



September 17, 2013

VIA ELECTRONIC MAIL ONLY

Ms. Jeanine Townsend
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State Water Resources Control Board
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SUBJECT: Comments to A-2209(a)-(e) – September 24, 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 reviewed the State Water Resources Control Board's (State Water Board) September 9, 2013 revised 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 September 9 revised order (September 9 Revised Order) here.

In general, Grower-Shipper supports the changes made in the September 9 Revised Order. Our specific comments on key provisions are provided further here.

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

Grower-Shipper appreciates the efforts that State Water Board staff have made to clarify that implementation of management practices, and implementation of modified management practices should be the standard for determining compliance with the provisions

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."

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in question. However, as articulated in our September 3, 2013 comments, we are concerned that the clarifications provided do not clearly tie implementation of management practices to compliance with the provisions in question. Accordingly, we continue to support further changes similar to those provided in our September 3, 2013 comments, which we will not repeat here.

II. Containment Structures, Provision 33

Grower-Shipper appreciates the narrative language added to the September 9 Revised Order with respect to containment structures. However, there is continued concern that growers may have difficulty complying in the short term to the requirements set forth in Provision 33. Specifically, Provision 33 as it appears in the September 9 Revised Order requires that containment structures be managed, constructed, and maintained to avoid the percolation of waste to groundwater. Included as part of the provision are several identified methods of compliance. There are no time schedules associated with compliance with this provision. Thus, if adopted as is, or if adopted as originally proposed, growers will be subject to the terms and conditions of this provision upon order adoption. Rather than requiring immediate compliance with this provision, we recommend that the language of Provision 33, or at the very least the language of the September 9 Revised Order, be amended to recognize that compliance with this provision should be modified to acknowledge that growers should take such actions to the extent feasible. Or, in the alternative, the September 9 Revised Order should include narrative language that clearly indicates that implementation of management practices, or modified management practices, constitutes compliance with Provision 33. Such clarification would be consistent with the clarifications discussed with respect to the newly proposed Provision 87.5.

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

Grower-Shipper supports the changes in the September 9 Revised Order with respect to section A.6 of Part 2 of the Tier 1, 2, and 3 MRPs. Specifically, Grower-Shipper supports the three different approaches allowed for cooperative monitoring programs. As indicated in our September 3, 2013 comments, the use of a statistically valid approach (and inclusion of approach 3) is appropriate and is protective of public health. Further, where there is uncertainty with respect to nitrate levels in domestic wells, Grower-Shipper believes it appropriate to conduct follow-up monitoring for nitrate in the domestic wells where the uncertainty exists.

Next, Grower-Shipper supports the provisions for notification to users if groundwater monitoring finds that water in a well that is used or may be used for drinking water exceeds or is protected to exceed the maximum contaminant level (MCL) for nitrate. However, 24-hour notification requirements may not be feasible, especially if the lessee is conducting the monitoring and the lessee needs to notify the landowner of monitoring results pursuant to their lease contract. Accordingly, Grower-Shipper recommends that a more practical notification timeframe be identified. Although not directly applicable to domestic water systems, one

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example is that set forth in California Health and Safety Code section 116450(g). Under this provision, upon receipt of notification from a public water system, a school or school system, owner or operator of residential rental property or owner or operator of a business property has 10 days to provide notification to employees, tenants, and students, as applicable. Accordingly, we believe that 10 days would provide for a practical time with which to provide notification.

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

As indicated in our September 3, 2013 comments, 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 quality control 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. Grower-Shipper's concerns with respect to public reporting of such information in the Annual Compliance Form remain. Rather than requiring public reporting on an individual grower basis, Grower-Shipper believes that aggregation of the data by a third party could provide more meaningful information. However, Grower-Shipper confines additional comments to the language contained in the September 9 Revised Order.

First, Grower-Shipper appreciates that the State Water Board has re-considered the requirement to report total nitrogen applied at a field or management block level. As indicated in our September 3, 2013 comments, reporting at the much smaller field/management block level would be excessively burdensome for a number of growers subject to the provision in question. Accordingly, Grower-Shipper supports the addition of Method 2, which would require total nitrogen applied reporting based on a nitrate loading risk unit.

Second, considering the State Water Board and the Central Coast Water Board's need for the information, the requirements associated with Method 2 are more appropriate and likely more reasonable to implement. Further, Grower-Shipper understands from the discussion at the September 10, 2013 Board hearing, that the reporting of this information on the Annual Compliance Form would commence on October 1, 2014. As a practical matter, Grower-Shipper supports this date as the appropriate date for implementation. Specifically, growers in the Central Coast are already preparing and submitting information to comply with the currently applicable October 1, 2013 compliance deadline for submittal of the Annual Compliance Form. Changes to the Annual Compliance Form, and the information associated therewith, at this time would be difficult to implement. Extension of the deadline to a later date is also not practical in that growers are already preparing information associated with the Annual Compliance Form as it currently stands, and it would not be appropriate to require them to submit two electronic forms within several months of each other. Moreover, based on the discussion that occurred at the close of the September 10 Board hearing, grower representatives were left with the understanding that growers needed to comply with the

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October 1, 2013 Annual Compliance Form requirement as it currently exists, and that any changes associated with the form would be implemented at the next annual submittal of the Annual Compliance Form, which will be October 1, 2014. Thus, significant reliance on this approach has already been conveyed to the grower community in the Central Coast.

In conclusion, Grower-Shipper appreciates all of the time and attention that State Water Board staff and the State Water Board have given to the Conditional Waiver and its requirements. Overall, we believe that the changes proposed by the State Water Board collectively throughout this process have helped to revise the Conditional Waiver into a more workable program for irrigated agriculture in the Central Coast. While Grower-Shipper still maintains significant concerns that have not been addressed, we sincerely appreciate all of the efforts put forward through this process.

Sincerely,



Theresa A. Dunham

cc (via electronic mail only): Attached Service List

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