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6 Ocean Mist Farms and RC Farms



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9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

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11 OCEAN MIST FARMS AND RC FARMS
12 vs.
13 CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
14 CENTRAL COAST REGION

SWRCB/OCC File No.: A-2209(c)

DECLARATION OF DALE HUSS IN
SUPPORT OF STAY

LAW OFFICES OF
BEST BEST & KRIEGER LLP
500 CAPITOL MALL, SUITE 1700
SACRAMENTO, CALIFORNIA 95814

1 7. The farm plans require each farm to identify each discharge location for not just
2 irrigation return flow, but also storm water, and to calculate the volume of such discharge. This is
3 a non-point source program, which by its very nature is often characterized by many discharge
4 points for irrigation runoff, and storm water runoffs, which may be sheetflow. Identification of
5 all such discharge locations is impossible. As such, Ocean Mist cannot possibly measure the
6 volume of storm water runoff. As a point of clarification, Ocean Mist Farms does not have
7 irrigation runoff because of our transition to drip and sprinkler irrigation systems.

8 8. The Order also requires the reporting of volume and timing of fertilization, which
9 are closely guarded proprietary information and are critically important to Ocean Mist's
10 competitiveness edge against other farms. While this information maybe helpful to the Regional
11 Board, there needs to be a better way to get the information without divulging this specific
12 information to the general public or Ocean Mist's competitors. The economic cost of losing this
13 competitive edge is incalculable.

14 9. Further, the Order compels Ocean Mist to include separate components in the farm
15 plans, including: (1) irrigation management, (2) pesticide management, (3) fertilizer management,
16 (4) salinity management, (5) sediment management, (6) storm water management, and (7) aquatic
17 habitat management. Ocean Mist had objected to some of these on several grounds, including
18 uncertainty, lack of lead time and concerns with respect to nitrate calculations (addressed further
19 below). Ocean Mist is expecting the State Board to address some or all of these points on appeal.
20 It is improper to compel Ocean Mist to write all these components in each of the farm plans
21 within four weeks and prior to the State Board making a determination on the Order. To require
22 implementation now would render the appeal process pointless. A stay is necessary to protect
23 Ocean Mist's right to appeal the Order, which contains numerous unprecedented, cumbersome
24 and unnecessary provisions.

25 10. Lastly, Paragraph 44 of the Order requires Ocean Mist to identify all of its tile
26 drains and implement management relative to these drains. Ocean Mist has addressed this in
27 detail in its Petition for Review, and the Regional Board staff had expressly indicated that they
28

1 would not make such requirements. The operation of and use of tile drains is vital to Ocean
2 Mist's operations.

3 **Annual Compliance Form Reporting**

4 11. Ocean Mist has farms that, per the Order, are likely to be classified as Tier 2 or
5 Tier 3 farms because Ocean Mist grows vegetables, which requires the use of nitrate fertilization.
6 Therefore, paragraph 67 and other similar provisions require by October 1, 2012, Ocean Mist to
7 "determine nitrate loading" and report our "risk" per such calculations. This has been a major
8 point of controversy and confusion as to how such calculations will be made. Ocean Mist has
9 addressed its lack of confidence in this formula in its Petition for Review, and has every
10 expectation that this will be modified during the appeal.

11 12. Because this provision compels these calculations within the next four weeks, we
12 have been in discussions with consultants, none of whom understand how to implement these
13 requirements, and are unwilling to stand behind these calculations or recommendations.

14 **Individual Surface Water Discharge Monitoring and Reporting Requirements**

15 13. Provisions 72 and 73 of the Order and Part 5 of the Tier 3 MRP require Ocean
16 Farm, which has farms likely to be classified as Tier 3, (1) to submit individual surface water
17 discharge Sampling and Analysis Plan and Quality Assurance Project Plan by March 15, 2013,
18 (2) to initiate individual surface water discharge monitoring by October 1, 2013, unless an
19 alternative is approved by the Regional Board's Executive Officer, and (3) to submit individual
20 surface water discharge monitoring data to the Regional Board by March 15, 2014 and annually
21 thereafter by October 1st, unless an alternative is approved by the Regional Board's Executive
22 Officer. As discussed in further details in the various petitions for review, the Regional Board
23 exceeded its authority under Water Code section 13267 by requiring these unnecessary and
24 unprecedented regulations. Moreover, these requirements do not exist under the 2004 Ag Waiver
25 and therefore their impacts and effects could not have been analyzed or considered under the
26 2004 Agricultural Order's Negative Declaration.

27 14. To comply with these regulations, which are unlikely to be upheld, Ocean Mist
28 must immediately retain experts and consultants to develop a Sampling and Analysis Plan and

1 Quality Assurance Project Plan for each of its Tier 3 farms to ensure compliance by March 15,
2 2013 – less than six months from now. Ocean Mist will also have to hire on an ongoing basis and
3 train its employees on how to implement the required plans and gather data and samples from
4 irrigation run-off, tailwater discharges, tile drain discharges, tailwater points and storm water
5 discharges. Further costs will be incurred as the samples will be submitted for testing and
6 analysis. We are presently making these management decisions, which involve this next crop
7 year.

8 15. As discussed above, identifying all of these discharge points are impossible, as this
9 is a non-point source program. To require implementation may also subject Ocean Mist to
10 potential civil liabilities and fines for failure to comply with requirements that are extremely
11 difficult, if not impossible, to implement. A stay is necessary to prevent Ocean Mist and similarly
12 situated farms from being subjected to these unnecessary, unlawful, and extremely difficult to
13 implement regulations.

14 16. A major concern of Ocean Mist has to do with the staff's desire to depart from
15 regional monitoring and compel each farmer to individually monitor its many discharges at the
16 field edge. Such individual monitoring will be exceedingly costly, burdensome, and a total
17 departure from representative monitoring. This is an attempt to regulate non-point source
18 discharges as industrial point sources, which is clearly improper.

19 **Nitrate Calculations and Other Concerns**

20 17. With respect to nitrate use on Ocean Mist's Tier 3 vegetable farms, Ocean Mist is
21 required by the Order to balance its nitrogen use by restricting its nitrogen used to a ratio of 1:1.
22 In other words, a farmer would only be allowed to apply the amount of nitrogen that the Regional
23 Board's staff believes is needed by that particular vegetable crop. This is agronomically
24 impossible, as no crop is 100% efficient, and all nitrate is not available to the crop. Moreover, it
25 is improper for the Regional Board to specifically restrict the inputs on a farm or in a factory.

26 18. Ocean Mist advanced their appeal on those arguments and anticipate the State
27 Board will reverse or significantly amend the entire section on nitrate. Consequently, these
28 sections must be stayed to avoid irrecoverable costs and harm to farmers.

1 **Cost Impacts**

2 19. As discussed in my previous declaration, Ocean Mist will incur substantial costs,
3 estimated to be between \$50.00 and \$100.00 per acre, during the period of time that the Order is
4 subject to review by the State Board. Ocean Mist in-house growers have approximately 8,000
5 acres of farmland. If the State Board does not grant the stay, Ocean Mist estimates that the total
6 cost of complying with the regulations required by October 2013 to be between \$400,000.00 and
7 \$800,000.00. None of these costs are recoverable, if the State Board later vacated the Order. To
8 require immediate compliance would render Ocean Mist's Petition to Review pointless and
9 deprive Ocean Mist of its right to appeal the Order.

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

12 Executed this 24th day of August, 2012, at Castroville, California.

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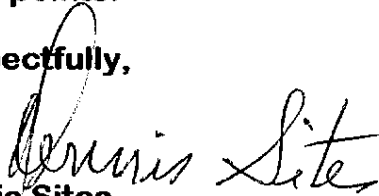
Comment Letter—Central Coast Agricultural Order Stay Hearing

State Water Board:

Unfortunately, I have a previous engagement and will be out of the state on August 30, 2012. I regret that I will be unable to attend. I appreciate the fact that the WQCB is taking the time for this hearing. I stand by my written comments previously submitted. The only thing that could be added is the requirements for reporting have changed since my original submittal. The template for photo monitoring has been posted, and the compliance forms have not been posted by the RWQCB, which further complicates getting a grasp on the total cost.

Bill Thomas represents RC Farms and I am sure he will be able to illustrate these points.

Respectfully,

A handwritten signature in cursive script that reads "Dennis Sites". The signature is written in black ink and is positioned above the printed name.

Dennis Sites

Consultant, RC Farms