



San Luis Obispo COASTKEEPER®

March 11, 2011

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

RE: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Board Members:

The Environmental Defense Center (EDC), Environmental Justice Coalition for Water (EJCW), Monterey Coastkeeper (MCK), Santa Barbara Channelkeeper (SBCK) and San Luis Obispo Coastkeeper (SLOCK) offer these comments for your March 17, 2011, hearing in Watsonville regarding the Central Coast Region Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2011-0006 ("Conditional Waiver" or "Draft Order"). In general, we support a conditional waiver program that contains robust regulatory provisions to ensure that our waters are protected from agricultural discharges and which ensures that agriculture remains sustainable and productive.

Our organizations continue to support adoption of the February 2010 Draft Order, as it is most protective of water quality and adequate to fulfill your statutory duties. Certain aspects of the November 2010 Draft Order are useful; for example, the provisions about discharge from bait traps; the presence of bare soil; reporting of total nitrogen applied, reporting of nitrate balancing; and the achievement nitrogen balance ratios. Draft Order R3-2011-0006 does not compare favorably to the February and November 2010 Drafts; however, our organizations conditionally support adoption of Order R3-2011-0006, contingent on several additions and revisions as described below.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EJCW works to empower community members to become strong voices for water justice in their communities, and to build a collective, community-based movement for democratic water management and allocation in California. MCK serves Monterey and Santa Cruz Counties as a program of the Otter Project, and protects the water, watersheds and coastal ocean for the benefit of wildlife and human populations alike. SBCK is a non-profit environmental

organization dedicated to protecting and restoring the Santa Barbara Channel and its watersheds through science-based advocacy, education, field work and enforcement. SLOCK, a program of Environment in the Public Interest, is dedicated to the protection of water quality, watershed and coastal regulations in San Luis Obispo and northern Santa Barbara Counties.

Please note that our prior comments on the February and November 2010 Draft Orders are incorporated herein by reference.

Tiering

The November 2010 Draft Order and Order R3-2011-0006 rely on a tiering structure based upon proximity to polluted waters and loading risk, including crop type and size of operation. “Tier 3” operations represent the highest risk to water quality. We are generally supportive of the tiered structure (with revisions outlined below), but we continue to be concerned by the inadequate scale of Tier 3; it is essential that the acreage regulated in Tier 3 be expansive enough to address the serious surface and groundwater pollution issues on the Central Coast. For example, operators might split acreage between family members to avoid the 1,000-acre trigger for Tier 3 classification.¹

According to Table 5, on page 23 of the staff report, Tier 3 is expected to include 54 percent of the acreage and 13 percent of the operations enrolled in the Conditional Waiver. This is an appropriate target and is critical to maintain effective regulation. It is essential that a large proportion of the highly impaired waters be included in Tier 3. To ensure that the Conditional Waiver operates effectively, the following language should be added to Order R3-2011-0006:

This order shall be scaled to adequately regulate discharges to impaired surface water and to groundwater. After this order has been effective for one year, the tiering structure shall be modified as appropriate to capture at least 10 percent of the total operations or 40 percent of the total acreage enrolled in Tier 3. The tiering structure shall be re-evaluated at least every two years to ensure that at least 10 percent of the total operations or 40 percent of the total acreage enrolled in the conditional waiver are in Tier 3.

Order R3-2011-0006 adds proximity to public water supply wells contaminated with nitrates (or other nitrogen) into the tiering structure. Operations greater than 1,000 acres and within 1,000 feet of a public water supply well are included in Tier 2. The staff report describes Tier 2 as approximately the same level of regulation as Order R3-2004-0117: “Tier 2 requirements are comparable to the 2004 Conditional Waiver, with a few additional reporting requirements to better indicate effectiveness of management practices and reduction in pollutant loading.”

¹ Please note that we do *not* assume that 1,000 acres is an adequate threshold for determining which operations fall into Tier 3.

In addition, as noted by the quotation and by careful reading of Order R3-2011-0006, Tiers 1 and 2 require dischargers to report information but to actually *do* very little. Tier 2 asks that operators sample groundwater, report groundwater sampling results, self calculate and report Nitrate Loading Risk Level, and report total nitrogen applied. It is not until Tier 3 that operators are required to actually achieve Nitrogen Balance Ratios and “achieve annual reduction(s) in nitrogen loading to groundwater.” Nitrate pollution of our groundwater is the most serious public health issue controlled by your Board. To delay *doing* anything about it is inappropriate and unacceptable, and it is not protective of public health. Order R3-2011-0006 should be revised to include all operations with high nitrate loading potential and within 1,000 feet of a public water system above nitrate MCL in Tier 3.

Toxicity

First, we are concerned by the requirement that dischargers must “effectively control” waste discharges, as provided throughout Order R3-2011-0006 and especially in Part H, Time Schedule, Sections 84 to 87. “Effectively control” must be defined specifically. In addition, Order R3-2011-0006 should be revised to state:

By October 1, 2013, Tier 3 dischargers must effectively eliminate individual waste discharges of pesticides and toxic substances to waters of the State and of the United States.

Second, we share the concerns expressed by your Board at the February 2011 meeting, that if a discharger switches from using Diazinon or chlorpyrifos to some other pesticide(s) – which may be as or even more toxic than Diazinon or chlorpyrifos – the discharger would no longer be in Tier 3, even though the discharger’s operations could pose a comparable risk to water quality. The focus on two specific pesticides is perplexing, considering that staff has already concluded based on studies that additional contaminants such as pyrethroid pesticides, metals, and phenolic compounds are a significant source of toxicity throughout agricultural areas of the Central Coast Region (Attachment A; Sections 78, 79, 80, and 81).

Even though the Department of Pesticide Regulation controls the use of specific pesticides, it is within your Board’s regulatory scope to eliminate “toxicity.” The February 2010 Draft Order appropriately included a long list of substances known to cause toxicity in sediment or water and did not focus tiering around just two chemicals. Order R3-2011-0006 should be revised to match this section of the February 2010 Draft Order.

Vegetated Buffers

Order R3-2011-0006 does not include prescriptive 30-foot buffers, but rather a reference to the Basin Plan which refers to a 30-foot buffer for construction. Your Board must consider how far we have stepped back from the February 2010 Draft Order, which included 100, 75 and 50-foot buffers (50-foot buffers required for streams that are not

impaired). The November 2010 Draft Order specified a 30-foot buffer for impaired waters and no buffer along unimpaired waters. Now, Order R3-2011-0006 contains nothing more than a vague reference to buffers for impaired waterways. This language is unacceptable, and we suggest the following revision:

A vegetated buffer strip of at least 30 feet shall be maintained along all Tier 2 and 3 streams based on the National Hydrography Dataset Plus (NHDPlus,) and a vegetated buffer strip of at least 50 feet shall be maintained along lakes, wetlands, estuaries, and other natural bodies of standing water.

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 R3-2011-0006 represents an opportunity for your Board to take an active leadership role in fixing the problems on our Central Coast and making sure that we all have water for drinking, for agriculture and for habitat, for the long and foreseeable future.

We appreciate this opportunity to comment. If you have any questions about our recommendations, please do not hesitate to contact any of our organizations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan G. Alley". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nathan G. Alley
Staff Attorney
Environmental Defense Center

March 11, 2011

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Dipti Bhatnagar
Northern California Program Director
Environmental Justice Coalition for Water



Steve Shimek
Executive Director
Monterey Coastkeeper



Kira Redmond
Executive Director
Santa Barbara Channelkeeper



Gordon Hensley
Executive Director
San Luis Obispo Coastkeeper