

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

SUPPLEMENTAL SHEET FOR REGULAR MEETING OF MAY 12-13, 2010

Prepared May 5, 2010

ITEM NUMBER: 3

SUBJECT: Public Comments Update for Preliminary Draft Staff Recommendations for an Updated Agricultural Order

This Supplemental Sheet for Item 3 provides an update on public comments and alternatives received regarding the preliminary draft staff recommendations for an updated Agricultural Order. As described in the staff report, on February 1, 2010, staff released preliminary draft staff recommendations for an updated Agricultural Order and the Water Board provided a 60-day public comment period for interested persons to comment on the recommendations and propose alternatives for regulating agricultural discharges. As of May 4, 2010, the Water Board received 1234 comment letters. This includes 202 unique, individual letters and approximately 1032 submittals of six standardized form letters. The form letters are described in more detail below.

Due to the large volume of comment letters received, staff has produced an index to all comment letters received as of May 4, 2010 (Attachment 1 to this Supplemental Sheet) and posted all unique, individual comment letters on the Water Board's Internet site. In addition, copies of the form letters and a description of the number of copies received, as well as copies of form letters that included unique notations were posted on the Water Board's Internet site. Comment letters are posted in groups and postings will continue as additional comment letters are received and processed. To conserve resources, staff will not produce hard copies of the approximately 1234 comment letters (which would result in more than 3000 pages of paper).

The index to the comment letters and copies of all comment letters received are available to Board Members and the public at the Water Board's Internet site:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

PUBLIC COMMENTS AND ALTERNATIVES

Alternatives for Regulating Agricultural Discharges

In response to the February 1, 2010 release of the preliminary draft staff recommendations for an updated Agricultural Order, staff initially identified two alternatives for regulating agricultural discharges, one submitted by the California Farm Bureau Federation and the other by OSR Enterprises, Inc. These two alternatives are described in the staff report. Since staff drafted the staff report, the combined commenter group of environmental organizations (Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, and Surfrider Foundation Santa Barbara Chapter) has indicated that their comment letter

submitted on April 1, 2010 should be reviewed by staff as an alternative for regulating agricultural discharges. This alternative is identified as Alternative #3 and is included as Attachment 2 of the Supplemental Sheet.

Alternative 3. Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, and Surfrider Foundation - Santa Barbara Chapter (dated April 1, 2010)

Staff conducted a preliminary review of Alternative #3 based on the criteria described in the staff report, including consistency with: 1) the program goals of resolving surface and groundwater water quality impairments and impacts to aquatic habitat over a reasonable time frame, and including milestones, and monitoring and reporting to verify compliance and measure progress over time; and 2) minimum statutory requirements. This alternative proposes to implement all components of the preliminary draft Agricultural Order and recommends additional requirements.

Expanding upon the preliminary draft Agricultural Order, Alternative #3 includes specific requirements to resolve surface and groundwater water quality impairments and impacts to aquatic habitat over a specific time frame. The alternative includes milestones, monitoring and reporting to verify compliance and measure progress over time, and meets minimum statutory requirements. Although staff has not completed a detailed evaluation of the Alternative #3, some of the additional requirements proposed include:

- Improve and clarify definitions;
- Use consistent language throughout the Agricultural Order;
- Ensure “public disclosure” of information;
- Shorten compliance dates (e.g. toxicity);
- Prohibit the discharge of toxic substances, in accordance with law;
- Amend definition of low-risk discharge criteria to include stormwater protections;
- Develop a stream-flow weighted discharge objective;
- Require collection of pre-dawn dissolved oxygen measurements;

Central Coast Water Board staff support working with environmental organizations to identify workable requirements that resolve pollution and protect beneficial uses, and will use concepts contained in Alternative #3 to inform revisions to the preliminary draft Agricultural Order.

Public Comments

Table 3 of the staff report presented a preliminary summary of key public comment areas. Further review of the 1234 comment letters received supports these key public comment areas. Staff will continue to review all letters and use suggestions, comments, and concerns to inform revisions to the preliminary draft Agricultural Order.

As discussed above, 1032 comment letters were versions of six standardized form letters. Since the Water Board did not post all 1032 comment letters reflecting standardized form letters, the content related to the six standardized form letters is described below and copies of the form letters are included in Group 11 of comment letters posted on the Water Board's Internet site.

Form Letter #1 - This standardized form letter was submitted by **62 individuals**. Three of the 62 letters included additional, unique comments.

Form letter #1 expressed concern with the process, requirements, and feasibility of the preliminary draft Agricultural Order. The letter stated that staff has abandoned cooperative efforts with agriculture to develop an Agricultural Order and that there have been improvements in water quality that are not acknowledged in the Order. The letter also stated that the preliminary draft Agricultural Order requires water quality standards that cannot be feasibly met in the timeframes described. The letter also expressed concerns regarding feasibility of implementation, expansion of the Farm Plan, and public access to proposed monitoring and reporting data and information. The individuals request that the Water Board work with the agricultural community and the agricultural community's proposed alternative.

Form Letter #2 - This standardized form letter was submitted by **471 individuals** (183 letters were submitted in English and 288 were submitted in Spanish). Nine of the 471 letters included additional, unique comments.

Form letter #2 expressed support for the Water Board's preliminary draft recommendations for an updated Agricultural Order. Specifically, the individuals expressed concerns regarding drinking water polluted with nitrates and the impacts to public health. The letter strongly urges the Water Board to require Dischargers to sample domestic drinking water wells and provide alternative water supplies or replacement water to affected public water suppliers or private well owners. The letter specifically urges the Board to regulate agricultural discharges so they do not contaminate drinking water and also states that agriculture should pay for the costs of contamination.

Form Letter #3 - This standardized form letter was submitted by **426 individuals** and some letters contained additional, unique comments.

Form letter #3 expressed support for the Water Board's preliminary draft recommendations for an updated agricultural Order and stated that the Water Board has the legal responsibility to protect the integrity of water and rivers. The letter also stated that agriculture should not be treated different than any other industry or private citizens. The letter supported staff's recommendation to protect surface water, groundwater, and ocean waters from polluted runoff. The letter stated that every grower should be required to monitor and know what is in the runoff leaving their farm and that growers should not be allowed to discharge water off their property or into groundwater that is toxic to aquatic life. The letter stated that commercial agriculture has become a science and farmers should use only the amount of fertilizer needed to grow their crop; and that excess fertilizer cannot be allowed to pollute groundwater or rivers such that treatment costs are unjustly passed on to municipal drinking water users. The letter also stated that farmers should be required to protect riparian vegetation and should maintain a vegetated buffer between their crops and any waterways.

Form Letter #4 - This standardized form letter was submitted by **7 individuals**.

Form letter #4 was submitted by tenants of Acquistapace Farms and expressed concern with the preliminary draft Agricultural Order. The letter states that the recommendations related to

record keeping, buffers for pesticide applications, leaching of salts, elimination of tile and tail water, excessive monitoring, riparian vegetation, and groundwater will cause undue physical and financial hardships to farmers. This letter supports proposals made by the California Farm Bureau and the Santa Barbara and San Luis Obispo Counties Grower Shipper Association.

Form Letter #5 - This standardized form letter was submitted by **32 individuals**. Seven of the 32 letters included additional, unique comments.

Form letter #5 expressed concern with process, requirements, and feasibility of the preliminary draft Agricultural Order. There is concern that the preliminary draft Agricultural Order contains undefined and potentially highly impractical requirements and will have a negative impact on the agriculture. This letter urges the Board to listen to the growers' feedback and suggestions and develop an Agricultural Order that is designed with achievable objectives, and include a transparent and collaborative process that utilizes agricultural stakeholders.

Form Letter #6 - This standardized form letter was submitted by **34 individuals**. Fourteen of the 34 letters included additional, unique comments.

Form letter #6 expressed concern with process, requirements, and feasibility of the Order. This letter questioned if the Water Board was aware of potential economic and social impacts that may result from the preliminary draft Agricultural Order and also questions the Water Board's understanding of other existing water quality and potential sources of pollution that may impact water quality. The letter asks that staff be directed to examine, study, and publish an analysis that incorporates historical information related to background levels and impacts from industries, land uses, mining, military facilities, dump sites, golf courses, urban areas, stormwater discharge, wastewater discharge, spills, and other natural conditions. The letter expressed concern that implementation of the preliminary draft Agricultural Order may result in the conversion of prime farm ground to other non-agriculture uses. The letter expressed concern that implementation of the preliminary draft Agricultural Order may reduce water downstream and impact habitat. This letter states that food safety issues must be respected in any rule making effort. This letter requests that the Water Board endorse the agricultural alternative proposal and reconvene the Agricultural Advisory Committee.

ATTACHMENTS

1. Index of all comment letters received as of May 5, 2010
2. Alternative submitted by the Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, and Surfrider Foundation - Santa Barbara Chapter