California Regional Water Quality Control Board
Central Coast Region

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Linda S. Adams.
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

January 10, 2007

CDFA Marketing Branch
1220 N Street
Sacramento, CA 95814
Attention: Lynn Morgan

Dear Ms. Morgan:

SUBJECT: PROPOSED CALIFORNIA LEAFY GREEN PRODUCTS HANDLER MARKETING AGREEMENT

Thank you for the opportunity to comment on the proposed marketing agreement for California leafy green products. Over the past several weeks, we have been discussing the marketing agreement and farm management practices with industry representatives and other agencies, and we appreciate the industry representatives' willingness to add specific language to their "best practices" guidelines regarding environmental laws and the need to contact environmental regulatory agencies. This letter provides background information on our cooperative work with growers, and our concerns about the marketing order and the best practices referred to in the marketing agreement.

For many years, growers in the Central Coast have been working proactively with Monterey Bay National Marine Sanctuary and the Central Coast Water Board to improve and protect water quality. The requirements of the Conditional Waiver for Irrigated Lands, which now regulates all commercial irrigated farming operations in the Central Coast, are a direct result of an eighteen-month process of negotiation and collaboration between the agricultural industry, environmental organizations and the Central Coast Water Board. Over 92% of the total irrigated acreage in the Central Coast is now enrolled, less than three years into the Conditional Waiver program, including all of the large growers of leafy green products. This is a major accomplishment on the part of the agricultural industry and an important step in the long-term goal of improving water quality in the Central Coast.

Under the Conditional Waiver, growers are required to enroll with the Water Board, obtain water quality education, and implement management practices to protect water quality. The Conditional Waiver intentionally allows flexibility in the choice of appropriate management practices, recognizing the complexity and variety of farming in the Central Coast. However, we know that vegetated conservation practices are among the most effective tools for protecting and improving water quality. Millions of federal and state tax-payer dollars have been invested in researching and promoting conservation practices, and in assisting farmers in implementing such practices as riparian buffers, vegetated ditches, grassed roadways, and other uses of vegetation to reduce erosion and filter pollutants such as nutrients, pesticides, sediment, and pathogens.

For a number of years, therefore, we have been increasingly concerned about food safety recommendations that include removal of all vegetation in the vicinity of crops. In our recent, direct experience in the Salinas Valley area, growers have been complying with the various food safety guidelines and recommendations (Good Agricultural Practices) for the simple reason that buyers will not purchase a grower's crops unless the grower complies with the guidelines. **The problem is with how growers, buyers and auditors interpret the guidelines.** Our direct experience demonstrates that many are interpreting Good Agricultural Practices to mean that there must be no vegetation or wildlife habitat near the crop, with no data to support such recommendations. For that reason, we are supporting efforts to increase our knowledge and understanding of the connection between presence of vegetation and food safety risks, including the following:

- a literature review conducted by Monterey County Resource Conservation District, "Reconciling Food Safety and Environmental Protection: A Literature Review" (funded through a grant from PG&E Settlement Funds) (Attachment 1);
- a million dollar project by the Central Coast Agricultural Water Quality Coalition, in partnership with researchers at UC Davis, UCSC, and others, to look at the compatibility of water quality protection practices and food safety;
- and a conference to promote coordinated management of water quality protection and food safety by bringing together water quality and food safety researchers, technical assistance providers, industry, and environmental protection agencies, scheduled for April 2007, to share information and identify opportunities for coordinated research.

We are also attaching a recent brief put out by the Center for Agroecology and Sustainable "Food Systems at UC Santa Cruz, Food Safety Versus Environmental Protection on the Central Coast" (Attachment 2).

While current knowledge about the causes of recent *E. coli* 0157:H7 outbreaks is still incomplete, the current literature suggests that food safety risk from wildlife is very low, far lower than the risk posed by cattle, the primary source of *E. coli* 0157H7. Therefore, even with incomplete knowledge, we believe that **removing effective vegetated practices, such as filter strips, grassed ditches and roadways, or riparian areas, is unlikely to significantly reduce the risk of an outbreak, and in fact, will remove a valuable means of filtering pathogens out of water**.

Potential Enforcement

Growers who are currently trying to protect water quality with adequate vegetation on and near their fields are caught in the middle. If they attempt to comply with food safety requirements by removing riparian habitat or on-farm vegetation, they may be increasing their exposure to liability for enforcement actions, including daily penalties, by regulatory agencies.

If water quality in agricultural areas fails to improve as required by the Conditional Waiver program, the Water Board will be forced to impose additional requirements, adopt mandatory practices, or require individual permits.

Need for Education and Training

Adequate education and training of inspectors, growers and handlers under a Leafy Green food safety program is critical. We believe the outreach and education program allowed by Section VIII of the proposed agreement must be mandatory. As discussed above, our concerns are with the specific language of the Best Practices as well as how they are implemented in the field. Therefore, it is critical for CDFA, the Leafy Green Board and the industry to involve the Central Coast Water Board, water boards in other affected areas, and other environmental agencies such as California Department of Fish and Game, in all aspects of developing education, outreach and training. The Central Coast Water Board will continue our efforts to educate growers regarding requirements of the Conditional Waver, but these efforts may not be adequate if inspectors cannot certify fields where vegetated conservation practices are in place. The proposed agreement should make consultation with environmental regulators mandatory for all education and training. Any inspector training program must include training in water quality and wildlife habitat protection requirements.

Need for Review and Findings

The marketing agreement requires signatories to comply with the Best Practices in order to use the certification mark that CDFA will obtain. We understand that the Best Practices have not yet been finalized. The Leafy Green Board will formally adopt the Best Practices, which are being developed by a scientific panel hired by the affected industry. CDFA's role will be limited to performing inspections to certify compliance with the Best Practices, enforcing the agreement and collecting assessments and other administrative tasks. A marketing order is planned that will establish a similar program for growers, based on the same Best Practices.

Marketing agreements and orders are in the nature of rulemaking actions. As described above, likely reactions to this program will be that growers will remove vegetated conservation practices, or decline to install them where they otherwise would. The marketing agreement and order will thus have a direct physical effect on the environment. We believe that CDFA should do additional environmental review to comply with the California Environmental Quality Act (CEQA). The environmental impacts of a governmental program should be considered early in the process. CDFA should take this opportunity to consider all impacts of removing vegetation, and alternatives to that practice, before moving forward with any program which includes or may include recommendations to remove vegetation.

We are also concerned that Best Practices for growing leafy greens may not meet the definition of Article II, Section A3 of the proposed agreement, in that they have not been reviewed and approved by "state and federal agencies, scientifically peer reviewed by a nationally renown (sic) science panel and adopted by the Board."

Before entering a marketing agreement, CDFA must make findings that the agreement is reasonably calculated to attain its objectives, conforms to the California Marketing Act, and protects the interests of consumers. We believe that CDFA should develop a full record, including adequate peer review and environmental analysis, before making these findings.

Conclusion

We support the concept of the marketing agreement and we understand the need to protect public health. We also believe any marketing agreement and Best Practices should be subject to environmental review and should incorporate input from environmental protection agencies and independent researchers. Adopting practices that do not also protect the environment will serve neither to protect public health nor restore confidence in fresh produce. We urge the industry and CDFA to include other agencies in the development and implementation of practices that will truly protect the public's health and water quality. We want to emphasize that nothing should be finalized without input from the state and federal environmental protection agencies. At the state level, this includes the Department of Fish and Game, as well as the Water Boards. We believe food safety and water quality protection are compatible and complimentary. Any mandatory Best Practices must be based on sound science. We have not seen evidence of that to date.

As discussed above, the State of California, growers, technical assistance organizations and researchers have devoted considerable resources over the past several years to improving agricultural practices and protecting the environment. As an agency, the Central Coast Water Board is entrusted with protecting the public's interest in clean water. We believe that protecting the health of watersheds and riparian areas is the key to water quality improvement and that healthy, functioning watersheds may even be less likely to have the kinds of problems that result in food safety issues. We are committed to working closely with the agricultural industry, educators, technical assistance organizations and state and federal agencies to resolve this issue in a manner that protects both public health and the environment.

We must again emphasize that input from environmental protection agencies is essential before any mandatory Best Practices are put into place. Please contact Michael Thomas at 805-542-4623 if you have questions.

Sincerely,

for Michael Thomas

Jeffrey Young, Chairman
Central Coast Water Board

Attachment: Literature Review
c:
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A. J. Yates, CDFA

A. G. Kawamura, CDFA
Tam Dudoc, SWRCB
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