



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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Via Email Only

commentletters@waterboards.ca.gov

July 16, 2013

Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I St., 24th Flr.
Sacramento, CA 95814

Re: Comments to SWRCB/OCC Files A-2209(a)-(e)—July 23 Board Workshop and Own Motion Review

Dear Ms. Townsend:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

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, and Santa Cruz County Farm Bureau (collectively “Farm Bureau”) petitioned the State Water Resources Control Board (“State Board”) to review the actions and inactions by the Central Coast Regional Water Quality Board (“Central Coast Water Board”) in issuing Order No. R3-2012-0011, adopting a Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands, Monitoring and Reporting Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03, and Certification, pursuant to the California Environmental Quality Act (“CEQA”), of the Final Subsequent Environmental Impact Report (“SEIR” or “Final SEIR”), CEQA Findings, and Statement of Overriding Considerations for the Adoption of Renewal of a Waiver of Waste Discharge Requirements

for Discharges of Waste From Irrigated Lands in the Central Coast Region, Resolution Number R3-2012-0012 (all documents collectively referred to as “2012 Ag Order”).

Farm Bureau appreciates the opportunity to review the State Board’s Proposed Order in response to the various petitions filed with respect to the Central Coast Water Board’s adoption of the 2012 Ag Order as well as the State Board’s proposed Own Motion Review order for the 2012 Ag Order, and provides the following comments and concerns.

Order for Own Motion Review

Although Farm Bureau generally supports the State Board’s proposed decision to proceed on an Own Motion Review, Farm Bureau remains concerned with the length of time that has elapsed and will continue to elapse in seeking a resolution on this matter. Farm Bureau’s members, as well as other growers and ranchers throughout the Central Coast region, expend potentially unnecessary resources and incur costs, which may negatively impacts their ability to farm, with each delay as growers must currently comply with the 2012 Ag Order. Within the Stay Order, certain provisions were not stayed as the State Board anticipated a full resolution of the petitions prior to October 2013. With its Own Motion Review and the State Board’s acknowledgement that it “will not necessarily complete revisions in time to adopt the order by August 13, 2013,” (Proposed Own Motion Review, p. 2), Farm Bureau is concerned that full resolution may not occur prior to October 2013. In order prevent further expenditures of unnecessary resources, Farm Bureau suggests that the State Board include additional provisions within the Own Motion Review to stay applicable requirements due on or about October 1, 2013.

Formation and Scope of the Expert Panel to be Convened to Address Groundwater and Surface Water Issues Related to the Impact of Agricultural Discharges

Although a panel of experts has been tasked with conducting a thorough analysis of water quality issues and developing long-term recommendations that may be applied statewide, many uncertainties exist regarding the Expert Panel and its role in revising the requirements of the 2012 Ag Order. Given the limited details known at this time regarding the formation of the Expert Panel and the scope of issues to be addressed by the panel, it is difficult for Farm Bureau to provide detailed comments. Nevertheless, Farm Bureau has numerous questions regarding the formation of the Expert Panel and its interplay with the State Board and the 2012 Ag Order. Some of Farm Bureau’s questions include, but are not limited to:

What will be the makeup of the participants on the panel? Will there be an advisory committee to the State Board? If so, who will be on the advisory committee and what role will the committee play? What specific scope of issues will be before the panel? What are the anticipated timing of the panel’s tasks and the timing of providing recommendations to the State Board? How will the “interim determinations” within the

Proposed Order affect growers within the Region especially if recommendations from the Expert Panel substantially differ than those currently proposed in the Proposed Order? How will the Expert Panel's recommendations be implemented?

In addition to numerous questions, Farm Bureau offers the following comments. Farm Bureau recommends that the Expert Panel include members with expertise in numerous agricultural related fields, including, but not limited to, agronomists with expertise in all crops grown on the Central Coast, hydrologists, irrigation specialists, and agricultural economists. Additionally, all recommendations stemming from the Expert Panel should be guided by the Water Code's reasonableness standard (Wat. Code, § 13000) and not unduly burden agriculture. Further, the Expert Panel should hold numerous workshops in order to solicit comments on draft recommendations from the growers regulated by the requirements.

The Proposed Order emphasizes "that this Order constitutes only an interim determination as to how to move forward on the difficult and complex questions presented in the petitions, pending the Expert Panel's more thorough examination of the underlying issues. (Proposed Order, p. 4.) Farm Bureau acknowledges the highly complex issues faced by the State Board in the petitions and the need for proper and scientifically sound approaches to address surface and groundwater quality. However, Farm Bureau questions the Proposed Order's approach of maintaining certain requirements in the interim while the Expert Panel convenes and develops its recommendations. In light of the fact that the Proposed Order's requirements are "interim determinations," growers are burdened with vast unknowns and expenses to comply in the interim, making it difficult to for growers to invest in new technology and implement new management practices that will benefit water quality. Farm Bureau respectfully requests the State Board to remove or suspend certain provisions described herein while the Expert Panel provides its recommendations.

Farm Bureau Maintains its Previously Raised CEQA claims

Farm Bureau raised numerous challenges to the 2012 Ag Order's compliance with the California Environmental Quality Act ("CEQA"), Pub. Resources Code, §§ 21000 et seq., in its petition. (Farm Bureau Petition, pp. 16-52.). Rather than addressing those challenges, the Draft Order dismisses the claims as "not raising substantial issues appropriate for State Water Board review." (Proposed Order, p. 5.) Farm Bureau respectfully disagrees with this conclusion and maintains all of its CEQA challenges previously raised in its petition. (Farm Bureau Petition, pp. 16-52.)

Third Party Compliance Options, Provision 11

Farm Bureau supports the revisions to Provision 11 that "draw out the option of proposing third party monitoring and reporting programs in addition to third party water quality improvement projects and clarify the criteria for evaluating such program proposals." (Proposed Order, p. 11.) Notwithstanding the proposed revisions, Farm

Bureau agrees with the amendments to Provision 11 submitted by Theresa Dunham on behalf of Grower Shipper to provide further clarity and success for third party programs.

Containment Structures, Provision 33

Farm Bureau supports the Proposed Order's revisions to Provision 33 requiring containment structures to now "minimize percolation of waste to groundwater" rather than the 2012 Ag Order's requirement to "avoid percolation of waste to groundwater." (See Proposed Order, p. 22.) Many growers within the Central Coast Region use containment structures or retention ponds to control, capture, retain, and reuse stormwater runoff and irrigation water. The use of ponds and structures provides many benefits not only to the grower but also to the environment. Irrigation and stormwater runoff stored in a retention pond and then used as a source of irrigation water can reduce surface water use in an area, recharge groundwater aquifers, and reduce loadings to nearby waters of the state.

As prescribed in the 2012 Ag Order, Provision 33 required growers with existing or new containment structures to construct or retrofit existing structures in such a manner as to prevent any percolation to groundwater. (2012 Ag Order p. 30, ¶ 33.) By using the words "avoid" with "contribute," this regulation essentially required growers to totally eliminate any potential leaching to groundwater, as any level of nitrate above 0 ppm could "contribute" to the problem (including the fact that irrigation water in many areas of the Central Coast Region is already above 0 ppm). In addition to the large costs associated with lining structures to "avoid" or prevent any "contribution," this provision negatively impacts the groundwater by prohibiting percolation of water to groundwater, thus preventing needed and beneficial groundwater recharge. The Proposed Order's revisions to Provision 33 appropriately remedy the above flaw.

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

The Proposed Order declines to strike the groundwater monitoring provisions but tasks the Expert Panel "with considering appropriate structures and methodologies for monitoring that may support long-term nitrate control efforts." (Proposed Order, p. 25.) Notwithstanding the denial to strike the provisions, the Proposed Order acknowledges the shortcomings in groundwater monitoring, especially in the near-term, as well as its inappropriateness for use as compliance or trend monitoring. (*Ibid.*) Given these articulated shortcomings, as well as those previously raised by Petitioners, Farm Bureau does not support the Proposed Order's approach of maintaining the groundwater monitoring requirements as currently written in the interim while the Expert Panel is tasked with developing recommendations for proper and scientifically sound approaches.

Photo Monitoring, Provision 69 and Part 4 of Tier 2 and Tier 3 MRPs

Farm Bureau appreciates the Proposed Order's additions to allow alternative photo documentation methods such as aerial photography and photography from elevated

vantage points. However, even with the new additions, the requirements of Provision 69 and the MRPs are still burdensome, costly (aerial photography can be costly), and provide little relief since most growers are unlikely to redo their photo monitoring.

Individual Surface Water Discharge Monitoring, Provisions 72-73 and Part 5 of Tier 3 MRP

Although the Proposed Order attempts to “narrow” the scope of the individual surface water discharge monitoring for Tier 3 dischargers by limiting monitoring from an “outfall,” such narrowing does not alleviate previously raised issues.

Notwithstanding the narrowing of the scope of the monitoring, the individual surface water monitoring requirements are still burdensome and contain unnecessary requirements that exceed the Central Coast Water Board’s authority under Water Code section 13267. Although the Central Coast Water Board has the authority, pursuant to Water Code section 13267, to require monitoring and technical reports, “the burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.” (Wat. Code, § 13267(b)(1).) As detailed in previous comments, the burden, including the costs, associated with the individual surface water monitoring requirements outweighs the benefits obtained.

No concrete evidence is provided that supports requiring farmers to provide individual surface water discharge monitoring especially in light of the fact that the 2012 Ag Order contains many other reporting requirements imposed on Tier 3 dischargers to address these discharges and provide accountability. (See, e.g., Annual Compliance Form, the Irrigation and Nutrient Management Plan Effectiveness Report, and Water Quality Buffer Plan, all of which require Tier 3 dischargers to document and report management practice implementation in detail.) The management practice reporting provides for a high level of accountability and negates the need for and reasonableness of maintaining the individual surface water monitoring requirements.

Additionally, as stated previously, the information obtained is unlikely to provide the Central Coast Water Board with any real information with respect to water quality. (See Transcript, March 14, 2012 Hearing of the Waiver of Waste Discharge Requirements Discharged from Irrigated Lands, Central Coast Regional Water Quality Control Board, Panel Hearing (March 14, 2012 Transcript), p. 214:9-18 [“DR. LOS HUERTOS: The assumption is that we can use on-farm monitoring to characterize water quality, and then use that to prioritize which farms to visit and then, maybe, make some enforcements of the problem areas. The problem is that the on-farm monitoring, four samples per year, cannot adequately describe water quality on the farm. It doesn’t describe water quality. It doesn’t describe practice effectiveness and it doesn’t describe any kind of trend analysis.”].)

On the whole, the individual surface water discharge monitoring and reporting are unlikely to result in improvements in water quality because they shift limited grower

resources away from investing in new technology and implementing new management practices that will benefit water quality, and instead require growers to focus on expensive monitoring and reporting requirements that are burdensome, unwarranted, and will provide no substantiated benefits to the environment. Given these shortages, the individual surface water monitoring requirements should be removed, or suspended while the Expert Panel provides its recommendations.

Provisions Addressing Nitrogen Application

The 2012 Ag Order contains a number of provisions designed to control and reduce discharges of nitrogen to groundwater. Farm Bureau recognizes the public health threat facing the Central Coast region and the need to address nitrogen in groundwater. The Proposed Order tasks the Expert Panel with proposing “a comprehensive, consistent approach that will inform agricultural regulatory programs statewide,” while maintain the nutrient management requirements with some revisions. (Proposed Order, p. 33.) In light of the fact that the Expert Panel will be developing a statewide approach, Farm Bureau questions the continuance of the nutrient management requirements.

Determination of Nitrate Loading Risk Level, Provision 68 and Part 2, Section C.1-4 of Tier 2 and Tier 3 MRPs

The Proposed Order retains Provision 68 requiring Tier 2 and Tier 3 dischargers to determine their nitrate loading risk level using either of the two provided methodologies. Although the Proposed Order acknowledges, “neither methodology can provide a precise measurement of risk to nitrate loading to groundwater,” it retains both methods in order to allow for “recalculation” to prevent false results. (Proposed Order, p. 34.) As raised in previous comments, Farm Bureau asserts neither method should be used as a regulatory tool.

Both methodologies are highly simplistic and unlikely to accurately determine nitrate loading risks from each farm/ranch. The Central Coast Water Board’s Table 4 is flawed as it ignores soil types and characteristic and improperly includes irrigation water concentration in its hazard index concept. Additionally, the inherent purpose behind UCANR’s index is simply to be a guideline tool – not a regulatory tool. It was not developed, nor was it intended to be used, for regulatory purposes. Further, the most important factor in determining risk is site-specific management practices, which are not comprehensively captured in either methodology. (March 2011 Board Workshop Transcript, p. 171:12-17 [“DR. LETEY: . . . -- the thing that’s going to dictate what goes down is the farmer management. And we can, and should, monitor and focus attention on monitoring the farmer management. And -- and induce those management practices that lead to reduced loading.”].) Therefore, the use of UCANR’s nitrate hazard index or Table 4 is improper and will not provide the Central Coast Water Board with useful information or environmental benefits. Thus, agricultural dischargers subject to the 2012 Ag Order will be required to spend significant resources to comply, yet the information obtained will not improve water quality nor will it provide the Central Coast Water Board

with useful information. Accordingly, the nitrate loading risk level determinations should be removed, or suspended while the Expert Panel provides its recommendations.

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

The Proposed Order amends provisions for total nitrogen applied requiring Tier 2 and Tier 3 dischargers determined to have high nitrate loading risk to report (a) total nitrogen applied, (b) average annual nitrogen concentration in irrigation water, and (c) total nitrogen present in the soil for each farm/ranch or nitrate loading risk unit. Although portions of the total nitrogen applied requirements have been amended, the requirements are still flawed given that they rely on high nitrate loading risk determinations. As explained *supra*, the two methodologies for calculating nitrate loading risk levels are faulty and cannot provide a precise measurement of risk to nitrate loading to groundwater. Further, the information to be obtained through the methodologies is not relevant to site-specific risk. The Proposed Order acknowledges the flawed nature of both methodologies and tasks the Expert Panel “with developing or endorsing a methodology for determining when a particular farm poses a risk to loading nitrates to groundwater.” (Proposed Order, p. 34.) However, reliance on the 2012 Ag Order’s methodologies for calculating nitrate loading risk levels in order to determine total nitrogen applied is improper, especially in the interim while the Expert Panel determines the appropriate manner to for determining risk to loading nitrates to groundwater. Using flawed methodologies to calculate nitrate loading risk levels and then using those flawed levels to determine total nitrogen applied will only result in further imprecise and faulty results. Consequently, the provisions for total nitrogen applied should be suspended until the Expert Panel concludes its analysis and offers its recommendations.

Irrigation and Nutrient Management Plan, Provisions 74-77 and 79 and Part 6 of Tier 3 MRP

Farm Bureau supports the Proposed Order’s revisions to Section A.5 and Section B.2 of Part 6 of the Tier MRP and the deletion of Provisions 76 and 77 and Section B.1 of Part 6 of the Tier 3 MRP. However, additional amendments are still needed, as the revisions do not address previously raised concerns with the Irrigation and Nutrient Management Plan (“INMP”).

As discussed in previous comments and in the petition, numerous required components of the INMP, including the Effectiveness Report, are highly speculative and not readily available. Although Tier 3 growers no longer have to submit the INMP to the Central Coast Water Board, growers still must identify nitrate loading risk factors (MRP Part 6, Section A.4.c), total nitrogen applied (MRP Part 6, Section A.4.e), crop nitrogen uptake values (Provision 74; MRP Part 6, Section A.4.d), annual balance of nitrogen applied compared to typical crop nitrogen uptake or nitrate loading risk (MRP Part 6, Section A.4.g), and annual estimation of nitrogen loading to groundwater and surface

water (MRP Part 6, Section A.4.h), in addition to other components. Farm Bureau questions the Proposed Order's requirement for each grower to engage in this exercise for self-evaluation given the Proposed Order's own acknowledgment that the information is "not widely available" and will result in "questionable" results. (Proposed Order, p. 38.)

In particular, Provision 74 and MRP Part 6, Section A.4.d require growers to determine typical crop nitrogen uptake for each crop type produced and report the basis for the determination. However, most crops grown in the Central Coast have no scientifically valid nitrogen uptake values. (See, May 4, 2011 Board Workshop Transcript, p. 450:18-25 ["MR. HARD: This regulation as it currently stands, that's in all tiers, would have growers trying to figure out what the nutrient uptake values are. There are 52, by our count, crops grown in this region, give or take one [or] two. Of those 52 crops only two have ever had scientifically evaluated uptake values. And those two that have been done are not scientifically valid."].) The lack of scientifically evaluated and available information with respect to crop nitrogen uptake makes it impossible for growers to actually calculate a nitrogen uptake ratio for their farms or ranches. Given this lack of data, Provision 74 should be deleted.

Additionally, the Proposed Order deleted the requirement for a qualified professional to evaluate the INMP effectiveness report, while retaining the certification requirement for the development of the INMP. The retention of such certification is unnecessary. Many growers consult and work directly with professional soil scientists, agronomists, and certified crop advisors, making it superfluous for an INMP to be certified in order to be an effective management tool. Additionally, many growers are able to develop effective INMPs without professional assistance due to comprehensive experience as well as formalized training in irrigation and nutrient management techniques from years of farming and ranching and formal education. Accordingly, the requirement to certify INMPs should be deleted.

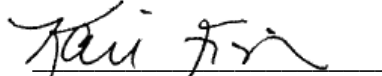
Nitrogen Balance Ratios, Provision 78

The Proposed Order deleted the requirement to report progress toward Nitrogen Balance ratios deeming the ratios "speculative and overly simplistic" in nature. (Proposed Order, p. 41.) The Proposed Order further concludes little will be gained in "asking the dischargers to even 'make progress toward' these particular targets." (*Id.*, p. 42.) Farm Bureau agrees with the Proposed Order's conclusions regarding the nitrogen balance ratios and the speculative, approximate, and simplistic nature of calculating the relationship between the nitrogen employed by the discharger and the nitrogen needed by the crop. (*Id.*, p. 41.) Further, Farm Bureau supports the deletion of Provision 78 as the nitrogen balance ratios as contained in the 2012 Ag Order are improper regulatory compliance standards. By mandating a specific ratio, the 2012 Ag Order is oversimplifying crop nutrient needs as compared to the amount of nutrients (i.e., nitrogen) applied.

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Farm Bureau appreciates the State Board's consideration of these petitions as well as the opportunity to comment on the State Board's Proposed Order and proposed Own Motion Review.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari Fisher", written over a horizontal line.

Kari E. Fisher

Attorney 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

cc (electronically only): Attached Service List
KEF/pkh

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