

September 3, 2013

VIA ELECTRONIC MAIL ONLY

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

SUBJECT: Comments to A-2209(a)-(e) – September 10, 2013, Board Meeting

Dear Ms. Townsend:

Somach Simmons & Dunn represents Petitioners Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers (collectively hereafter, Grower-Shipper). We have received the State Water Resources Control Board's (State Water Board) revised proposed order in response to the various petitions filed with respect to the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) adoption of *Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0011 for Discharges from Irrigated Lands (Conditional Waiver)*, and *Monitoring and Reporting Program Order Nos. R3-2012-0011-01, R3-2012-0011-02 and R3-2012-0011-03*.¹ On behalf of Grower-Shipper, we provide comments on the proposed revised order (Revised Order) here. Also attached is a PowerPoint presentation that Grower-Shipper intends to present at the September 10, 2013 workshop.

I. Central Coast Regulation of Irrigated Agriculture Should Allow Coalitions to Be the First Point of Contact

As a preliminary matter, Grower-Shipper continues to support certain portions of the Revised Order that support the vital role third parties play in assisting regional water boards in their implementation of water quality regulatory programs for agriculture. As recognized in the Revised Order, third parties have the expertise to provide technical assistance and training to growers "at a scale that cannot be matched by regional water board staff resources, and, in many cases, third parties already have relationships in place with the dischargers." (Revised

¹ To provide consistency with the terms as referenced in the proposed order, we will refer to the Monitoring and Reporting Program Orders individually as "Tier 1 MRP," "Tier 2 MRP," and "Tier 3 MRP."

Ms. Jeanine Townsend

Re: Comments to Revised A-2209(a)-(e) – September 10 Board Workshop

September 3, 2013

Page 2

Order, p. 13.) Grower-Shipper also appreciates the Revised Order's references and discussion with respect to the third party surface receiving water approach approved by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) for growers in the Eastern San Joaquin Watershed. (Revised Order, p. 36.) Grower-Shipper sees the Eastern San Joaquin Watershed approach, and its other third party provisions, as a model for a third party alternative for Central Coast growers.

Accordingly, Grower-Shipper requests that the State Water Board direct the Central Coast Water Board to work with the agricultural community to develop a long-term program that better incorporates a third party approach for addressing discharges from irrigated agriculture. The third party approach that Grower-Shipper would like to implement is one that would be similar to those being implemented in the Central Valley. Grower-Shipper believes that the individual monitoring, reporting, and effectiveness evaluations contained in the Central Coast Conditional Waiver are likely to not be as effective for improving water quality as a third party approach like the one developed in the Central Valley. For example, with the Central Valley program, third parties are able to compile watershed and/or representative monitoring information and where there is an exceedance of a water quality standard, the third party works directly with growers to evaluate management practices and alter such practices as necessary. This program is effective because the third parties take the data and information, analyze it, conduct individual grower surveys of practices, and meet directly with growers as necessary. The Central Valley approach also allows for the third parties and the Central Valley Water Board to prioritize such efforts to areas where there are identified water quality issues of concern, which allows for a more effective use of limited resources.

In comparison, under the Central Coast approach, growers (primarily Tier 2 and Tier 3 growers) must individually report specified information to the Central Coast Water Board annually. The information must be provided through the electronic Annual Compliance Form. Any analysis of the information is dependent on staff resources. And any grower follow-up is also dependent on staff resources. Further, the Central Coast program is based on risk to water quality depending on the type of farming operation versus prioritizing and focusing on areas of where there are known water quality issues of concern. The Central Coast approach is somewhat of a scattershot in that it may or may not address known water quality issues of concern.

Moreover, and as discussed in more detail immediately below, the Central Valley Water Board's approach to nitrogen management planning and summary reporting appears to be far more effective than that contained in the Conditional Waiver and as proposed for modification by the Revised Order. Under the Conditional Waiver (and as modified by the Revised Order), the Central Coast Water Board will receive from Tier 2 and Tier 3 growers total nitrogen applied in pounds per acre (lbs/acre) per crop for each field or management block. Any useful analysis of this information will be dependent on staff time and resources. Under the Central Valley Water Board approach, all growers must have a nitrogen

management plan. The nitrogen management plan remains on the farm. Then, for those growers in areas where there are identified groundwater concerns (termed, “high vulnerability areas”), they must provide annual nitrogen summary reports that include specified information to the third party. The third party is then responsible for and required to summarize and analyze the information on a crop-type/township basis. Through this analysis, the third party is then able to identify outliers with respect to nitrogen application. The outliers then become the priority individuals that the third party targets its education and outreach efforts towards. The analysis is done annually and reported to the Central Valley Water Board. Grower-Shipper believes that this approach is likely to be more effective at working directly with growers rather than the approach taken in the Conditional Waiver, which is further modified by the Revised Order.

In sum, and as stated previously, Grower-Shipper believes it appropriate for the State Water Board to direct the Central Coast Water Board to develop a long-term program that includes a third party approach for monitoring and reporting that is similar to the Central Valley Water Board’s approach.

II. Total Nitrogen Applied, Provision 70 and Part 2, Section C.5 of Tier 2 and Tier 3 MRPs

Grower-Shipper understands that the issue of nitrogen application and reporting is one of great concern to the State Water Board and the regional water boards, and that there is currently significant consternation with respect to how to best approach such a daunting task that results in the collection of meaningful information and data that can be used to better ensure protection of our groundwater resources. To that end, the California Department of Food and Agriculture (CDFA) is working quickly with a task force of diverse stakeholders to develop a nitrogen reporting recommendation that will be provided to the State Water Board for consideration in its Expert Panel process. Through the CDFA task force efforts and the State Water Board’s Expert Panel process, Grower-Shipper is optimistic that a nitrogen reporting system will be developed that is both reasonable to implement for agriculture, and that provides the State Water Board and regional water boards with the appropriate level of information to protect and improve our groundwater resources.

Considering that backdrop, Grower-Shipper continues to be concerned with the nitrogen application reporting approach contained in the Conditional Waiver and as modified by the Revised Order. Specifically, Grower-Shipper is concerned with the public reporting of such information in the Annual Compliance Form and the scale of reporting that would be required by the Revised Order. These two issues are addressed further here.

A. Total Nitrogen Applied Reporting Should be Retained in the Farm Plan

Rather than requiring total nitrogen reporting as part of the Annual Compliance Form at this time, Grower-Shipper believes it appropriate that such information be part of the Farm

Ms. Jeanine Townsend

Re: Comments to Revised A-2209(a)-(e) – September 10 Board Workshop

September 3, 2013

Page 4

Plan, and that such information be retained on-site with the Farm Plan. Under the Conditional Waiver, Farm Plans must be kept current, kept on farm, and a current copy must be available to Central Coast Water Board staff upon request. (Conditional Waiver, Provision 44, p. 21.) Maintenance of such grower specific nitrogen application information (which includes amount of fertilizers applied, average annual concentration of nitrogen in irrigation water, and the amount of nitrogen in the soil) on-site in the Farm Plan is consistent with the Central Valley approach and with approaches taken from other states (e.g., see Maryland Water Quality Improvement Act of 1998).

Grower-Shipper recognizes that under the current Conditional Waiver approach, maintenance of such information in the Farm Plan does not provide the Central Coast Water Board or the public with relevant, aggregated public information because there is not a third party program to take summary information from the growers, analyze it, and provide the Central Coast Water Board with a meaningful report that identifies outliers on crop-type/township basis. Nor does the Conditional Waiver include third party requirements that direct the third party to conduct follow-up and outreach to those growers that are identified as outliers. To address this deficiency, and as discussed above, Grower-Shipper requests that the State Water Board direct the Central Coast Water Board to develop a long-term program that includes a third party approach for collecting and reporting summary nitrogen application information from growers on an aggregated township basis, and that directs third parties to work directly with growers. For those growers not wishing to participate in a third party approach, it would be appropriate for those growers to provide summary reporting information directly to the Central Coast Water Board.

Or, in the alternative, if the State Water Board is hesitant to direct such an approach until the CDFA task force and State Water Board Expert Panel processes have been completed, the State Water Board could revise the Conditional Waiver to specify that such information be retained in the Farm Plan until the State Water Board has completed its Expert Panel process. Once that process is completed, either the State Water Board or the Central Coast Water Board could revise the Conditional Waiver to require nitrogen application reporting in a manner that is consistent with the outcome of the pending processes.

To the extent that the State Water Board relies on total nitrogen reporting at this time as the mechanism for the Central Coast Water Board to identify excessive nitrogen application, Grower-Shipper believes that the other reported information collectively provides the Central Coast Water Board with sufficient information to prioritize operations for further review of on-site Farm Plans. Specifically, the Annual Compliance Form requires identification of management practices employed, including irrigation methods. Through this information, and groundwater monitoring information received from individuals or through a cooperative program, the Central Coast Water Board can identify those operations for which they determine appropriate for further review of Farm Plans.

Accordingly, Grower-Shipper contends that removing the total nitrogen reporting requirements (including fertilizer loads, irrigation water concentrations, and soil concentrations) from the Annual Compliance Form to the Farm Plan is appropriate at this time. Further, such a change does not impede the Central Coast Water Board's ability to identify and work with growers that may be employing management practices that are not protective of water quality.

B. Reporting Total Nitrogen Applied at a Field or Management Block Level is Impractical and Excessively Burdensome on the Central Coast

The Revised Order proposes to change the scale of total nitrogen applied reporting from a farm/ranch scale to a field or management block scale. (Revised Order, pp. 43-45.) The scale of reporting in this manner is further described as follows: "In order to report on a field basis, the entire field must be planted with the same crop and receive the same fertilizer inputs. A management block is any portion of a discharger's land that is planted with the same crop and receives the same fertilizer inputs. Management blocks may consist of multiple fields and/or divisions of a single field." (Revised Order, p. 44.) According to the Revised Order, what must then be reported annually at the management block level is the amount of total nitrogen applied (i.e., organic and inorganic fertilizers) in lbs/acre per crop, and total nitrogen present in the soil in lbs/acre prior to the first application of fertilizer. (Revised Order, pp. 43-44.) In the Central Coast, this level of reporting is impractical and problematic for several reasons.

First, the level of reporting proposed by the Revised Order is inconsistent with the other reporting provisions contained in the Conditional Waiver. The Conditional Waiver requires that those subject to the order must generally implement the order's provisions and report information on an individual farm/ranch basis. Farm or ranch is defined by the Conditional Waiver to mean, "a tract of land where commercial crops are produced or normally would have been produced. Individual farms/ranches typically have a similar farm/ranch manager, operator or landowner(s) and are categorized by farm size, primary output(s), and/or geographic location." (Conditional Waiver, Attachment A, p. 86.) Under this definition, multiple crops at one location that are managed by the same entity or individual would be considered to be an individual farm/ranch. The Conditional Waiver then requires, in part, farm/ranch reporting for the following types of information: tier determinations (Conditional Waiver, p. 16); electronic notice of intent (NOI) (Conditional Waiver, p. 25); the determination of nitrate loading risk factors (Conditional Waiver, p. 28); and, photo monitoring (Conditional Waiver, p. 28).

Second, the Revised Order is likely to result in the reporting of total nitrogen loading on a scale that for some growers is much smaller than that as compared to the individual farm/ranch level. On many farm/ranch operations in the Central Coast, there are likely to be numerous management blocks. It is not uncommon for individual farm/ranches to be divided

into quarter-acre management blocks. Thus, a hypothetical 200-acre farm/ranch would in fact be 800 management blocks. (See, e.g., photos, Exhs. B-D.) If that management block is then planted into different crops throughout the year, the number of management blocks could then further increase by a multiple of two to almost three. Or, even where growers have multiple acres that would be considered a single management block, the number of reporting units can be significant. For example, one vegetable grower has calculated that for his 6,000 acre operation (which consists of several individual farms/ranches) there would be approximately 1,500 different plantings, and each planting would be considered a separate management block.

Under the terms of the Revised Order, this would mean that this grower would need to maintain detailed records for each management block, test the soil for each individual management block, and then electronically report on the Annual Compliance Form an estimated 3,000 different data points (total nitrogen applied and total nitrogen in soil). The cost of maintaining and then transmitting this amount of data and information to the Central Coast Water Board is significant and does not bear a reasonable relationship to the need for this level of data and information. (See Wat. Code, § 13267(b)(1).) Finally, there is considerable uncertainty as to how this would be accomplished by the December 2013 deadline proposed in the Revised Order.

Accordingly, total nitrogen applied information, and soil testing for nitrogen should be on an individual farm/ranch basis, which is consistent with other provisions in the Conditional Waiver. Further, such information should be retained in the Farm Plan at this time until the CDFG and the State Water Board have completed their efforts with respect to evaluating appropriate nitrogen tracking and reporting systems.

III. Groundwater Monitoring, Provision 51 and Part 2 of Tier 1-3 MRPs

The Revised Order proposes to make significant changes to the groundwater monitoring provisions in the Tier 1, 2, and 3 MRPs. It would revise section A.6 of the MRPs to require cooperative groundwater monitoring programs to sample all domestic drinking water wells that are used or may be used for drinking water purposes, and require that initial sampling rounds include two samples (one spring, one fall). (Revised Order, p. 32.) Further, the Revised Order adds a provision that would apply to all dischargers subject to the order. The newly proposed section A.7 would require any discharger conducting individual groundwater monitoring or a third party conducting cooperative groundwater monitoring to notify the Central Coast Water Board and users whenever there is an exceedance of a primary maximum contaminant level (MCL) or a secondary MCL.

With respect to the efficacy and need to sample all drinking water wells in the context of a third party program, Grower-Shipper directs the State Water Board to the comments submitted by the Central Coast Groundwater Coalition (CCGC). As conveyed by the CCGC, cooperative groundwater programs like the one put forward by the CCGC can provide the level of information necessary to characterize local drinking water without sampling every

domestic well of its members. The approach that would be taken by the CCGC provides for a high level of certainty, and includes approaches for addressing uncertainty where it exists. Further, a cooperative program like the CCGC's would provide the Central Coast Water Board with other information and data that helps the Central Coast Water Board to properly characterize groundwater conditions and areas of concern. The level of information that a cooperative program like the CCGC can provide far exceeds the level and value of information provided at an individual level. However, if a cooperative program must include individual monitoring of wells for all members, there is no economy of scale and there is no incentive for a grower to join a cooperative program. Accordingly, the Revised Order will, as a practical matter, negate the purpose and objective of the cooperative groundwater monitoring provisions contained in the Tier 1, 2, and 3 MRPs.

With respect to the notification requirements, Grower-Shipper has concerns with the extent of the notification requirements proposed. Grower-Shipper agrees that with respect to nitrate, it is appropriate and important that the Central Coast Water Board and users be promptly notified of water that exceeds the drinking water standard for nitrate.² However, Grower-Shipper believes that it is unnecessary to include the other notification requirements with respect to all primary MCLs and secondary MCLs.

Although primary MCLs are related to the protection of public health, the monitoring requirements in Tier 1, 2, and 3 include only one constituent for which there is a primary MCL, and that constituent is nitrate. (See, e.g., Tier 1 MRP, p. 17.) That is because nitrate is the primary constituent of concern related to discharges from irrigated agriculture. While there may be other constituents with primary MCLs that are also of concern, such constituents are not directly related to potential discharges from irrigated agricultural operations. Accordingly, it would be inappropriate in a Conditional Waiver specific to discharges from irrigated agriculture to include monitoring requirements for other constituents unrelated to irrigated agricultural operations. Since monitoring of other constituents is not required, it is not necessary for the Revised Order to include notification requirements for all exceedances of primary MCLs. Further, to the extent that the MRPs are revised in the future, the Central Coast Water Board can include additional notification requirements if such requirements are justified.

² Grower-Shipper notes that there are various and appropriate methods for providing notification to users of water. Grower-Shipper directs the State Water Board to the CCGC comments with respect to alternative methods/means for providing notification to users.

For the secondary MCLs, Grower-Shipper is confused with respect to their inclusion, considering that such standards are considered consumer acceptance taste and odor standards. Further, based on our review of the California Department of Public Health's regulations (Cal. Code Regs., tit. 22, ch. 15, § 64400 et seq.) it does not appear that public water systems have notification requirements for exceedances of secondary MCLs similar to those that are proposed in the Revised Order. Specifically, according to section 64449 of title 22 of the California Code of Regulations, groundwater is required to be monitored for secondary MCLs once every three years. (Cal. Code Regs., tit. 22, § 64449(b).) If the secondary MCL is exceeded in groundwater, then the community water system is required to initiate quarterly sampling. If after four consecutive quarterly samples (and based on an average of the samples) there is an exceedance, the community water system is then required to notify the Department of Public Health. The community water system can continue to use the source of water even though there is an exceedance of a secondary MCL if they obtain a waiver, or if the system meets other specified requirements. (Cal. Code Regs., tit. 22, § 64449.4.) In such cases where use of the water is to be continued, such use may occur as long as the system provides public notification of the constituent levels in its annual Consumer Confidence Report and provides public notice by electronic media, publication in a local newspaper, and/or information in customer billings.

Comparatively, the Revised Order would require notification of the exceedance of a secondary MCL to users within 30 days based on one sample. The requirements in the Revised Order fail to consider that secondary MCLs are consumer confidence level standards—not public health standards. The notification requirements in the Revised Order may also imply to growers and users of such water that the water is not safe to drink. Considering that secondary MCLs are consumer confidence standards (i.e., taste and odor), and that the Department of Public Health does allow for drinking water to be used above such standards, it is inappropriate for the Revised Order to include notification requirements for secondary MCLs. Accordingly, such requirements must be deleted from the Revised Order.

IV. Containment Structures, Provision 33

The Revised Order proposes to delete its previous language change to “minimize” percolation of waste to groundwater to “avoid” without any explanation. (Revised Order, p. 25.) This change arguably creates a prohibition of using containment structures unless it can be shown that they do not percolate waste. Such a prohibition is inconsistent with the Porter-Cologne Water Quality Control Act (Porter-Cologne). Porter-Cologne does not require that waste not be discharged, but that the discharge of waste must be subject to waste discharge requirements or that waste discharge requirements must be waived. In this case, the Central Coast Water Board has adopted a waiver of waste discharge requirements. With the waiver, the Central Coast Water Board can allow for the percolation of waste. To the extent that such percolation may cause or contribute to a violation of water quality standards, the Conditional Waiver has other provisions to encourage implementation of management practices to meet such standards over time. The “avoid” language that is now maintained by

the Revised Order defeats the purpose of allowing implementation of management practices over time.

Further, it is important to note that the use of containment structures is itself implementation of a management practice to protect surface water. The use of such structures allows growers to capture and settle sediment out of irrigation water prior to irrigation water releases to surface water. This is a well known, and encouraged, practice for protecting surface water. It would be unfortunate if the containment structure provision would result in them no longer being a viable, practical management practice for the protection of surface water. Accordingly, we encourage the State Water Board to remove the word avoid and re-introduce the term minimize.

V. Water Quality Standards Compliance, Provisions 22-23; Effective Control of Pollutant Discharges, Provisions 82, 84-87

Grower-Shipper appreciates and supports the Revised Order's attention to the water quality standards compliance provisions contained in the Conditional Waiver. We agree with the Revised Order that "it is appropriate to attribute compliance where a discharger is engaged in a conscientious effort to implement appropriate controls." (Revised Order, p. 24.) However, to ensure that a discharger's compliance with respect to water quality standards is directly related to implementation of management practices, Grower-Shipper finds that Provision 22 must be further revised and that the language of 87A may need to be relocated.

As the State Water Board has experienced recently in the stormwater program and in recent court decisions interpreting similar receiving water limitations language contained in municipal stormwater permits, courts will look to the plain language of the Conditional Waiver to determine application of specific provisions and requirements. (See, e.g., *NRCD v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880.) To that end, Provision 22, as proposed in the Revised Order, does not specifically incorporate or recognize the compliance provisions proposed in 87A. Further, by providing this language as 87A, it would, from a permit construction standpoint, arguably only apply to the requirement expressed in Provision 87, which is that "By October 1, 2016, Tier 3 Dischargers must effectively control individual waste discharges of nitrate to groundwater." (Conditional Waiver, p. 32.)

Moreover, Grower-Shipper believes that it is important for the State Water Board to understand that many growers are already implementing the most effective management practices available for protecting surface and ground water quality. However, implementation of even the most effective management practices may not mean that a grower can show compliance with applicable water quality standards. Accordingly, the State Water Board and the regional water boards need to recognize that meeting water quality standards in irrigated agricultural systems will likely take time, and additional research. To protect agriculture in the meantime, the Conditional Waiver provisions need to clearly indicate that implementation of effective management practices constitutes compliance with water quality standards and certain conditions in the Conditional Waiver.

To ensure that compliance with water quality standards is actually determined through implementation of appropriate management practices and an iterative approach of improvement, we recommend the following changes:

- Revise Provision 22 - “Except as provided in Provision 82a, Dischargers shall not cause or contribute to exceedances of applicable water quality standards, as defined in Attachment A, shall protect beneficial uses of waters of the State and shall prevent nuisance as defined in Water Code section 13050.”
- Delete Provision 23 - This provision is repetitive of Provision 22 and is unnecessary.
- Revise Provision 82 -

82. Time schedules for compliance with conditions are identified in Conditions 84-87, and described in Table 2 (all Dischargers) and Table 3 (Tier 2 and Tier 3 Dischargers). Milestones are identified in Table 4. Dischargers must comply with Order Conditions by dates specified in Tables 2 and 3 in accordance with the MRP.

a. A Discharger shall be found in compliance with Provisions 22, and 84 through 87 of this Order, and the milestones in Table 4, as long as the Discharger is (1) implementing management practices that prevent or reduce discharges of waste to the extent feasible that are causing or contributing to exceedances of water quality standards; and (2) to the extent that practice effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing discharges from causing or contributing to exceedances of water quality standards, the Discharger must implement modified management practices, if such modified practices are known and generally available for implementation.

b. The Water Board will consider the following information in determining the extent to which the Discharger is effectively controlling individual waste discharges and implementing management practices in compliance with Provision 82.a:

- i. compliance with time schedules;
- ii. effectiveness of management practice implementation;
- iii. effectiveness of treatment or control measures (including cooperative water quality improvement efforts, and local and regional treatment strategies);

Ms. Jeanine Townsend

Re: Comments to Revised A-2209(a)-(e) – September 10 Board Workshop

September 3, 2013

Page 11

- iv. results of individual discharge monitoring (Tier 3);
- v. results of surface receiving water monitoring downstream of the point where the individual discharge enters the receiving water body;
- vi. other information obtained by Water Board staff during inspections at operations or farms/ranches, or submitted in response to Executive Officer orders;

VI. Other Revisions in the Revised Order

With respect to the other revisions in the Revised Order not addressed above, Grower-Shipper generally supports the changes. However, to the extent that other changes are not consistent with the comments above, Grower-Shipper encourages deletion of such changes, or changes to the Revised Order and Conditional Waiver that would conform both orders to be consistent with what is stated above.

In conclusion, Grower-Shipper requests that the State Water Board reject and/or modify the Revised Order as follows: (1) direct the Central Coast Water Board to develop a long-term program that includes a Central Valley type of third party approach; (2) remove the total nitrogen applied (including water and soil test information) reporting from the Annual Compliance Form to the Farm Plan until the State Water Board completes its Expert Panel process; (3) change the scale of total nitrogen applied and soil tests from the field/management block level to the individual farm/ranch level; (4) require user notification when the nitrate drinking water standard is exceeded; (5) remove notification requirements with respect to other primary MCLs and secondary MCLs; (6) revise the containment structure language to “minimize”; (7) revise the water quality standards language as recommended by Grower-Shipper; and, (8) make other conforming changes to the Conditional Waiver and Revised Order as necessary.

Sincerely,



Theresa A. Dunham

Attachments: Exhibits A-D

cc: Attached service list

TAD:cr

EXHIBIT A

Comments to A-2209(a)-(e) September 10, 2013 Board Meeting

Tess Dunham, Esq.
Somach Simmons & Dunn

On behalf of Grower-Shipper Association of Central
California, Grower-Shipper Association of Santa Barbara and
San Luis Obispo Counties, and Western Growers

Primary Issues of Concern

- Lack of “Central Valley” type third-party program
- Electronic reporting of total nitrogen applied
- Reporting/tracking of total nitrogen applied on a field/management block basis
- User notification for exceedances of secondary MCLs
- Containment Structure Requirement
- Water Quality Standards Provisions

If in High Vulnerable Area for Groundwater (for which nitrate is a constituent of concern), Region 5 Growers Must:

- Have Nitrogen Management Plan certified by:
 - Self-certification for individual that attends training program or adheres to NRCS site-specific recommendations
 - Nitrogen Management Plan specialists
 - CCAs, Soil Scientists, Agronomists, Technical Service Providers, etc.
- Prepare & Submit Nitrogen Management Plan Summary to Coalition
 - Report Crop, Acreage, and Nitrogen Balance Ratio from Plan

Region 5 Third Party Responsibilities

- Prepare Nitrogen Management Plan & Summary Report Templates
- Prepare Annual Reports of Summary Reports Received from Growers
 - Information must be aggregated on a Township Basis
 - Annual Report must include: comparisons on a crop type basis with similar conditions
- Turn over individual information upon request of Executive Officer

Grower Shipper Request

- State Water Board to direct Central Coast Water Board to work with stakeholders to develop a long-term program that includes a third party approach similar to that being used in the Central Valley.

Concerns with Electronic Reporting of Total Nitrogen Applied

- CDFA Task Force evaluating reporting & tracking systems
- State Water Board's Expert Panel getting ready to convene
- Appropriate for information to be maintained in Farm Plan
- Conditional Waiver can be re-opened upon conclusion of Expert Panel and State Water Board recommendation

Concerns with total nitrogen applied reporting at a field/management block level

- Central Coast agriculture includes thousands of management blocks
- Many growers have blocks in quarter-acre sizes
- A single quarter acre may support 1.8 to 2.6 plantings per year
- Each planting would likely be a management block
- Results in excessive data compilation

Example 1: Type of Management Block



Example 2: Type of Management Block



Example 3: Type of Management Block

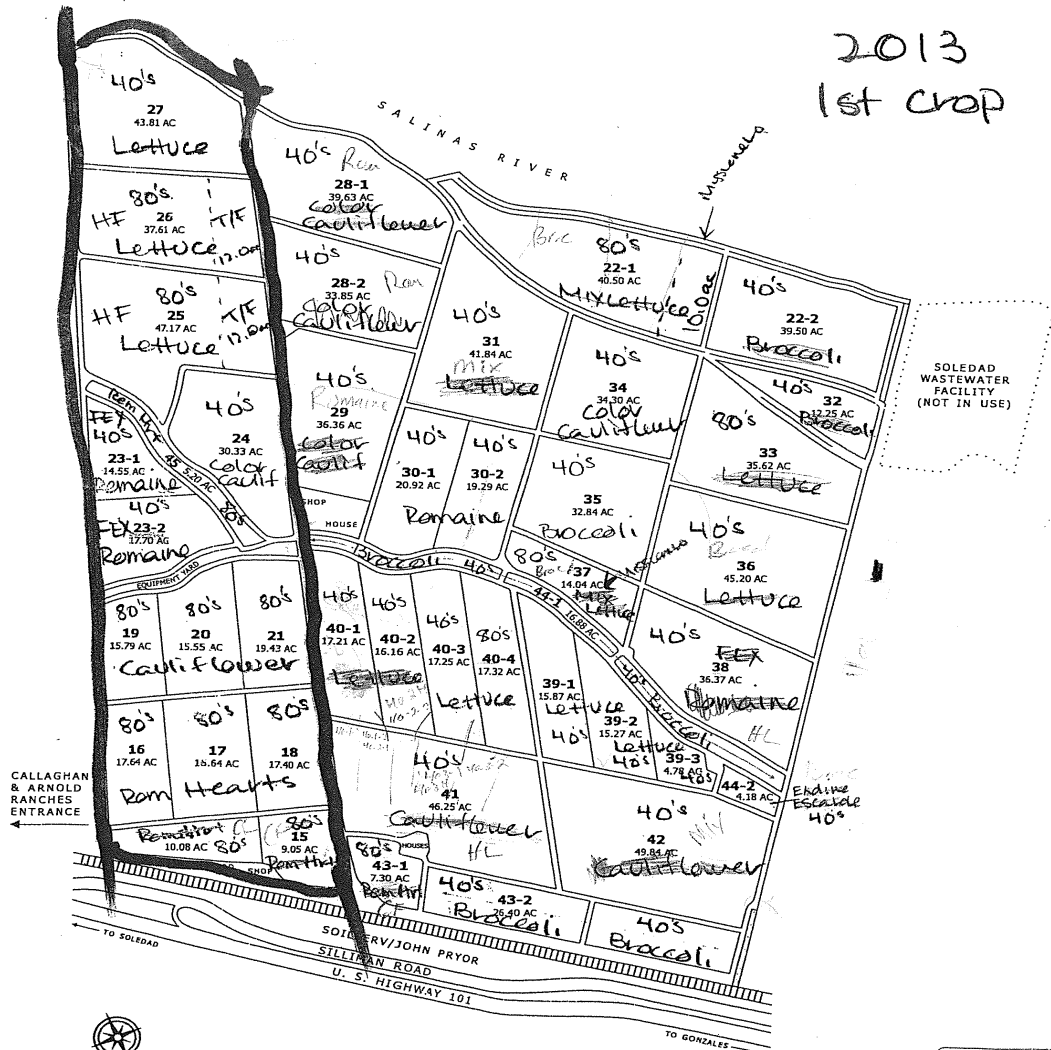


Ranch Map 1

02

2013
1st crop

Ranch Map 1



Ranch Map

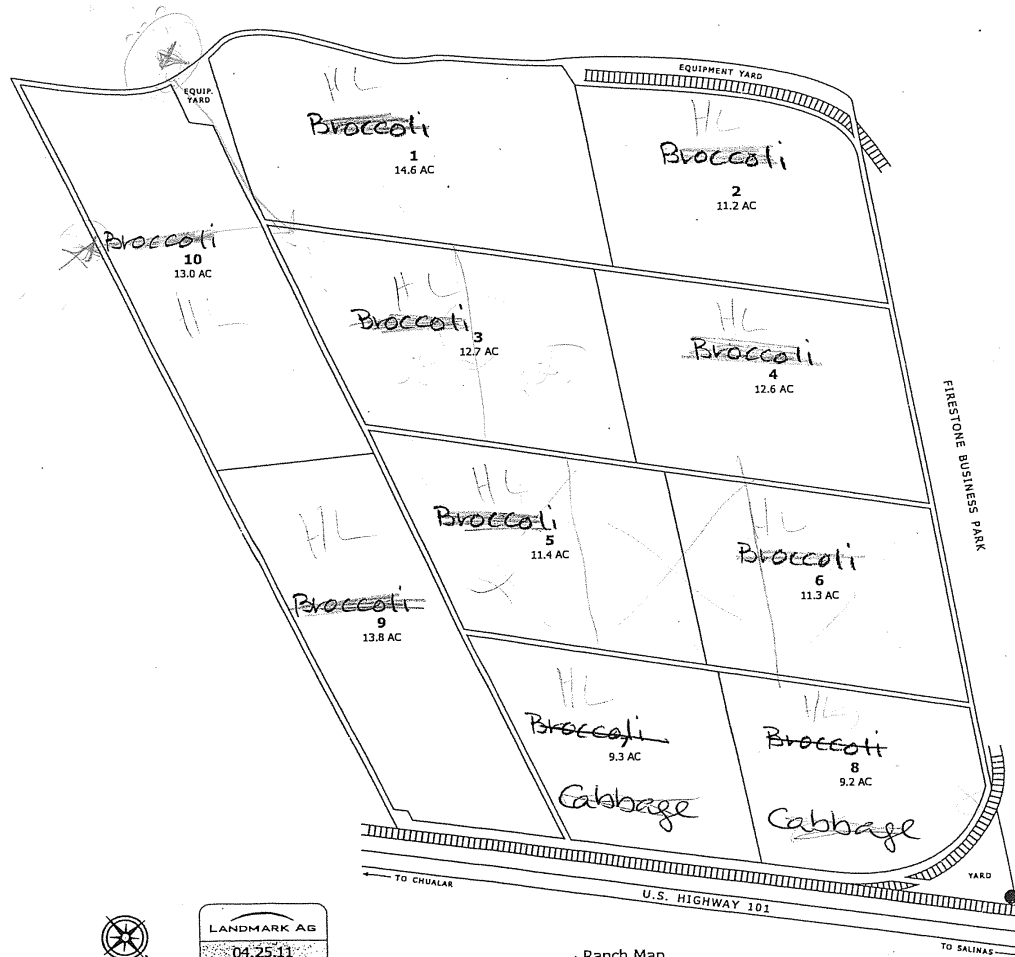
LANDMARK AG
05.17.11

Ranch Map 2

05

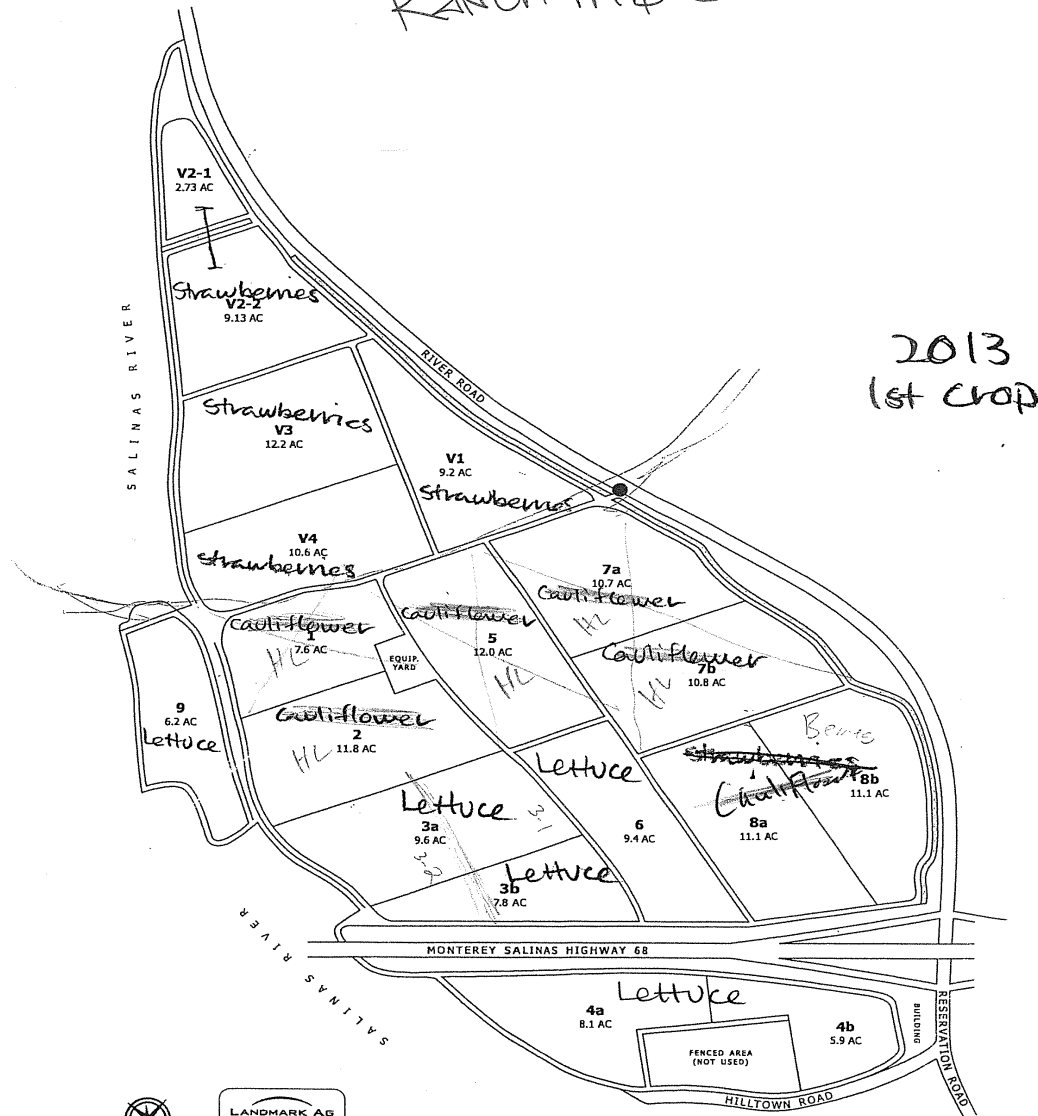
Ranch Map 2

2013
1st crop



Ranch Map 3

Ranch Map 3



2013
1st crop



LANDMARK AG
04.22.11

- Ranch Map



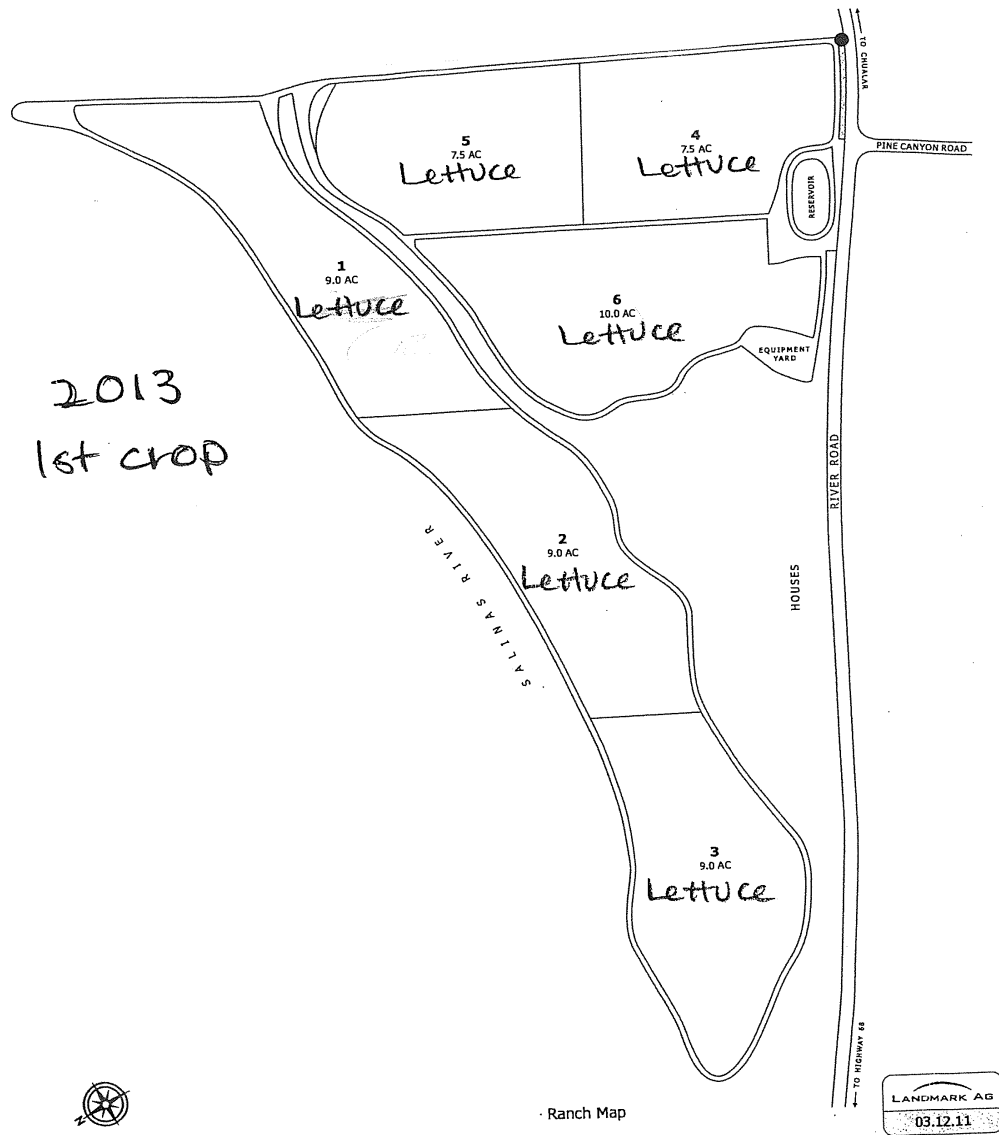
SOMACH SIMMONS & DUNN

Exhibit A-13

Ranch Map 4

08

Ranch Map 4



2013
1st crop



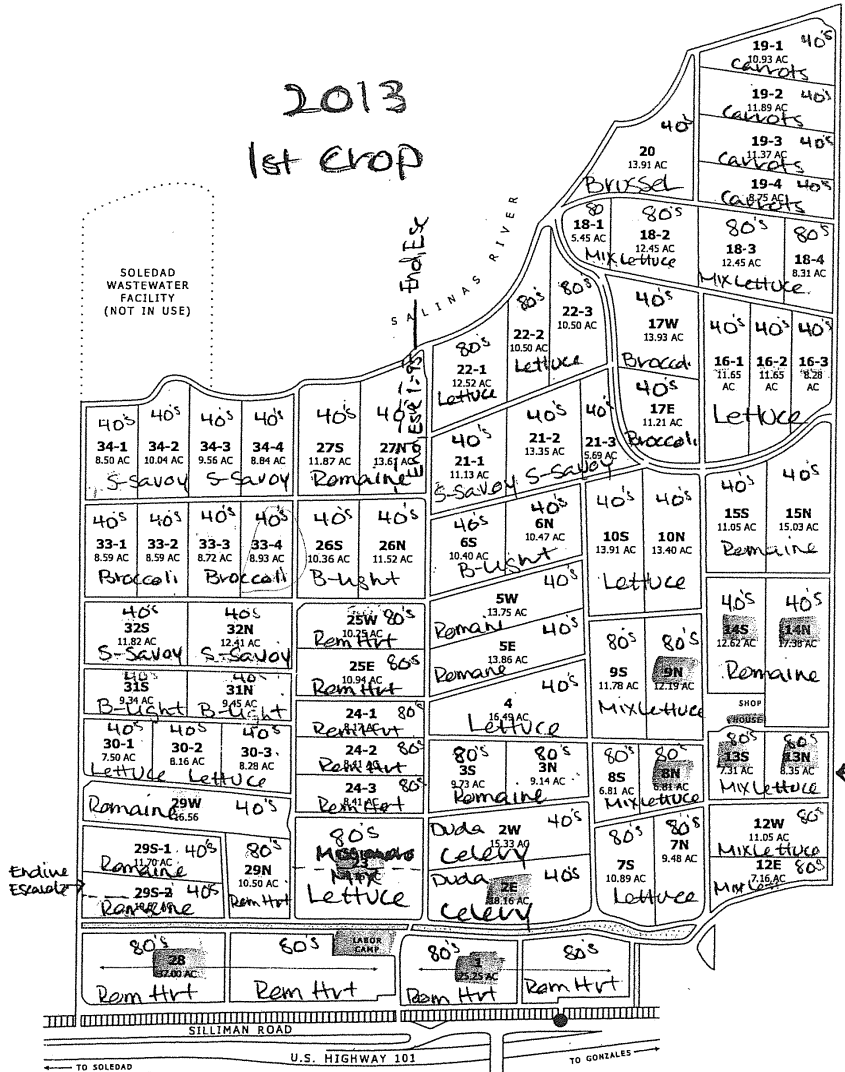
Ranch Map

LANDMARK AG
03.12.11

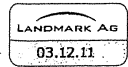
Ranch Map 5

09
CONDITIONS

2013
1st crop



Ranch Map



Groundwater Monitoring

- Not necessary for cooperative programs to monitor all domestic supply wells
- Not necessary to include notification for all primary MCLs (program monitors nitrate)
- Secondary MCLs are taste and odor standards – not public health standards

Containment Structures

- Revised Order creates a prohibition
- Threatens long term use of containment structures
- Need to change “avoid” to “minimize”

Water Quality Standards (WQS) Provisions

- Needs to be revised to ensure that implementation of management practices constitutes compliance with WQS
- Provision 23 repetitive and unnecessary
- Provision 82 should be revised rather than adding a new provision 87A

WQS Revisions

- Provision 22 adds, “Except as provided in Provision 82a, Dischargers shall not cause....”
- Add Provision 82a, “A Discharger shall be found in compliance with provisions 22 and 84 through 87 of this order, and the milestones in Table 4, as long as the Discharger is (1) implementing management practices that prevent or reduce discharges of waste to the extent feasible that are causing or contributing to exceedances of water quality standards; and (2) to the extent that such practice effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing discharges from causing or contributing to exceedances of water quality standards, the Discharger must implement modified management practices if such modified practices are known and general available for implementation.”



Contact Information

Tess Dunham, Esq.
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95762
(916) 446-7979
tdunham@somachlaw.com

EXHIBIT B



Exhibit B

EXHIBIT C



Exhibit C

EXHIBIT D



Exhibit D

SERVICE LIST
SWRCB/OCC Files A-2209(a)-(e)

September 2013

Mr. Ken Harris
Executive Officer
Central Coast Regional Water Quality
Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
kharris@waterboards.ca.gov

Frances McChesney, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
fmchesney@waterboards.ca.gov

Mr. Michael Thomas
Assistant Executive Officer
Central Coast Regional Water Quality
Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
mthomas@waterboards.ca.gov

Jessica M. Jahr, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jjahr@waterboards.ca.gov

Ms. Angela Schroeter
Senior Engineering Geologist
Central Coast Regional Water Quality
Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
aschroeter@waterboards.ca.gov

Lori T. Okun, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
lokun@waterboards.ca.gov

Ms. Lisa McCann
Environmental Program Manager I
Central Coast Regional Water Quality
Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906
lmccann@waterboards.ca.gov

Philip G. Wyels, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
pwuels@waterboards.ca.gov

Deborah A. Sivas, Esq.
Leah Russin, Esq.
Alicia Thesing, Esq.
Brigid DeCoursey, Esq.
Environmental Law Clinic
Mills Legal Clinic at Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
dsivas@stanford.edu

Emel G. Wadhvani, Esq.
Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
ewadhvani@waterboards.ca.gov

*Attorneys for Petitioners Monterey Coastkeeper,
Santa Barbara Channelkeeper, San Luis
Obispo Coastkeeper [File No. A-2209(a)]*

SERVICE LIST
SWRCB/OCC Files A-2209(a)-(e)

September 2013

Mr. Gordon R. Hensley
San Luis Obispo Coastkeeper
Environment in the Public Interest
EPI-Center
1013 Monterey Street, Suite 202
San Luis Obispo, CA 93401
coastkeeper@epicenteronline.org
*Petitioner San Luis Obispo Coastkeeper [File
No. A-2209(a)]*

Johnny A. Gonzales
Irrigated Lands Regulatory Program
Coordinator
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jgonzales@waterboards.ca.gov

Mr. Steven Shimek
Monterey Coastkeeper
The Otter Project
475 Washington Street, Suite A
Monterey, CA 93940
exec@otterproject.org
*Petitioner Monterey Coastkeeper [File
No. A-2209(a)]*

Jonathan Bishop
Chief Deputy Director
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jbishop@waterboards.ca.gov

Ms. Kira Redmond
Mr. Ben Petterle
Santa Barbara Channelkeeper
714 Bond Avenue
Santa Barbara, CA 93103
kira@sbck.org; ben@sbck.org
*Petitioner Santa Barbara Channelkeeper [File
No. A-2209(a)]*

Michael A.M. Lauffer, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
mлаuffer@waterboards.ca.gov

Nancy McDonough, Esq.
Kari E. Fisher, Esq.
Ms. Pamela Hotz
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833
kfisher@cfbf.com; photz@cfbf.com
*Attorneys for Petitioners California Farm
Bureau Federation, Monterey County Farm
Bureau, San Benito County Farm Bureau, San
Luis Obispo County Farm Bureau, San Mateo
County Farm Bureau, Santa Barbara County
Farm Bureau, Santa Clara County Farm
Bureau, Santa Cruz County Farm Bureau [File
No. A-2209(b)]*

Victoria Whitney, Deputy Director
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
vwhitney@waterboards.ca.gov

Mr. Dale Huss
Ocean Mist Farms
10855 Ocean Mist Parkway
Castroville, CA 95012
daleh@oceanmist.com
*Petitioner Ocean Mist Farms [File
No. A-2209(c)]*

Tom Howard, Executive Director
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
thoward@waterboards.ca.gov

SERVICE LIST
SWRCB/OCC Files A-2209(a)-(e)

September 2013

William J. Thomas, Esq.
Wendy Y. Wang, Esq.
Best Best & Krieger
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
William.thomas@bbklaw.com;
wendy.wang@bbklaw.com
*Attorneys for Petitioners Ocean Mist Farms and
RC Farms [File No. A-2209(c)]*

Mr. Darrin Polhemus
Deputy Director
Division of Administrative Services
P.O. Box 100
Sacramento, CA 95812-0100
dpolhemus@waterboards.ca.gov

Mr. Dennis Sites
RC Farms
25350 Paseo del Chaparral
Salinas, CA 93908
dsitesagmt@aol.com
Petitioner RC Farms [File No. A-2209(c)]

Claire Wineman
President
Grower-Shipper Association of Santa
Barbara and San Luis Obispo Counties
P.O. Box 10
Guadalupe, CA 93434
richard@grower-shipper.com
*Petitioner Grower-Shipper Association of
Santa Barbara and San Luis Obispo
Counties [File No. A-2209(d)]*

Ms. Abby Taylor-Silva
Vice President
Policy and Communications
Grower Shipper Association of
Central California
512 Pajaro Street
Salinas, CA 93901
abby@growershipper.com
*Petitioner Grower Shipper Association of
Central California [File No. A-2209(d)]*

Mr. Hank Giclas
Senior Vice President
Strategic Planning, Science & Technology
Western Growers
P.O. Box 2130
Newport Beach, CA 92658
hgiclas@wga.com
*Petitioner Western Growers [File
No. A-2209(d)]*

William Elliott
Jensen Family Farms, Inc.
323 McCarthy Avenue
Oceano, CA 93445
elliottsl@aol.com
*Attorney for Petitioners Jensen Family Farms,
Inc. and William Elliott [File No. A-2209(e)]*

Courtesy Copy:
Ms. Jeannette L. Bashaw
Legal Secretary, Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jbashaw@waterboards.ca.gov