



December 2, 2009

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Stakeholder Process for Renewing the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Board Members:

This letter describes our organizations' experience with the existing Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order). In particular, we will discuss what has and what has not worked with the existing Ag Order, and how the Ag Order has served to improve water quality in the Central Coast Region. This letter will also address staff's proposed Public Input Process and Schedule.

The Environmental Defense Center (EDC) is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EDC protects and enhances the environment through education, advocacy and legal action.

Monterey Coastkeeper (MCK) protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. MCK serves Monterey and Santa Cruz counties including the northern Salinas and Pajaro river basins.

Santa Barbara Channelkeeper (SBCK) is a non-profit environmental organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through citizen action, education, field work and enforcement. Channelkeeper has nearly ten years of experience in conducting citizen water quality monitoring activities in agricultural watersheds.

EDC, SBCK and MCK all participated in the original stakeholder process which informed the existing Ag Order, and we have participated in the recent stakeholder process convened by your staff to discuss the next iteration of the Ag Order.

Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Monterey Coastkeeper
475 Washington St., Suite A
Monterey, CA 93940

Santa Barbara Channelkeeper
714 Bond Avenue
Santa Barbara, CA 93103

I. What Worked In The Existing Ag Order?

Perhaps the greatest success of the existing Ag Order has been educating the agricultural community about how agricultural operations contribute to water quality impacts.

The work done by Preservation, Inc. has also been invaluable. The Cooperative Monitoring Program has identified impairments and shown trends in water quality.

While it may be difficult to quantify actual improvements in water quality as a result of the existing Ag Order, there is evidence that better farm management practices have alleviated some agricultural impacts.

II. What Did Not Work In The Existing Ag Order?

While the existing Ag Order has demonstrated success, we believe that certain areas still need improvement.

Enforcement

A serious problem under the existing Ag Order is a lack of adequate enforcement on both enrolled and non-enrolled growers. Currently, there exists no database of growers and the actual plots they farm. Without such a database, it is impossible to enforce enrollment.

Lack of water quality standards to determine compliance – The current program requires that Best Management Practices (BMPs) be implemented on-site to minimize the quantity of and improve the quality of agricultural discharges. BMP implementation, however, varies from site to site by necessity depending on site-specific concerns. As a result, without defined water quality standards for discharges to surface and groundwater, it is impossible to determine whether or not agricultural operations are contributing to exceedences of basin plan objectives in surface water bodies.

Inadequate attention to stormwater discharges – The current program lacks standards and mechanisms pertaining to stormwater discharges. Section 40 of the existing Ag Order states that “the goal of these combined practices should be to minimize stormwater runoff for the first half-inch of rain during each storm, and to reduce runoff for the first one-and-a-half inches of rain during each storm.” The Ag Order, however, does not define the difference between the words ‘minimize’ and ‘reduce’ and describes no method to determine whether compliance is being achieved. Crops such as strawberries are especially problematic, as they are mostly covered with impervious plastic during the rainy season which increases water volumes and velocities running through furrows and ditches.

There is particularly a gap in the current program when it comes to stormwater discharges from fallow agricultural fields. BMPs are frequently not implemented when agricultural fields are not in operation. However, from a stormwater quality perspective, fallow agricultural fields present a similar risk to surface water quality as would a large construction site. The lack of specific language describing requirements for stormwater management of fallow fields is a significant gap in the existing program.

Inadequate protection of aquatic habitats -- The existing Ag Order expresses no vision for maintenance of vegetated buffer areas between farm fields and aquatic habits. With the current focus on 'food safety' there are documented cases of removal of riparian vegetation. The riparian corridor along our creeks and rivers is the ultimate vegetated buffer before runoff enters our open waters. These riparian areas offer many public benefits including improvement of water quality.

Water Quality Monitoring

Lack of individual discharge monitoring - While the Cooperative Monitoring Program (CMP) has produced useful data, a critical weakness in the existing Ag Order is a lack of individual discharge monitoring. The existing Order is directed at improving the quality and reducing the quantity of agricultural discharges, however, agricultural discharges are not regularly monitored as a part of the CMP. The ambient data produced through the CMP does allow the Regional Board and stakeholders to identify general long-term water quality trends, however it does not allow us to determine whether the current program is successfully improving water quality.

To date, the only assertions¹ based on CMP data that the current program is producing water quality benefits have been based upon a statistically significant downward trend in summer stream flows at a selection of CMP monitoring sites. This assertion, however, fails to acknowledge that seasonal fluctuations in stream flow are also directly and heavily influenced by a number of other factors such as trends in annual precipitation, pumping, and the use of water diversions. Without discharge monitoring data, it will remain impossible to attribute such changes or improvements to the existing waiver program. While the authors of this letter are confident that improvements have occurred throughout the region, the current monitoring program fails to provide information allowing us to verify and quantify those improvements.

Inadequate dissolved oxygen measurements - The CMP currently collects dissolved oxygen measurements in the middle of the day. Due to diurnal fluctuations in dissolved oxygen, measurements collected in the middle of the day do not accurately diagnose potential anoxic conditions and are actually misleading. In order for such measurements to be valid they must occur during periods when dissolved oxygen can be expected to be at a minimum, usually before dawn. Ideally, such measurements would be collected continuously throughout the day to capture the extent of diurnal fluctuation.

¹ October 23, 2009. Joint Letter to Mr. Jeffery Young from some members of the Ag Advisory Panel.

SBCK has conducted numerous studies² that demonstrate the importance of timing in dissolved oxygen monitoring (Figure 1). Since nutrient impairments are one of the major issues facing water bodies throughout our region, the monitoring program needs to collect information that will determine whether or not eutrophication from nutrient enrichment is occurring. This is a major flaw in the current monitoring program.

Lack of groundwater monitoring data – There is a widespread gap in the availability of groundwater quality data throughout the region. Groundwater is directly linked to surface water quality through surface-to-groundwater interactions and through tail water discharges. Without groundwater data, the Regional Board and stakeholders are unable to evaluate whether the current program is improving groundwater quality over time. Without groundwater quality data, it is also impossible for growers to make certain informed decisions regarding nutrient management. As the Regional Board heard at its July meeting in Watsonville, entire communities can no longer use their well water due to nutrient and chemical pollution. Groundwater contamination is a critical yet neglected issue.

Reporting

Similarly, the water quality data that is received by Central Coast Region staff is not always complete or available in a useful format. Part of this problem stems from a lack of on-farm data. The information also has not been made generally available to the public. This has affected the Ag Order's enforcement regime by precluding other organizations with expertise in agriculture, water quality and/or environmental protection from participating in the regulatory program.

Enrollment

Finally, while enrollment numbers are high, there are significant numbers of growers and operations that are not enrolled in the existing Ag Order. For the program to be ultimately successful there must be a higher rate of participation. It is far too easy for a small number of bad actors to spoil an otherwise productive regulatory program. It is inaccurate to state that any percentage of the dischargers or any percentage of the land is enrolled. The reality is that we don't really know. Without better data it is impossible to identify the gaps.

Little or no work has been done to determine what percentage of enrolled farms have completed their educational requirements and/or are implementing good practices. Submission of the farm plan is not required, only an annual checklist is submitted.

Major crops, such as strawberries, are apparently regulated contrary to the existing Ag Order. Apparently the coolers enroll, and neither the property owner nor

² <http://www.stream-team.org/venturaalgae.html>.

grower are required to enroll or participate. We have no idea if the cooler exercises any control over beneficial water quality control practices on the ground.

III. Public Input Process and Schedule

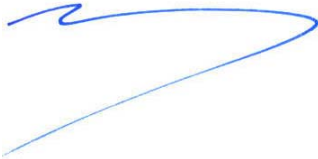
We support the schedule that has been proposed by staff and attached to your Board Letter as Attachment 3. We are, however, concerned that the California Environmental Quality Act (CEQA) process may take longer than suggested. Environmental review under CEQA is an important and necessary component of your decision-making process and should inform the new Ag Order. It is important that the process not be drawn out too long. We initially expected a new Ag Order to be promulgated in July of this year, and the Board should not wait too much longer to address the above concerns that we have raised about the existing Ag Order. We do support a thorough and open process that allows time between iterations of the new order. We would prefer to see fewer iterations with more time given to review each new version.

Conclusion

We appreciate this opportunity to participate in the Ag Order renewal process, and we have appreciated being part of the (now defunct) advisory panel. The Central Coast Region and its agriculturalist constituents should be proud of the work that has been done on and under the existing Ag Order so far. There is certainly room for improvement, and we are confident that our concerns will be addressed in the new Ag Order being prepared by your staff.

If you have any questions, please do not hesitate to contact any of our organizations.

Sincerely,



Nathan G. Alley
Staff Attorney, Environmental Defense Center



Ben Pitterle
Santa Barbara Channelkeeper

Regional Water Quality Control Board, Central Coast Region

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Page 6 of 7

A handwritten signature in blue ink, appearing to read 'S. Shimek', written in a cursive style.

Steve Shimek

Executive Director, Monterey Coastkeeper

Figure 1. Ventura River diel dissolved oxygen and pH measurements collected from April through September of 2008. Note differences in dissolved oxygen concentration of up to 11 mg/L between pre-dawn and afternoon measurements from anoxic (< 5mg/L) to super-saturated conditions.

