



September 14, 2012

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, California 95814-0100

RE: Comments to SWRCB/OCC File A-2209(a)-(e) – September 19, 2012 Board Meeting

The Environmental Defense Center (EDC) submits these comments regarding the Draft Order On Requests For A Stay (Draft Stay Order) to be considered at the State Water Resources Control Board's September 19, 2012, meeting.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting the Central Coast. As outlined in our previous written submittals and in our testimony at your August 30, 2012, hearing, EDC urges your Board *not* to stay any provision of the Central Coast Regional Water Quality Control Board's March 2012 Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0011 for Discharges from Irrigated Lands, and associated Monitoring and Reporting Programs Order Nos. R3-2012-0012 (collectively referred to herein as the Agricultural Order).

We address each provision which your Board intends to stay below.

Installation of backflow prevention devices (Provision 31)

It is inappropriate to stay Provision 31 for any amount of time; a stay cannot be reconciled with the (accurate) statement found on page 11 of the Draft Stay Order:

Given the clear harm to the environment and to the public interest of having fertilizers and other chemicals flow back to a groundwater well or to surface water, [the Board finds] that the Agricultural Petitioners cannot show lack of substantial harm

The Agricultural Order was adopted six months ago, and dischargers have had ample time and opportunity to consult with the Central Coast Water Board and achieve installation of cost-effective backflow prevention devices. In fact, the Central Coast Water Board's

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February 2010 Draft Agricultural Order (and each of the four subsequent draft iterations of the Agricultural Order) required installation of backflow prevention devices; Provision 73 of the February 2010 Draft (page 68) states:

Dischargers that fertigate, chemigate, or apply any chemicals through the irrigation system connected to a groundwater well, must install and properly maintain backflow prevention device(s) to prevent the discharge of waste to groundwater, consistent with any applicable Department of Pesticide (DPR) requirements and local ordinances.

Dischargers have had *more than two-and-a-half years* to seek additional clarification of these requirements. Instead, dischargers have spent their time spreading misinformation and pursuing frivolous legal challenges; your Board should not reward such unreasonable behavior. We urge you adhere to the Board's responsibilities under state law and to *not* stay Provision 31 of the Agricultural Order.

Management, construction, and maintenance of containment structures to avoid percolation of waste to groundwater (Provision 33)

We agree with Monterey Coastkeeper, Santa Barbara Channelkeeper and San Luis Obispo Coastkeeper (Environmental Petitioners), that the public cost of staying Provision 33 far outweighs the speculative costs associated with containing contaminated runoff.

Reporting of practice effectiveness and compliance (Provision 44.g)

As noted in your Draft Stay Order, “practice effectiveness and compliance determination is an essential component of improving water quality [and] it significantly advances the interest of the environment and public.”

The original Agricultural Order required preparation of a Farm Plan. Provision 34 of the 2004 Agricultural Order (which dischargers were expected to comply with for the past *eight years*) states that the program “must verify the adequacy and effectiveness of the waiver’s conditions.” Thus, the requirement to report practice effectiveness and compliance *is not new* and should not be stayed. Delayed implementation of Provision 44.g may render the entire Agricultural Order itself ineffective and therefore unable to meet the requirements for a waiver under state law.

Determination of nitrate loading risk factors and typical crop nitrogen uptake (Provision 68, MRPs Tiers 2-3, Part 2, Section C)

Your Board may be authorized to exercise its own discretion and stay various provisions of the Agricultural Order, but it is highly inappropriate to do so in this case. As we have stressed repeatedly, the Agricultural Petitioners have had *years* to craft the arguments relative to their stay requests. If, after all of that time and effort, the Agricultural Petitioners are *still* unable to carry the burden of proof required by California Code of

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Regulations, title 23, section 2053, subdivision (a), it is a clear indication that the Agricultural Order is sound both legally and practically.

As stated in the Staff Report for March 14-15, 2012, on page 7-8 (and as we have noted before):

The [2012 Order] prioritizes conditions to control nitrate loading to groundwater and impacts to public drinking water systems (Finding #6). Extensive studies and empirical data verify that fertilizer from irrigated agriculture is the overwhelming source of nitrate pollution in groundwater in intensively farmed areas such as the lower Salinas Valley and lower Santa Maria Valley. According to the most recent data from California Department of Public Health in the Water Board's GeoTracker database, as of the date of this staff report, approximately 273 public supply wells (serving hundreds of thousands of people) exceed the state drinking water standard and must be treated before it can be provided to the consumer. In parts of the Salinas groundwater basin, more than 33% of the public supply wells used for drinking water exceed the drinking water standard and require treatment. In the Santa Maria groundwater basin, more than 29% of public supply wells used for drinking water exceed the drinking water standard and require treatment. Municipalities and water purveyors in many areas must treat drinking water to remove nitrates before providing the water to customers. 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.

“Addressing Nitrate in California’s Drinking Water,” by Thomas Harter and Jay R. Lund, *available at* <http://groundwater.nitrate.ucdavis.edu/>, states on page 2 that “inconsistency and inaccessibility of data prevent effective and continuous assessment.” Nonetheless, the report concludes that “nitrate loading reductions are possible, some at modest cost.” *Id.* Cleaning up historic and ongoing nitrogen exceedences on the Central Coast will take time and a concerted effort on behalf of all dischargers. As noted above, nitrogen contamination is one of the most pressing water quality issues in our region, and we must take action *now* to begin remedying it.

Photo monitoring of streams and riparian and wetland habitat (Provisions 69, 80(a) as Incorporated into 69; Tiers 2 and 3 MRPs; Part 4)

We urge your Board *not* to stay provisions related to photo monitoring. By extending the compliance deadline for this requirement, you run the risk of incentivizing dischargers to remove riparian and wetland habitat in the interim. Early and/or immediate implementation of this provision is critical if the Agricultural Order’s objectives are to be achieved.

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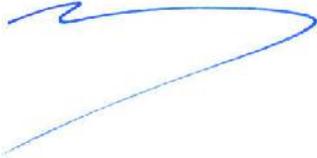
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Conclusion

The Agricultural Petitioners' attempt to delay implementation of the 2012 Agricultural Order threatens human health and our environment, and we urge you to deny Petitioners requests for a stay.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan G. Alley". The signature is fluid and cursive, starting with a small loop and ending with a long, sweeping tail that curves back towards the left.

Nathan G. Alley
Staff Attorney