboards.ca.gov

Re: PETITIONS OF (a) MONTEREY COASTKEEPER
SWRCB/OCC FILES A-2209(a) – (e)

Dear Ms. Bashaw:

This office represents and has represented agricultural interests throughout the State of California for over 40 years before the SWRCB. We are responding to your June 26, 2012 Notice. Our letter to the SWRCB dated May 22, 2012 is attached (without the voluminous exhibits) and is incorporated herein by reference, which letter and exhibits were submitted in connection with the UC Davis Nitrate Report public workshop held on Wednesday, May 23, 2012 (found under the "Law Offices of Patrick J. Maloney" download).

The principal difficulty in trying to analyze the Nitrate Issue is the absence of verifiable data in order to determine the scope of the issues and what should be done to deal prospectively with nitrates. Dr. Harter recognized this problem in his reports and the back up reports.

This office neither supports nor objects to any of the Petitions by Monterey Coastkeeper et al that are before the SWRCB. However, there are public issues, which the SWRCB should consider in connection with the pending Petitions.

A massive amount of data on water usage in Monterey County has already been collected pursuant to a sophisticated procedure developed by the Monterey County Water Resources Agency (MCWRA) because of threats made by the SWRCB over the last twenty years. This data is currently not available to scholars such as Dr. Harter due to the actions of the SWRCB and the County of Monterey.

The SWRCB has developed over the last ten years the WRIMS system for surface water including the underflow of streams, which manages the data that the SWRCB is collecting pursuant to Water

Jeannette L. Bashaw
July 13, 2012

Page 2

Code Section 5100. The water user is required to disclose its water use and related conservation practices.

Most of the water users in the Salinás Valley are required by Water Code 5100 to make filings of their water use. There is currently significant similarity of data disclosure between the SWRCB and MCWRA disclosures.

The Interim Order proposes that another set of data will be collected regarding water use. A significant percentage of the requested information by the three government agencies is exactly the same. Instead of approving the Draft Order, the SWRCB should instruct MCWRA and the Regional Board to integrate all of the existing information held by the MCWRA into the WRIMS System and database. Once this information is incorporated the SWRCB, the Regional Board, and the Farming and Environmental Communities can determine what additional information is required from the water users to meet statutory obligations.

Such a procedure would give Dr. Harter years of information he needs in order to better analyze the cause and any needed solutions to the nitrate issue, and materially reduce the burden on the water user, and an existing database would be in place for all parties.

The SWRCB should go forward with the Hearing Petitions so it can develop an Order that will be economical and have the potential for a defining the issue and developing a solution.

Sincerely yours,



Patrick J. Maloney

Enclosure

cc: Thomas Harter, PhD

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THOMAS S. VIRSIK

May 22, 2012

Charles R. Hoppin, Chairman
State Water Resources Control Board
Coastal Hearing Room – Second Floor
Joe Serna, Jr. - Cal/EPA Headquarters Building
1001 "I" Street,
Sacramento, CA 95814

Re: May 23, 2012 Public Workshop concerning UC Davis Report On Nitrate In
Groundwater ("Davis Report")

Dear Mr. Hoppin:

Introduction

This office represents and has represented agricultural interests throughout the State of California for over 40 years before the SWRCB. We have been accused by a prominent UC Davis Professor who has worked for our opponents that our office works on behalf of clients to solve problems. During this representation it has frequently been our clients' position that it is important to have a full public disclosure of individual farmer water usage (both historical and current) and farming practices because this is the only way the water resources of the State of California can be fully optimized. This position has been challenged by individuals, water agencies and the SWRCB over the years.¹ The Davis Report gives the SWRCB a roadmap by which it can determine the scope of the Nitrate Problem in the State and economically address the problem. It is our sincere hope that this is not another report that the SWRCB and/or Legislature ignores for either political or budgetary reasons.

¹ Efforts by PJM clients to publicly disclose water usage and the results of the efforts. 1) See WRD 1404 (Charles B. See)—This led to People v. Forni and the Napa Frost Protection Program; 2) fought to obtain water data collected by MCWRA in Salinas Valley. Based on hypothetical calculations the clients were able to establish that the Upper Valley and Forebay had a limited impact on Salt Water Intrusion. 3) Actively supported the Sax Report and proposed requiring the use of WC Section 5100 et seq. by all water users. SWRCB took no action. 4) Actively fought for the disclosure of individual farmers' water use in the Imperial Valley for the last ten years. Our clients are still trying to get the Board to accept their individual water use data. See Exhibit B for further details.

Importance of UC Davis Work

There are four important messages in the Davis Report

- A. To the extent there is a public health issue involving nitrates, it can be solved at a reasonable cost mainly through drinking water treatment.
- B. Since direct measurement of nitrate leachate is costly to obtain, the regulator should initially fund treatment efforts with fees on fertilizer application until a taskforce can explore nitrate mass accounting as a basis for fees. Page 72.
- C. Since nitrate mass accounting is inseparable from water flows accounting, irrigation management is equally important as nitrogen management in the determination of the amount of nitrate leachate beyond the root zone both to assess fees more accurately based on current contribution as well as for determination of cost-effective agrichemical loading reductions. Volume 2, Page 66.
- D. Importance of collection and coordination of data.

Private Comments

This office has spent a considerable amount of time with the Davis researchers and they have offered the following private comments:

- A. If we had started collecting and coordinating data 20 years ago on water and nitrate application and farming practices the problem would have been much better understood and we would have by now been developing solutions.
- B. The distinction between underflow and groundwater as defined in California law does not exist in the world of hydrology.

History of Modern Day Agriculture in the Salinas Valley in Monterey County

Salinas Valley is where modern California irrigated agricultural started over 250 years ago. One of the advantages of the Salinas Valley is that a lot of this irrigated agricultural history is documented. See for example:

1. Franciscan Reports on the Missions
2. Govt. Reports during the twentieth century.
3. County Tax Records
4. US Govt. AG censuses.

Scholars are currently analyzing historical agricultural and water use records in Monterey County. This will help determine whether this long-term historical agricultural and water use had any impact on the nitrate issue.

Prior Data Collection by MCWRA

There is another data set already collected by the Monterey County Water Resources Agency (MCWRA) which was not referenced in the Davis Reports. Many decades ago the SWRCB became concerned about Salt Water Intrusion in the Salinas Valley. MCWRA developed a sophisticated water management system. We described this system in detail in a letter we sent to RWQCB in March 2012. Exhibit A (Letter dated March 13, 2012 from Patrick J. Maloney to Jeffrey Young). This water and land use information was carefully gathered by the farming community over the last 20 years. When this data is publicly disclosed it will shed further light on

Charles R. Hoppin
May 22, 2012

Page 3

the contribution of irrigation flows by crop type and soils by location to the nitrate issue in the Salinas Valley. Any further work on nitrates should incorporate this information. There is no good reason to reinvent the wheel over the next 20 years and develop a new data-set when the information is already collected.

Mythology vs. Facts

There is a major difference between mythology and facts on water issues in this State. For example:

A. The County of Napa suggested you could have approximately 10,000 acres of vineyard development in Napa County because of water problems. There are now substantially more acres.

B. The County of Monterey thought that its Salt Water Intrusion was caused by the creation of the vineyards in the Southern Part of the County. It turned out to be false.

C. Many experts thought the introduction of Drip Irrigation would dramatically reduce the use of water in Salinas Valley on row crops. It has not happened.

There are numerous examples throughout the State where the creativity of the farming community has solved what looked like insurmountable water problems once the decision makers dealt with facts instead of mythology. We suggest that the Davis Report offers insights as to how the public, the farming community and SWRCB can work together to solve whatever nitrate problems there may be in the State of California. The SWRCB should recommend a course of action to the Legislature based on the report.

Sincerely yours,

Patrick J. Maloney

Patrick J. Maloney

cc: Thomas Harter, PhD



Jeannette L. Bashaw, Legal Analyst
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State Water Resources Control Board
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E-mail: jbashaw@waterboards.ca.gov
Telephone: (916) 341-5155

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

The Paso Robles Wine Country Alliance has been a participant during the adoption process of the new Ag Order. We have submitted letters at every opportunity and appreciate that many of our concerns with the initial draft waiver were addressed through the adoption process. Notwithstanding, the process has been very arduous and convoluted and a high degree of uncertainty still remains with the end result.

In recognition of the petitions filed challenging the Central Coast Water Board's adoption of the Conditional Waiver and MRP Orders, and a request for a stay on a number of requirements to the order until said petition is taken up by the State Water Board, we concur that a stay should be granted. Our comments are limited to concerns specific to our members; and, as such, do not take into account other order requirements that may affect growers who farm other commodities within or outside of our area. Our focus is only on the portions of the order that we believe have a direct impact on our area growers to the following provisions specific to the vineyard industry in the Paso Robles area:

- I. Based upon the Tiered structure presented in the adopted Ag Order (Order No. R3-2012-0011) the majority of vineyard growers in the Paso Robles AVA would fall within the Tier I category. The distinguishing criteria that would move a vineyard grower from Tier I to Tier II is the use of Chlorpyrifos or Diazinon within a 12 month period. Based upon this criteria, a grower who may have used Chlorpyrifos or Diazinon within the past 12 months period must comply with Tier II requirements. This does not give the grower the opportunity or incentive to cease the use of these chemicals to fall within Tier 1. The time requirements to comply should coincide with a reasonable time frame to cease or improve practices in order to fall within the lowest Tier, which should be the one of the goals of the order. As such, we request that a stay be granted to any Tier II requirements requiring enactment within a one year time frame.

**PASO ROBLES WINE COUNTRY ALLIANCE ADDRESS PO Box 324 Paso Robles, CA 93447 PHONE 805.239.8463
FAX 805.237.6439 WEB pasowine.com**



- II. We specifically find problematic actions that require immediate action such as:

Conditional Waiver Provision 39 of Part B, General Conditions and Provisions for All Dischargers – Tier 1, Tier 2 and Tier 3, which requires all dischargers to immediately “a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste;” (Conditional Waiver, p. 20);

The Order notably goes on to require that certain activities involving riparian areas or streambed stabilization may require additional permitting and streambed alteration agreements to implement these criteria. It is therefore impractical and unfeasible to expect these actions can take place immediately. Without further review of this requirement by the State Water Resources Control Board, a grower could be subject to severe risks of liability. As such, a stay should be granted for this requirement until a full review of the order has been considered by the State Board.

- III. It is unrealistic and infeasible to require all growers to have properly installed, maintained, and functioning backflow prevention devices by October 1st, 2012. Our request for a stay of this requirement is based upon the impractical nature of the timing which does not take into account the necessary steps to comply with this condition. It may take some time and expert consultation to comply with this requirement to be certain the device has been properly installed, maintained, and functioning. If a backflow prevention device has not been installed the time for installation may exceed the time available to comply. Additionally, there remains uncertainty and ambiguity with local ordinance requirements for backflow devices in our region. If the SWRCB eliminates this requirement from the Order, the expense to install would already have been incurred.

This requirement reflects that lack of understanding of the realities to comply with these requirements. It may be necessary for a grower to hire an expert to advise on the functionality of the backflow device, and/or to install said device. Neither of which can realistically be expected to take place within this short window of time. There are not enough consultants to be able to conduct this type of effort within the designated timeframe. As such, a stay of this requirement should be granted to allow the SWRCB to consider a more practical remediation of this requirement.

- IV. We concur with the request for stay of Subsection g of Conditional Waiver Provision 44 of Part B, General Conditions and Provisions for All Dischargers – Tier 1, Tier 2,



and Tier 3, which requires all dischargers to describe and include results of methods used to verify practice effectiveness and compliance with this Order by October 1, 2012 (Conditional Waiver, p. 22).

The provision remains unclear in its present form regarding the release of the Farm Plan to the Regional Board staff. It states that: "Farm Plans must be kept current, kept on the farm, and a current copy must be made available to Central Coast Water Board staff, upon request." This provision must be made clear that the CC Water Board may have access to the plan onsite, but does not have the authority to request a copy to take offsite. Execution of this requirement by October 1st can subject growers to potential risk of liability and release of proprietary information or trade secrets to the public.

- V. We request a stay on the requirement in the Groundwater Monitoring and Reporting requirements in regards to sampling of groundwater wells (Tier 1, MRP, pp. 8-10 and Tier II, MRP pp. 8-10). Execution of this requirement by October 1st, 2012 can result in expenses and potential harm to the well system if not clearly defined. The petition to the State Board should be reviewed prior to enactment of this requirement.

In general, we have consistently remarked 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. We unfortunately will always have abusers of the law, but when people are motivated to do good (particularly by their peers), they will do good.

The technical experts will tell you that insufficient data has been collected to form meaningful conclusions and develop effective implementation strategies. A longer term approach should be sought in order to correct water quality problems that have been years in the making through practices that are no longer the standard practices of today.

Moreover, the 2004 Ag Waiver Program was a model program throughout the State. It is unfortunate that the process to update the program tainted the collaborative effort and unprecedented cost and expense born by the agricultural community to make the program a success. In good faith, the agricultural community came to the table in a collaborative fashion to address the seriousness of water quality concerns important to us all.

Agriculture is a Resource - Agricultural practices should not be over-regulated and weakened from succeeding in today's economy and global challenges. Agriculture should be encouraged

July 12, 2012
Request for Stay
Page 4 of 4



to develop new techniques and programs that reinforce the sustainability of agriculture and the communities it serves.

Sincerely,

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

Jeanette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA

Re: Request for stay of the Region 3 Waste Water Discharge Order

Dear Ms. Bashaw:

I am a fifth generation farmer in the Santa Maria Valley. Our family has been involved with the development of water supplies from my great-great-grandfather starting the Santa Maria water company to my grandfather being instrumental in the construction of Twitchell Reservoir to my father being on the Santa Maria City Council when State Water was approved. The point being that I am highly concerned with the health of the Santa Maria groundwater basin. I feel that we have a great opportunity to address some aspects of the high nitrate issue in the Santa Maria basin through regulation, however some aspects of the proposed waiver I believe are counter-productive.

Requirements such as the installation of backflow prevention devices on irrigation wells, erosion prevention measures and fine tuning the fertilizer programs with improved methods of application will all help the problem. However, the provision in the order which rewards growers for using the lowest nitrate water for irrigation instead of the highest nitrate water whenever possible shall significantly increase nitrate concentrations in groundwater over time. It is my opinion that the most effective way to mitigate existing high concentration areas of nitrate in groundwater is to apply that water to crops and work on the sciences that make the nitrate and nitrite forms of nitrogen available to the plant. Currently I believe that this high-nitrate water is causing nitrate toxicity in plants so growers instinctively apply more nitrogen. To pump the cleanest available water and apply substantially more nitrogen so that tail water discharges are presumably lower is counterproductive to groundwater cleanup.

The fact is that the volume of surface discharges from ranches in the Santa Maria Valley, relative to historical amounts, is miniscule. I feel that the board would be better served at this time to grant the Stay being requested at this time. I believe that if the Stay is not granted by the board many different lawsuits will be initiated with massive amounts of money being spent unproductively.

We are better off working together to discuss/develop the selected practices and sciences that will reduce costs and increase application efficiency rather than hastily implementing practices that are clearly counterproductive to the groundwater nitrate issue.

Sincerely,

George J. Adam

Bashaw, Jeannette@Waterboards

From: June Van Wingerden <jbwingerden@hotmail.com>
Sent: Thursday, July 05, 2012 1:31 PM
To: Bashaw, Jeannette@Waterboards
Subject: Stay of Central Coast Ag Water Waiver

To Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board

As a nursery operation on the southern most border of Region 3, we have tried to comply with all the onerous regulations. There is confusion over who is included in the waiver... is a completely hydroponic operation that recycles its water and has no irrigation water leaving the property included or not? We get different answers from different sources. Also, one of our properties that is registered under the waiver received a "Tier 2" classification, but the creek is above the grade of the farming operation. There is no possible way for any irrigation water to enter the creek. A second property that has been given a "Tier 2" does border a concrete channel (not a creek), but again there is no run off. Irrigation water in this area is more than \$650. an acre foot not counting meter fees. Water is used sparingly because no one can afford to over irrigate. Thank you.

June Van Wingerden
Ocean Breeze Farms
3910 No Via Real
Carpinteria CA 93013
805-684-1747 ext 108

MONTEREY BAY NURSERY

July 6, 2011

To Whom It May Concern,

In regard to the Central Coast Regional Boards irrigated lands stay of order , Monterey Bay Nursery supports the stay of this order with the following comments.

We have a domestic well that is registered and monitored by the Monterey County Health Department. We are required by the MCHD to test the water monthly/yearly for contaminants. Why should a monitored well shift a nursery into tier II? Duplicating the test results will be costly, as well as redundant and unnecessary.

In addition to the domestic well, we have a farm well that is contaminated by Nitrates which is used to irrigate our plants. By using this well we save energy by pulling water that is closer to the surface and with the nitrates in the water the plants require less fertilizer. Why would we not be allowed to use this well under tier II? Using the domestic well for irrigation increases the use of fertilizer.

Federal LBAM quarantine regulations demand much more frequent and widespread use of approved pesticides than we would normally use in routine nursery applications. How can we cut back on spraying required pesticides if we are required by the USDA and CDFA to use these chemicals to be in compliance with USDA and State quarantine to control the Light Brown Apple Moth. The use of Chlopyrifos and Diazinon penalizes the grower by automatically placing him in a higher tier level. This is an example of conflicting regulations and impacts the sale of our product and viability of our business.

The process of adjusting our tier level may take months and we are liable for both the costs, enforcement and civil liability to comply at the assigned tier level even if that level is changed later.

Please keep in mind that each farmer faces unique challenges. What we need are: 1) reasonable, achievable goals; 2) clearly defined rules for compliance; 3) a periodic review of the waiver that includes a cost/benefit analysis; 4) a fair step by step protocol for noncompliance and 5) a periodic roundtable session for growers and the board to discuss problems facing growers and to analyze new strategies for the future.

Manuel Morales
Vice President

PO Box 1296
724-8903

Watsonville, CA 95077

(831) 724-6361

fax (831)

montereybaynsy.com

Pisoni Farms
P.O. Box 908
Gonzales, CA 93926
Phone: 831.675.3337
Fax: 831.675.2557



July 6, 2012

Jeannette L. Bashaw, Legal Analyst
Office of chief Counsel
State Water Resources Control Board
1101 1 Street, 22nd Floor (95814)
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Bashaw,

The purpose of this letter is to urge you to grant the Stay against the new CCRWQB Ag Order for the following main reasons:

1. Compliance with the order will cause me to incur unfair financial hardship because I will have to hire an additional employee to handle the enormous amount of compliance requirements.
2. Compliance is very difficult to understand, and finding consultants to help is difficult and time-consuming. My time is better spent farming.
3. The Ag Order is an unnecessary and unfair burden on farmers.

Please grant the Stay against the new CCRWQB Ag Order.

Sincerely,

A handwritten signature in blue ink that reads "Mark Pisoni".

Mark Pisoni
Farmer

Sereno Vista Vineyards

Paso Robles, California 93446

July 12, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100 Sacramento, CA 95812-0100
E-mail: jbashaw@waterboards.ca.gov

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have attended many meetings of the Central Coast Regional Water Quality Control Board and I am concerned that the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") will cause my operation irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. the potential release of my Farm Plan to a government agency will jeopardize trade secrets or proprietary information. I am also concerned that the notion of a farm plan is open to interpretation and represents a great unknown to me. Is my existing plan sufficient or will I need a consultant to write a new plan? Is it 2 pages or 20 pages?
2. that the Board failed to recognize other sustainable organizations such as the Wine Institute's Code of Sustainable Winegrowing Program and inappropriately partnered with only one qualified organization.
3. the continued confusion surrounding the requirements.
4. is the requirement to ensure proper functioning of my backflow device.
Who will monitor this and is there a need for a specially qualified individual to inspect.
5. what is required for sampling of my groundwater wells. Again, will I need a specialized 'professional' to do the sampling requirements prior to the October 1st deadline. I am concerned that release of groundwater well monitoring information will expose my well and property to risk of vandalism or liability.
6. is that I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, become aware of the requirements of the farm plan is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Regards,

A handwritten signature in black ink, appearing to read "Jerry Reaugh". The signature is fluid and cursive, with the first name "Jerry" and last name "Reaugh" clearly distinguishable.

Jerry Reaugh
Owner

Ann Myhre
PO Box 459
San Ardo, CA 93450

July 12, 2012

Jeanette Bradshaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street 22nd Floor
PO Box 100
Sacramento CA 95812

RE: Support for granting Stay to Ag Order adopted May 15, 2012 by Region Three Water Quality Control Board

I have testified at several hearings of the Regional Water Board about the impacts of the newly enacted Ag Waiver to little avail. Requirements either unreasonably burdensome or impossible to meet remain in force. Thus, I support the Stay.

As an introduction, let me say that I am a property co-owner at three locations in Monterey and San Luis Obispo Counties,

1. In San Ardo my husband has removed our drip irrigated permanent walnut crop from production and leased our land to a row crop farmer who is now responsible for Notice of Intent required under the Ag Waiver.
 2. On a tributary to the Santa Maria River our family has a tenant who files Notice of Intent.
 3. In Shandon where three growers farm in a yearly rotation, I file the Notice of Intent on behalf of one of our farmers so I am intimately aware of what this ordinance requires.
- * I might mention that while our leases require our tenants to file NOIs we cannot confirm that tenants actually comply with the Ag Waiver.

At hearings I have noticed that Region Three staff oftentimes disregards feasibility of implementing the demands of the Ag Waiver. There are many fine points that need to be examined but here I wish to address Groundwater reporting and Surface Water reporting in our Notice of Intent as required under the Ag Waiver and I wish to speak about turbidity in waterways.

SURFACE WATER

When the previous Ag Order was enacted growers and/or landowners were required to monitor surface waters. During the process of writing the ordinance negotiations between regional staff and agriculture entities resulted in a program of co-operative monitoring undertaken by a third party. I along with my co-owners participate in this program.

GROUNDWATER

The recently enacted Ag Order demands groundwater monitoring. Again, agriculture requested cooperative monitoring with request denied. Furthermore, regional staff has exhibited little interest in utilizing data available at county Health Dept., Water Resources Agencies, or Ag Commissioner's Office. Instead they have demanded another layer of reporting and for growers another expense.

Knowing the characteristic of drinking water wells is desirable and I believe this is an enterprise already monitored by county health departments. What is the purpose of Regional Water Quality Control Board monitoring?

I'm certain staff gave considerable thought to reporting irrigation wells.

1. I am prohibited from taking my own water sample and delivering it to the lab; however, my employee (an extension of me, trained and paid by me) is allowed to take the sample. This is laughable, and what is the purpose of this requirement?
2. Since I do not have an employee I am required to hire a third party to come to my property and take water samples. What is the purpose of this requirement if not to burden my budget with unnecessary expense?
3. As mentioned above, during the development of the new Ag Waiver it was repeated suggested by agriculture that there should be a cooperative monitoring groundwater program. This was rejected by staff and thus the Regional Board. I do not believe the Order has been amended or repealed but recently I was notified that I can select the option of cooperative groundwater monitoring before August 1, 2012.
4. I will select that option but I'm not certain cooperative monitoring will come to Shandon because there are few acres under cultivation and it may not be cost effective for a third party to provide that service. It would have been better to have negotiated third party monitoring before the fact so that all growers could have been included and treated equally under the law.
5. Oddly, if there is more than one irrigation well in use the landowner is allowed to determine which well is primary and which will be reported.

As good managers we may have gathered all of the above groundwater data but I do not believe we want to share this data in a report. The reason I am concerned about reporting groundwater data is because it is proprietary information and I do not wish it to become public information. Once Region Three has collected data it is possible that requests will be made under the Freedom of Information Act. It is possible such requests might be

granted. I do not think this concern can be dismissed. If our data is public we may be open to unfounded lawsuits or eco-terrorist attacks on known well sites. Is Region Three going to police and protect our property if it comes under siege?

EROSION, SEDIMENT CONTROL AND TURBIDITY

This is perhaps my personal area of greatest concern with regard to the new Ag Waiver. I attended my first conservation field day in 1955 so I am fairly familiar with the characteristics of my property. Our fertile farming fields formed because during heavy rainfall, soil drifts off the hills, through native grass, across the county road burying our fences, and into the plateau we farm. I cannot prevent this from happening.

The new Ag Waiver requires that I do not allow any of this soil or water to cross my farming field, across a buffer, and into to the river. **If that happens I will be in non-compliance.** I know it is not desirable and I know it will not happen often, but I cannot guarantee that sediment will never cross our farm and the buffer during heavy rainstorms, because I have observed that my neighbors who do not farm are unable to prevent this also. **I ask again, what is the purpose of the Ag Waiver?**

IMPLEMENTING THE AG ORDER ON A SPECIFIC PROPERTY

In Shandon we have four tenants. One grows a few acres of permanent irrigated nursery stock. The other three, a carrot grower, a dry land farmer, and young row crop farmer rotate fields yearly. This cycle means the carrot grower and the row crop farmer use three different wells during a rotation cycle. We managed under the previous Ag Order but I believe the recently enacted Region Three Ag Waiver will be particularly burdensome for these two farmers.

Again, I support granting and extending the Stay to the recently enacted Ag Waiver.

Best regards,

Ann Myhre



Mission Ranches Company, LLC

100 Broadway
King City, CA 93930
(831) 385-1263
FAX (831) 385-3340

July 10, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

RE: Support of granting the Stay of the Conditional Waiver Order (R3-2012-0011) adopted on March 15th.

Dear Chairman Hoppin and Board Members,

Mission Ranches is a family oriented, Salinas Valley based, vegetable farming operation that was established in 1988. Since that time, many new regulatory standards for farming and agriculture have come into effect in which we have been able to meet or exceed, although, at an ever-increasing expense. As an operation striving for generational sustainability, both financially and environmentally, we believe the Ag Order as it is currently written does not fully appreciate the expenses a farming operation will consider when implementing this Order nor does it allow for a cooperative solution to the problems it chooses to address.

Tier Designation

We are currently awaiting tier designation on several ranches. Even though the Ag Order is in effect we are unclear as to how to proceed under this Order for these ranches. Costs can vary according to tier designation and narrow budgets depend on an accurate representation of how Mission Ranches will be tiered.

Staff and Consulting Costs

Company resources have been diverted in gaining a better understanding of the changes this new Order to our current farming practices. New staff may need to be hired at the expense of employees in other positions to ensure compliance with the Ag Order or consultants paid to help with the new requirements.

Compliance

Maintaining the newly required documentation is an added cost that will be difficult to spread across our current budgets.

Mission Ranches expects the cost difference from the previous Ag. Order to the new Order to be in excess of \$200/ acre after Tier designation, staff and consulting costs and compliance maintenance are calculated. Agriculture is already affected by Federal, State, local, and county requirements for water quality. The addition of new requirements from a "Regional" Board can only drive growing costs up, with little or no return on "the investment in water quality" which Mission Ranches hopes to see improve through the practices already employed using the old waiver and new cooperatively sustainable methods.

Sincerely,



John Romans

Mission Ranches Company LLC

Gary Francioni, Inc.
32721 River Road
Soledad, CA. 93960
(831) 675-1681

July 9, 2012

Jeannette L Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor (95814)
Sacramento, CA 95812-0100
Jbashawwaterboards.ca.gov



RE: CCRWQCB "Request for Stay"
Gary Francioni, Inc. AW # 1796

In reference to the above mentioned request for stay, please note that this incorporates the following ranches: Soberanes, Gary's Vineyard, Gonzales Hill Ranch and Sierra Mar.

I am filed a request for tiering appeal determination on the above ranches and am waiting for a reply. This requirement would affect the vineyards financially as we do not have anyone qualified to complete these requirements, have not been able to find a consultant and we are still waiting for tiering requirements to be adjusted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Francioni", is written over the typed name below.

Gary Francioni

Replaces A Letter of the Same Date Concerning the Stay Request Under Review by the State Water Board

Friday, July 13, 2012 11:07 AM

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor (95814)
P.O. Box 100
Sacramento, CA 95812-0100
Telephone (916) 341-5155

I have just returned from a short vacation and have 2.5 hours to respond by noon and, in addition, I must attend a meeting during this same time period. Therefore there has been inadequate time to prepare a letter detailing impact.

San Ysidro Farms, Inc. is roughly 1500 acres gross and can be classified as middle sized. Ownership is multiple family owned and succession is underway with my son succeeding and his sons in the process of preparing to follow by working here summers and one in Cal Poly, Ag Business.

Over the years we have been working to improve water management and irrigation practices. In 1965 furrow irrigation was the norm, generally gated pipe, but there was still considerable siphon pipe in use and sprinklers were just beginning to be introduced. Wells often ran 24 hours a day, the county ditches were full of water, and timers on wells were not common place. Today, we are 100 percent drip, some of it permanent, except for crop establishment and that will soon be changing. The amount of drain water and sediment has been drastically reduced and the goal is zero. It's simply a question of time and adequate profits. We are very concerned about our long term economic viability in California and the ability of management to comply by a set of regulations that are both invasive and onerous.

Growers of the central coast have invested enormous time and money to develop what we feel fulfilled the intent of the law and the spirit of the law. All proposals failed to find acceptance with the regional staff which seems radically motivated and heavy handed. Neither did we make any headway with the Regional Board which contained new members and basically rubber stamped everything presented to them by Staff. The current relationship between the Staff and the Grower community is adversarial at this point and promises to continue this way for years to come as growers capitulate one by one to the regional staffs' absolute abuse of discretionary power.

Over the course of the last several weeks I have read every word of the "Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands" Order No. R3-2012-0011. I find them clear and well written. It is manifestly clear that the

simplicity of the statements provides for terms and conditions that openly convey the dictatorial power to be manifested in the authority of the Director "at will". They are a framework for failure as growers attempt to comply. It is clear that once one compliance level is met another will be there to take its place in a never ending elevator to oblivion. This Order should be rescinded in total and those in Staff who are responsible for failure to work with growers to develop an acceptable comprehensive program should be terminated.

There are many ways the State Board can achieve an adequate fulfillment of the Porter-Cologne Water Quality Control Act. Much of the spirit of the law is being fulfilled by the changes that have taken place over the last several years without the intrusion of this alien form of governing and as new generations of farmers come forward with considerably enhanced education through university level training, new ideas will be adopted with rapidity. Herein lies, what I believe, is a way out of this mess and into a new era of cooperation wherein the requirements of the law, the work of the State Board to fill those requirements, and the growers who are so important to the welfare of the States economy, can work together. I believe the State Board should support the Stay and seriously consider contracting with the University of California and the Extension Service to accomplish in a more judicious and harmonious manner what the Regional Staff has failed to accomplish over the course of its entire history. You must ask yourself, what is the cost the State is willing to pay for the negative impact of the Regional Boards policy?

Our Grower Shipper attorney told the Regional Staff at a workshop it would be a "blood bath". Someone felt threatened and he and a grower were visited by the sheriff's department. The blood bath is the failure of growers to be able to operate within the parameters established by this waiver and the enormous cost it will require. Costs that will even require growers, to prove that some of their practices are proprietary in nature and must spend needless time and expense protecting their interests from being published by the regional staff. Who is this genius on the Regional Staff to decide for me what is proprietary and what is not? This is where dictatorship becomes totalitarian. In the end, the result in the years to come will be the demise of small and medium sized farms in California and the only ones that will be able to deal with the whims of the State will be giant corporations. Capitalism will be tolerated so long as it fulfills the wishes of the State and does its' work for them. We are to be asked to self incriminate ourselves. The "blood bath", is also the figurative loss of employment and farmers and not a threat perceived or otherwise by a State employee. The sheriffs visitation was meant to abridge freedom of speech and put growers on notice.

We have many arbitrary costs that we are now burdened with as a result regulations and public concerns. Food Safety has become a major concern and that has been very expensive. The Bit program has added additional costs. The Air Pollution Control people have caused perfectly good irrigation pump engines to be replaced adding significant costs. The price of oil has impacted the cost of almost everything. The costs of this Waiver as I am sure you are now aware are significant. All of this has to come from

profits at a time when workers need increased wages and the State needs tax revenues. All of this must be brought under some reasoned control before it is too late.

Lastly, growers had no voice on the board due to an outrageous denial of civil rights. The one grower on the board was told he must recuse himself thus obliterate from the record any voice from agriculture by a board member. That's what you can expect when tyranny imposes its will and checks and balances are lost and minorities are silenced. If for no other reason, the Stay should be put in place.

If I go out of business, there will be over 400 people out of work directly from here. We grow about 1500 acres of broccoli, 800 bulk lettuce, 900 cauliflower, 140 celery, 150 mixed lettuce, and about 140 acres of strawberries in a separate company with different ownership. The generated gross income before any other businesses are affected is close to \$25-30 million. We deserve better, all growers deserve better, the people of the State of California deserve better, and quite frankly so does the State Board.

Please consider a complete change of course, dump the current plan, and contact with the University of California at Davis and Farm Extension to achieve State goals and fulfillment of the law. Please issue the Stay.

Roy E. Killgore, Founder
San Ysidro Farms, Inc



Jeannette L. Bashaw, Legal Analyst

07/12/2012

Office of Chief Counsel

State Water Resources Control Board

1001 I Street, 22nd Floor [95814]

P.O. Box 100 Sacramento, CA 95812-0100

E-mail: jbashaw@waterboards.ca.gov

Telephone: (916) 341-5155

FAX 916-341-5199

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. Continued confusion surrounding the requirements;
2. The cost to install and/or ensure proper functioning of my backflow device.

Estimated cost is: ?? I cannot comply with this requirement by October 1st, 2012

3. It is unclear to me what is necessary to comply with immediate requirements to a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to

Bed & Breakfast

minimize the discharge of waste.

4. I am concerned that release of my Farm Plan to a government agency will jeopardize trade secrets or proprietary information.
5. I am uncertain what is required for sampling of my groundwater wells. I am unable to conduct the sampling requirements prior to the October 1st deadline. I am concerned that release of groundwater well monitoring information will expose my well and property to risk of vandalism or liability.
6. I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, and maintain streambanks is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Larry Smyth Carriage Vineyards



Bashaw, Jeannette@Waterboards

From: flingTraylor <fling@sanmarcoscreek.com>
Sent: Friday, July 13, 2012 9:48 AM
To: Bashaw, Jeannette@Waterboards

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100 Sacramento, CA 95812-0100

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. Continued confusion surrounding the requirements;
2. The cost to install and/or ensure proper functioning of my backflow device.

Estimated cost is: Unknown I cannot comply with this requirement by October 1st, 2012 for the following reasons:

3. It is unclear to me what is necessary to comply with immediate requirements to a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective stream bank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste.
4. I am concerned that release of my Farm Plan to a government agency will jeopardize trade secrets or proprietary information.
5. I am uncertain what is required for sampling of my groundwater wells. I am unable to conduct the sampling requirements prior to the October 1st deadline. I am concerned that release of groundwater well monitoring information will expose my well and property to risk of vandalism or liability.

6. I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, and maintain stream banks is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Fling A. Traylor

San Marcos Creek Vineyards

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100 Sacramento, CA 95812-0100
E-mail: jbashaw@waterboards.ca.gov
Telephone: (916) 341-5155

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. Continued confusion surrounding the requirements;
2. The cost to install and/or ensure proper functioning of my backflow device. Estimated cost is: \$20,000, I cannot comply with this requirement by October 1st, 2012 for the following reasons: 1. Our operation cannot afford to shut down irrigation requirements for our crops during the summer, in order to have sufficient time to install the back flow devices. 2. The economic impact of installing these devices was not realized during our budgeting process and therefore would impact our ability to proceed.
3. It is unclear to me what is necessary to comply with immediate requirements to a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste.
4. I am concerned that release of my Farm Plan to a government agency will jeopardize trade secrets or proprietary information.
5. I am uncertain what is required for sampling of my groundwater wells. I am unable to conduct the sampling requirements prior to the October 1st deadline. I am concerned that release of groundwater well monitoring information will expose my well and property to risk of vandalism or liability.
6. I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, and maintain streambanks is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Phelan". The signature is written in a cursive style with a large initial "G".

Greg Phelan

Vineyard Manager

French Camp Vineyards

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100 Sacramento, CA 95812-0100
E-mail: jbashaw@waterboards.ca.gov
Telephone: (916) 341-5155

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. Continued confusion surrounding the requirements;
2. The cost to install and/or ensure proper functioning of my backflow device. Estimated cost is unknown at this time. I cannot comply with this requirement by October 1st, 2012 due to the reasons stated in 6. below.
3. It is unclear to me what is necessary to comply with immediate requirements to a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste.
4. I am concerned that release of my Farm Plan to a government agency will jeopardize trade secrets or proprietary information.
5. I am uncertain what is required for sampling of my groundwater wells. I am unable to conduct the sampling requirements prior to the October 1st deadline. I am concerned that release of groundwater well monitoring information will expose my well and property to risk of vandalism or liability.
6. I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, and maintain streambanks is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water

quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert P. Behlendorf".

Robert P. Behlendorf

Owner

Wine Horizons, LLC

179 Niblick Rd. #414

Paso Robles, CA 93446

805-400-8829

bob@behlendorf.com

Bashaw, Jeannette@Waterboards

From: Joyce Murray <joycemurray@bonniche.com>
Sent: Friday, July 13, 2012 10:58 AM
To: Bashaw, Jeannette@Waterboards
Cc: Wally Murray
Subject: Request for a Stay
Attachments: Grower Concerns.doc

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

We have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and are concerned that our operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. Attached is a letter outlining our concerns.

We appreciate your consideration.

Joyce and Wally Murray
Owners
Bon Niche Cellars

Bon Niche Cellars
2627 Golden Eagle Way
San Miguel, CA 93451
805-286-7798

www.bonniche.com

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100 Sacramento, CA 95812-0100
E-mail: jbashaw@waterboards.ca.gov

Re: Request for Stay regarding Ag Order (Order No. R3-2012-0011)

Dear Ms. Bashaw:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

1. Continued confusion surrounding the requirements;
2. The cost to install and/or ensure proper functioning of my backflow device.
3. I am uncertain what is required for sampling of my groundwater wells. I am unable to conduct the sampling requirements prior to the October 1st deadline.
4. I have no idea where to begin or what consultants may be able to assist me in complying with the Ag Order at this time. A deadline of October 1st to conduct sampling, install devices, and maintain streambanks is infeasible and unrealistic.

The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Joyce Murray

Bashaw, Jeannette@Waterboards

From: Kris Gavin <kgavin@thegiant.com>
Sent: Tuesday, July 10, 2012 2:46 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Kris Gavin
Growers Express LLC
PO Box 948
Salinas, CA 93902

Bashaw, Jeannette@Waterboards

From: Steve Tripp <steve@pim4u.com>
Sent: Tuesday, July 10, 2012 2:55 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Steve Tripp
740 Airport Blvd
Salinas, CA 93901

Bashaw, Jeannette@Waterboards

From: Daniel Taylor <daniel@oceanopacking.net>
Sent: Tuesday, July 10, 2012 3:02 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Daniel Taylor
Phelan & Taylor Produce Co
PO Box 929
Oceano, CA 93475

Bashaw, Jeannette@Waterboards

From: Lino Belli <lino@bagaia.com>
Sent: Tuesday, July 10, 2012 2:54 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Lino Belli
OWN
Belli Architectural Group
313 Salinas St
Salinas, CA 93901

Bashaw, Jeannette@Waterboards

From: Anne Russell Rudolph <anne@rudolph5.com>
Sent: Tuesday, July 10, 2012 2:53 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Anne Russell Rudolph
GEN/PART
Stepladder Ranch
4450 San Simeon Creek Rd
Cambria, CA 93428

Bashaw, Jeannette@Waterboards

From: John Maulhardt <jmaulhardt@aol.com>
Sent: Tuesday, July 10, 2012 3:16 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

John Maulhardt
President
San Ysidro Farms, Inc.
PO Box 819
Guadalupe, CA 93434

Bashaw, Jeannette@Waterboards

From: Robert Rodoni <bsprout5@aol.com>
Sent: Tuesday, July 10, 2012 3:18 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Robert Rodoni
165 Tamarack Dr
Aptos, CA 95003

Bashaw, Jeannette@Waterboards

From: Randy Baldwin <rfb1@smgrowers.com>
Sent: Tuesday, July 10, 2012 3:34 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our nursery operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, determining the nitrate loading risk of our nursery, the installation of back-flow prevention devices on our irrigation wells, requirements to prevent erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

We will need hire outside consultants to comply with the new and extensive monitoring and reporting requirements. There are substantial economic costs that we will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Randy Baldwin
125 S San Marcos Rd
Santa Barbara, CA 93111

Bashaw, Jeannette@Waterboards

From: Colby Rubbo <colby@costafarmsinc.com>
Sent: Tuesday, July 10, 2012 3:27 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Colby Rubbo
36817 Foothill Rd
Soledad, CA 93960

Bashaw, Jeannette@Waterboards

From: Phil Adrian <phil@coastlineproduce.com>
Sent: Tuesday, July 10, 2012 4:40 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Phil Adrian
PO Box 4273
Salinas, CA 93912

Bashaw, Jeannette@Waterboards

From: Gail Baum <gail@baumconsulting.com>
Sent: Tuesday, July 10, 2012 6:13 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Gail Baum
2690 Hidden Valley Rd
Templeton, CA 93465

Bashaw, Jeannette@Waterboards

From: Pete Aiello <pete@uesugifarms.com>
Sent: Tuesday, July 10, 2012 4:56 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Pete Aiello
1020 State Highway 25
Gilroy, CA 95020

Bashaw, Jeannette@Waterboards

From: Susan Hagen <Cre8vemom@aol.com>
Sent: Tuesday, July 10, 2012 7:05 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Susan Hagen
318 La Casa Via
Walnut Creek, CA 94598

Bashaw, Jeannette@Waterboards

From: Georgeann Eiskamp <geiskamp@aol.com>
Sent: Tuesday, July 10, 2012 8:00 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Georgeann Eiskamp
30 W Rianda Rd
Watsonville, CA 95076

Bashaw, Jeannette@Waterboards

From: Ryan Talley <rtal72@aol.com>
Sent: Wednesday, July 11, 2012 8:32 AM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

My company will have to hire consultants to comply with the new and extensive Monitoring and Reporting requirements. These include updating the Notice of Enrollment several times per year as individual farms are acquired, and the filing of a Notice of Termination each time a farm is turned over to a new 'operator'. Each farm will have to file an extensive Annual Compliance Form beginning on October 1, 2012. A separate and extensive Groundwater Monitoring Report will also be required on October 1, 2013 with the first round of sampling to begin in two months time.

There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Ryan Talley
339 Village Glen Dr
Arroyo Grande, CA 93420

Bashaw, Jeannette@Waterboards

From: Richard Bascou <Richard.Bascou@dole.com>
Sent: Wednesday, July 11, 2012 1:36 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

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Sincerely,

Richard Bascou
VP/AG
Dole Fresh Vegetables Inc
PO Box 2018
Monterey, CA 93942

Bashaw, Jeannette@Waterboards

From: Mike Stoker <mikestoker@aol.com>
Sent: Thursday, July 12, 2012 7:50 AM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

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Sincerely,

Mike Stoker
Law Offices of Mike Stoker
2019 State St Ste B
Santa Barbara, CA 93105

Bashaw, Jeannette@Waterboards

From: Michael Boggiatto <michael@boggiatto.com>
Sent: Thursday, July 12, 2012 9:34 AM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

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There are substantial economic costs that I will incur in meeting these new and unprecedented requirements. I am therefore asking the Board to grant the Stay Request while the adoption of the new Ag Order is being reviewed. Thank you.

Sincerely,

Michael Boggiatto
222 E Acacia St
Salinas, CA 93901

Bashaw, Jeannette@Waterboards

From: paul mirassou <btffarms08@gmail.com>
Sent: Thursday, July 12, 2012 1:28 PM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

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Sincerely,

paul mirassou
20800 Airline Hwy
Paicines, CA 95043

Bashaw, Jeannette@Waterboards

From: Jennifer Clarke <jclarke@steinbeckproduce.com>
Sent: Wednesday, July 11, 2012 7:44 AM
To: Bashaw, Jeannette@Waterboards
Subject: REQUEST FOR STAY - SWRCB/OCC FILES A-2209 (a) ??? (e)

Dear Ms. Bashaw,

Our farming operations are subject to the Conditional Waiver Order (R3-2012-0011) adopted in March by the Central Coast Regional Water Quality Control Board. The terms of that Order are under review.

There are substantial and costly requirements that will be due in October of this year. These include groundwater sampling, photo monitoring of riparian habitat, determining the nitrate loading risk of each farm, the installation of back-flow prevention devices on all irrigation wells, preventing erosion by minimizing bare dirt, and the implementation of management practices to meet water quality standards.

The Regional Board's adoption of a complex and confusing regulatory scheme has left the Ag Community in a state of uncertainty as to how to meet the requirements of this new Ag waiver. This is not limited to growers, but includes the companies who provide goods and services as well as technical providers who are struggling to provide growers with assistance.

Many of the conditions contained in the Ag Waiver are not directly tied to the protection of the water quality; rather, they target certain agricultural practices that are critical to the industry and seek to alter the operations and management of farmlands. Such provisions include unreasonable restrictions on the use of nitrate, certain insecticides, tile drains, and retention ponds. The Regional Board failed to consider science based approaches and the reality facing the agricultural industry and imposed certain regulations in the Ag Waiver that are simply unfeasible and impossible to comply.

When looking for information on irrigation and nutrient tracking tools we found that the necessary tools have not yet been developed. There are no Irrigation and Nutrient Management Plan templates or Nutrient Budget templates for coastal crops available in the public domain. We have worked with our Farm Advisors on several irrigation and nutrient management trials for lettuce. We understand that the UC Extension is working on an irrigation and nutrient tracking system for lettuce. This is still being developed and needs to be tested. At this time, tools for other crops grown in this region have yet to be developed.

What the CCRWQCB has failed to understand is that there is a significant difference in growing a crop to maturity and growing a crop that is marketable. The CCRWQCB Staff is under the impression that a grower can harvest and sell a crop grown with limited to no fertilizer and pesticide inputs. This is rarely the case. Because of these flawed thought processes Central Coast growers have an Ag Waiver that we will struggle to comply with while maintaining a sustainable business.

Approving the stay would alleviate existing confusion and allow more time to create tools and knowledge that growers can use in a successful way and report information in a useful manner. Without these tools and knowledge being available in the public domain, smaller and less capitalized growers are at a competitive disadvantage. Granting the stay will not jeopardize the public interest. In fact, it will better protect public interest as current activities are focused more on meeting administrative compliance requirements rather than implementation of measures that can truly improve water quality.

Thank you for the opportunity to provide feedback.

Sincerely,

Jennifer Skidgel-Clarke

Sincerely,

Jennifer Clarke
18939 Vierra Canyon Rd
Prunedale, CA 93907

Bashaw, Jeannette@Waterboards

From: jclarke@steinbeckproduce.com
Sent: Wednesday, July 11, 2012 7:43 AM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

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

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

The Regional Board's adoption of a complex and confusing regulatory scheme has left the Ag Community in a state of uncertainty as to how to meet the requirements of this new Ag waiver. This is not limited to growers, but includes the companies who provide goods and services as well as technical providers who are struggling to provide growers with assistance.

Many of the conditions contained in the Ag Waiver are not directly tied to the protection of the water quality; rather, they target certain agricultural practices that are critical to the industry and seek to alter the operations and management of farmlands. Such provisions include unreasonable restrictions on the use of nitrate, certain insecticides, tile drains, and retention ponds. The Regional Board failed to consider science based approaches and the reality facing the agricultural industry and imposed certain regulations in the Ag Waiver that are simply unfeasible and impossible to comply. When looking for information on irrigation and nutrient tracking tools we found that the necessary tools have not yet been developed. There are no Irrigation and Nutrient Management Plan templates or Nutrient Budget templates for coastal crops available in the public domain. We have worked with our Farm Advisors on several irrigation and nutrient management trials for lettuce. We understand that the UC Extension is working on an irrigation and

nutrient tracking system for lettuce. This is still being developed and needs to be tested. At this time, tools for other crops grown in this region have yet to be developed.

What the CCRWQCB has failed to understand is that there is a significant difference in growing a crop to maturity and growing a crop that is marketable. The CCRWQCB Staff is under the impression that a grower can harvest and sell a crop grown with limited to no fertilizer and pesticide inputs. This is rarely the case. Because of these flawed thought processes Central Coast growers have an Ag Waiver that we will struggle to comply with while maintaining a sustainable business.

Approving the stay would alleviate existing confusion and allow more time to create tools and knowledge that growers can use in a successful way and report information in a useful manner. Without these tools and knowledge being available in the public domain, smaller and less capitalized growers are at a competitive disadvantage. Granting the stay will not jeopardize the public interest. In fact, it will better protect public interest as current activities are focused more on meeting administrative compliance requirements rather than implementation of measures that can truly improve water quality.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Jennifer Skidgel-Clarke



July 11, 2012

Jeannette L. Bashaw, Legal Analyst
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Re: Support of Request for Stay

Dear Ms. Bashaw,

This letter is written in response to the opportunity to submit preliminary written responses to requests of petitions to stay some or all listed provisions of Order No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for the Discharges from Irrigated Lands adopted March 15, 2012. Thank for you for this opportunity to provide you with feedback on this matter.

Huntington Farms is a major vegetable grower based in the Salinas Valley area of the Central Valley region. Huntington Farms actively participates in the Presentation, Inc.'s monitoring program and has engaged in water quality management on its farm properties. Huntington Farms is enrolled in the Ag Waiver and its operations and management of its farms would be significantly impacted by the 2012 Ag Waiver. We are writing in support of the request for stay because implementation of the Ag Waiver as adopted, while the petitions are being considered, will cause substantial harm to the regulated community and does not further the public interest.

The Regional Board's adoption of a complex and confusing regulatory scheme has left the Ag Community in a state of uncertainty as to how to meet the requirements of this new Ag waiver. This is not limited to growers, but includes the companies who provide goods and services as well as technical providers who are struggling to provide growers with assistance.

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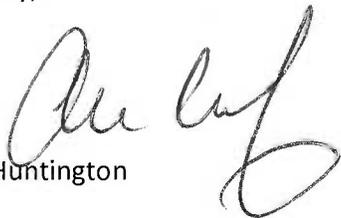
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Approving the stay would alleviate existing confusion and allow more time to create tools and knowledge that growers can use in a successful way and report information in a useful manner. Without these tools and knowledge being available in the public domain, smaller and less capitalized growers are at a competitive disadvantage. Granting the stay will not jeopardize the public interest. In fact, it will better protect public interest as current activities are focused more on meeting administrative compliance requirements rather than implementation of measures that can truly improve water quality.

Please feel free to contact me if you have questions or if I may provide further clarification of these points.

Thank you again for the opportunity to provide feedback.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Huntington". The signature is fluid and cursive, with a large, stylized initial "C" and "H".

Chris Huntington
CEO

Steinbeck Country Produce-Huntington Farms

Bashaw, Jeannette@Waterboards

From: erdc2tails@mac.com
Sent: Tuesday, July 10, 2012 12:13 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Martin Moore
1700 eagle tree lane
Felton, CA 95018-8714

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

Economic harm due to excessive costs for implementing Tier 2 and 3 requirements between now and December 2013. For example, an individual Sampling and Analysis Plan and Quality Assurance Project Plan for Tier 3 growers will likely cost between \$17,000 and \$28,800. An individual sampling event of five to ten locations is likely to cost between \$7,000 and \$11,000.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Martin Moore

Bashaw, Jeannette@Waterboards

From: sc.dane@gmail.com
Sent: Tuesday, July 10, 2012 12:33 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Dane Scurich
156 Thompson Rd.
Watsonville, CA 95077

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Immediate exposure to liability due to the Agricultural Order's requirement of immediate compliance with water quality standards.

The difficulty in finding appropriate consultants to help comply with the reporting requirements of the Agricultural Order.

Irreversible management practices or decisions that must be made in the near term to comply with the requirements of the Agricultural Order.

Dictation of management practices such as installing and/or maintaining backflow prevention devices; maintenance of all existing, naturally occurring, riparian vegetable cover; and maintenance of filter strips of appropriate widths.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Dane Scurich

Bashaw, Jeannette@Waterboards

From: tbsbfb@hwy246.net
Sent: Tuesday, July 10, 2012 12:43 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Teri Bontrager
Executive Director
Santa Barbara County Farm Bureau
P.O. Box 1846
Buellton, CA 93427-1846

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Thank you for considering my views.

Sincerely,

Teri Bontrager
805/688-7479
Executive Director
Santa Barbara County Farm Bureau

Bashaw, Jeannette@Waterboards

From: pete@uesugifarms.com
Sent: Tuesday, July 10, 2012 12:18 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Pete Aiello
1020 Highway 25
Gilroy, CA 95020-8074

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Thank you for considering my views.

Sincerely,

Pete Aiello

Bashaw, Jeannette@Waterboards

From: jwiley@wilburellis.com
Sent: Tuesday, July 10, 2012 12:18 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Joel Wiley
CCA/PCA
Wilbur-Ellis Company
19281 Pioneer Place
Aromas, CA 95004-9733

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Thank you for considering my views.

Sincerely,

Joel Wiley
831-726-2450
CCA/PCA
Wilbur-Ellis Company

Bashaw, Jeannette@Waterboards

From: laurie.lucich@farmcreditwest.com
Sent: Tuesday, July 10, 2012 12:13 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Laurie Lucich
175 Cow Meadow Pl.
Paso Robles, CA 93446-3947

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Thank you for considering my views.

Sincerely,

Laurie Lucich

Bashaw, Jeannette@Waterboards

From: mbsbcfb@hwy246.net
Sent: Tuesday, July 10, 2012 12:48 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Mistie Bainer
Administrative Assistant
Santa Barbara County Farm Bureau
180 Industrial Way
Buellton, CA 93427-9507

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

Economic harm due to excessive costs for implementing Tier 2 and 3 requirements between now and December 2013. For example, an individual Sampling and Analysis Plan and Quality Assurance Project Plan for Tier 3 growers will likely cost between \$17,000 and \$28,800. An individual sampling event of five to ten locations is likely to cost between \$7,000 and \$11,000.

Immediate exposure to liability due to the Agricultural Order's requirement of immediate compliance with water quality standards.

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Dictation of management practices such as installing and/or maintaining backflow prevention devices; maintenance of all existing, naturally occurring, riparian vegetable cover; and maintenance of filter strips of appropriate widths.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Mistie Bainer
Administrative Assistant
Santa Barbara County Farm Bureau

Bashaw, Jeannette@Waterboards

From: sandjekel@gmail.com
Sent: Tuesday, July 10, 2012 1:03 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Sandy Jekel
Farmer / Realtor
6880 O'Donovan Rd.
Creston, CA 93432-9743

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

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Thank you for considering my views.

Sincerely,

Sandy Jekel
Farmer / Realtor

Bashaw, Jeannette@Waterboards

From: chbunn@redshift.com
Sent: Tuesday, July 10, 2012 1:28 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Christopher Bunn
PO Box 7011
Spreckels, CA 93962-7011

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

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Thank you for considering my views.

Sincerely,

Christopher Bunn

Bashaw, Jeannette@Waterboards

From: yamanishi.farms@yahoo.com
Sent: Tuesday, July 10, 2012 2:43 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Suzanne Yamanishi
2184 San Juan Hollister Road
San Juan Bautista, CA 95045-9773

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Thank you for considering my views.

Sincerely,

Suzanne Yamanishi

Bashaw, Jeannette@Waterboards

From: jaynielittle@yahoo.com
Sent: Tuesday, July 10, 2012 2:33 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Jaynie Little
6204 Laurine Way
Sacramento, CA 95824-3813

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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Thank you for considering my views.

Sincerely,

Jaynie little

Bashaw, Jeannette@Waterboards

From: ken@ellwoodranch.com
Sent: Tuesday, July 10, 2012 2:58 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Kenneth Doty
President
Ellwood Ranch Inc.
1300 Ellwood Ranch Road
Goleta, CA 93117-1059

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

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Thank you for considering my views.

Sincerely,

Kenneth Doty
805 7053278
President
Ellwood Ranch Inc.

Bashaw, Jeannette@Waterboards

From: colby@costafarmsinc.com
Sent: Tuesday, July 10, 2012 2:58 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Colby Rubbo
36817 Foothill Road
Soledad, CA 93960-9656

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

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Thank you for considering my views.

Sincerely,

Colby Rubbo

Bashaw, Jeannette@Waterboards

From: richard@gonzalesranch.com
Sent: Tuesday, July 10, 2012 4:33 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Richard Gonzales
owner
Gonzales Ranch
7210 Vineyard Drive
Paso Robles, CA 93446-7635

July 10, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Thank you for considering my views.

Sincerely,

Richard Gonzales
8054414934
owner
Gonzales Ranch

Bashaw, Jeannette@Waterboards

From: tng2155@aol.com
Sent: Wednesday, July 11, 2012 6:48 AM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Tom Gibbons
Facility Manager
Enza Zaden
3918 Silver Leaf Drive
Santa Maria, CA 93455-3245

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Thank you for considering my views.

Sincerely,

Tom Gibbons
8317373652
Facility Manager
Enza Zaden

Bashaw, Jeannette@Waterboards

From: francis@hearneco.com
Sent: Wednesday, July 11, 2012 7:28 AM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Francis Giudici
President
L.A. Hearne Company
512 Metz Rd
King City, CA 93930-2503

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Francis Giudici
President
L.A. Hearne Company

Bashaw, Jeannette@Waterboards

From: paulnlvranch@earthlink.net
Sent: Wednesday, July 11, 2012 11:23 AM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Paul Van Leer
Manager
Las Varas Ranch
RR2 Box 234-A
Goleta, CA 93117-9798

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Thank you for considering my views.

Sincerely,

Paul Van Leer
805-968-9758
Manager
Las Varas Ranch

Bashaw, Jeannette@Waterboards

From: pwattis@wattisconstruction.com
Sent: Wednesday, July 11, 2012 11:58 AM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Paul L. Wattis, Jr.
Owner
P.W. Ranch
P.O. Box 198
Paicines, CA 95043-0198

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

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Thank you for considering my views.

Sincerely,

Paul L. Wattis, Jr.
Owner
P.W. Ranch

Bashaw, Jeannette@Waterboards

From: dougwhite2@dishmail.net
Sent: Wednesday, July 11, 2012 2:08 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Edward White
Retired
6 Mercedes Bend
Scotts Valley, CA 95066-2503

July 11, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

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Thank you for considering my views.

Sincerely,

Edward White
831 335 4097
Retired

Bashaw, Jeannette@Waterboards

From: pfb49@aol.com
Sent: Wednesday, July 11, 2012 9:58 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Nick Guriel
Owner
Coles Cattle Company
814 O'Connor Way
San Luis Obispo, CA 93405-7862

July 12, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

The 2012 Agricultural Order will negatively impact my ability to continue farming and will likely cause me irreparable harm in the near future. Of particular concern to my farming operation is:

Economic harm due to excessive costs for implementing Tier 2 and 3 requirements between now and December 2013. For example, an individual Sampling and Analysis Plan and Quality Assurance Project Plan for Tier 3 growers will likely cost between \$17,000 and \$28,800. An individual sampling event of five to ten locations is likely to cost between \$7,000 and \$11,000.

Immediate exposure to liability due to the Agricultural Order's requirement of immediate compliance with water quality standards.

The difficulty in finding appropriate consultants to help comply with the reporting requirements of the Agricultural Order.

Irreversible management practices or decisions that must be made in the near term to comply with the requirements of the Agricultural Order.

Dictation of management practices such as installing and/or maintaining backflow prevention devices; maintenance of all existing, naturally occurring, riparian vegetable cover; and maintenance of filter strips of appropriate widths.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Nick Guriel
8054319532
Owner
Coles Cattle Company

Bashaw, Jeannette@Waterboards

From: melaniehorwath@sbcglobal.net
Sent: Thursday, July 12, 2012 2:13 PM
To: Bashaw, Jeannette@Waterboards
Subject: State Board Request for Public Comments Supporting Stay of Central Coast Agricultural Order

Melanie Horwath
Office Manager
S & H Farms LLC
P.O. Box 58
Gonzales, CA 93926-0058

July 12, 2012

Charlie Hoppin & Members of the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

Dear Chairman Hoppin & Members of the Board:

I have been following the Central Coast Regional Water Quality Control Board's adoption of the 2012 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands ("Agricultural Order") and am concerned that my operation will face irreparable harm if the Agricultural Order is not stayed during the State Board's review of the petitions challenging the Agricultural Order. The costs of compliance for individual growers are disproportionate to the benefit to be gained if the stay is not granted as the requirements within the Agricultural Order do not result in water quality improvements. Further, the Regional Board is unlikely to gain any useful or beneficial information with respect to water quality during the period of a stay. Thus, if a stay is granted, neither the public nor interested persons will be harmed.

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The difficulty in finding appropriate consultants to help comply with the reporting requirements of the Agricultural Order.

The costs of compliance with this new regulation will reduce our local farmer's ability to compete in a global market. In the last decade California has lost so many small farmers because of having to deal with more and more regulation. Let's protect our ability to produce quality food, Americans should not have to rely on China or any other foreign country for our food source.

I urge the State Board to listen to growers' feedback and suggestions, including mine, and grant the requests for a stay. It is hoped that a future Agricultural Order will be designed with feasible measures, achievable objectives, and reasonable requirements in order to improve water quality.

Thank you for considering my views.

Sincerely,

Melanie A Horwath
831-675-2344
Office Manager
S & H Farms LLC