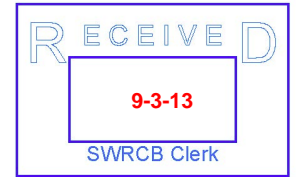




September 3, 2013

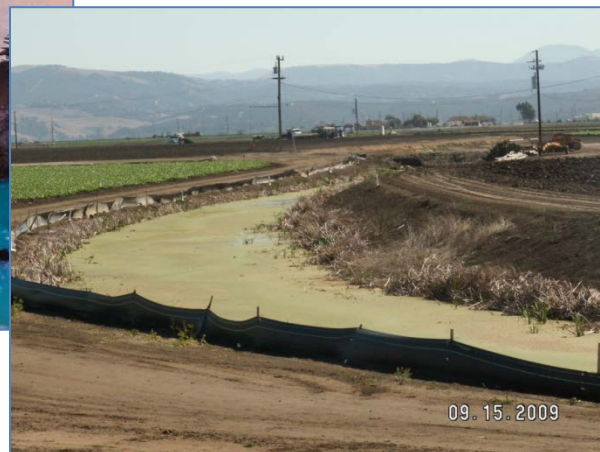
Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Via email to: commentletters@waterboards.ca.gov



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

Thank you for the opportunity to offer comment to the consolidated petitions of the Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0011 (and the associated Monitoring and Reporting Requirements) and the State Water Resources Control Board "Second Public Draft" Findings and Order. These comments are made on behalf of Santa Barbara Channelkeeper, San Luis Obispo Coastkeeper, and Monterey Coastkeeper (a program of The Otter Project) ("Keepers"). The Keepers have many years of experience dealing with the water quality challenges facing the Central Coast including agricultural discharges and have been continuously involved in the Irrigated Agriculture Regulatory Program since at least 2008. Agricultural pollution is perhaps the most important water quality problem impacting the environment and communities throughout the Central Coast Region. The Order currently being considered is a critically important issue to our organizations and our constituents.

The Central Coast has two very separate realities: Our coast and steep coastal streams are generally clean and pristine, but those conditions contrast sharply against the water and environment of the agricultural Salinas and Santa Maria Valleys.



Our visitors, wildlife, and rural residents are experiencing different realities as well.



These comments are being submitted for the State Water Resources Control Board (“SWRCB”) hearing being held on 10 September 2013, four years and ten months after the Executive Officer of the Central Coast Regional Water Quality Control Board (“CCRWQCB”) first convened a panel to draft the Agricultural Order and more than one year and six months after the adoption of the Order by the CCRWQCB. This workshop is one of literally over 100 meetings, workshops, all-day hearings, and small group discussions of this topic.

In December of 2008, then Central Coast Executive Officer Roger Briggs, convened an Agricultural Advisory Panel to shape the new Ag Order. The charge to the panel was to craft an order that could demonstrate improvement over the long term of the following issues (excerpted verbatim from the Briggs letter):

- “Eliminate toxic discharges of agricultural pesticides to surface waters and groundwater
- Reduce nutrient discharges to surface waters to meet nutrient standards
- Reduce nutrient discharges to groundwater to meet groundwater standards
- Minimize sediment discharges from agriculture lands
- Protect aquatic habitat (riparian areas and wetlands) and their buffer zones

Defining specific requirements, time schedules, milestones, and verification monitoring in the Irrigated Ag Order for each issue above ensures that the regulated community understands its obligations to meet discharge requirements and its role in helping to achieve water quality objectives and protect resources, while allowing reasonable time to reach full compliance. We understand that these requirements will not be achieved in a short time frame.”

It is no surprise the Panel could make little progress as from day-one most grower representatives stridently disagreed the CCRWQCB had authority to regulate these conditions. The Agricultural Advisory Panel disbanded in late 2009 and CCRWQCB staff immediately began drafting an Order that took into consideration Advisory Panel deliberations. The following elements were included in the Central Coast’s original Draft Order (February 2010) and were supported by our groups:

- Individual monitoring for all growers who discharge tailwater;
- Individual groundwater monitoring;

- Comprehensive list of all pesticides potentially causing surface water toxicity;
- Robust stormwater management targets;
- Minimum vegetated buffers required for all growers;
- Nitrate balancing targets and milestones;
- Leaching of wastewater from ponds to groundwater prohibited.

We believe it is fair to say the current proposed Draft Order does not fulfill the goals advanced by Executive Officer Briggs and are a sharp disappointment to our groups. It has been said by board members that the proposed Draft Order will gather the information needed to craft a more complete and regulatory Order five years from now. That is exactly what was said when the Central Coast's 2004 Ag Order was adopted. Conditions have only worsened since that time.

In contrast to the February 2010 Draft, the current Draft Order requires:

- Individual monitoring for less than 3% of growers in entire Region;
- No stormwater management targets;
- No vegetated buffer requirement. Buffer plans required in limited situations;
- No nitrate balancing targets or milestones. No reporting of nitrate uptake factors;
- No prohibition on leaching of wastewater from ponds to groundwater.

The current draft still includes individual groundwater monitoring, but even that requirement is threatened by potential implementation of a vague cooperative groundwater monitoring plan.

Suffice it to say, we believe that the time for continued weakening of proposed provisions has come to an end. Below we highlight a number of critical elements that we believe must be addressed by the Board for this Order to provide any meaningful protection of water quality. The following provisions must be added or strengthened:

- Requirement to report nitrogen uptake of each crop and to meet nutrient balancing ratios;
- Annual groundwater monitoring for Tier 3 growers;
- Strengthening of Provision 88A.

Requirement to report nitrogen uptake of each crop and to meet nutrient balancing ratios.

We must reiterate the premise of our petition: Reporting of the grower estimated nitrogen uptake of each crop is essential to understanding potential nitrate loading to groundwater, and demonstrating and meeting a balance between nitrogen applications and crop nitrogen requirements is critical to load reductions.

All parties believe that nitrate pollution of surface and ground waters threatens the health and safety of our region's people and environment. We believe the purpose of a Conditional Waiver is to achieve compliance with water quality standards and to demonstrate that achievement or at least progress toward that achievement. By eliminating the requirement to meet and report a nitrate balance ratio, the CCRWQCB has removed any enforceable standard for controlling nutrient pollution to groundwater. For what we all can agree is one of the most critical water pollution issues facing our State's environment and people, the Board is gathering an entirely incomplete set of information and deferring regulatory control to some unspecified later date.

We believe the State Board should require all growers to report their estimate of crop nutrient requirements. Next, high risk (Tier 3) growers should be required to meet a 1.0 (harvested crops) to 1.2 (crops that bear harvested fruits) ratio of nitrogen applied to nitrogen harvested.

Reporting and meeting this modest standard is achievable within the 5-year term of this order. Growers are able to report their estimate of nitrogen required; at the very least the CCRWQCB staff can

see the variation between estimates and gain important experience. Meeting the ratio is entirely feasible as the grower has the discretion to provide their own estimate of crop nitrogen need. This small step of reporting and meeting a ratio will become, through time and experience, the foundation for future expectations. The State Board has argued that the methodology is imprecise or somehow inaccurate. We argue that even if a different regulatory tool is adopted in the future, the base premise established in this Ag Order will still be valid: There needs to be a balance between nitrogen applied and nitrogen needed to raise a crop.

Annual groundwater monitoring for Tier 3 growers participating in a cooperative monitoring program. The State Board's Draft is unclear whether Tier 3 growers participating in a cooperative groundwater monitoring program must monitor and report results annually. The discussion (pg. 30, paragraph 3) states, "[We] find that annual monitoring for the highest risk dischargers is reasonable." That thought is not explicit in the new text (pg 31) for Tier 1, 2, and 3 MRPs Section A.6, P2. It is our recollection that in our (disclosed) communications with Board and staff that (although there seemed to be some doubt) annual monitoring was not required.

We believe recent experience suggests that shallow groundwater quality can change more rapidly than previously thought. It has been suggested that groundwater quality is a "legacy" issue, but the variable groundwater quality at communities such as San Jerardo suggest a closer connection between surface uses and practices, and shallow groundwater quality. Shallow groundwater may be more variable than deeper groundwater; shallow groundwater will likely be the first to be polluted and the first to respond to reduced loading. We see no possible argument that less testing is more protective of the environment or public health and we believe annual testing of Tier 3 – the highest risk - farms is appropriate.

We appreciate the State Board adding clarification to the minimum requirements of cooperative monitoring plans. The State Board has clarified that every well supplying drinking water must be monitored and reported, and the well must have two sampling rounds (one Spring, one Fall).

As recognized by the CCRWQCB and clarified by the State Board, "The significant health and safety concerns in conjunction with widespread evidence of elevated nitrate levels in the Central Coast Region lead us to the conclusion that identification and evaluation should encompass monitoring of all wells that are used or may be used for drinking water purposes." We have heard the argument that there may be situations where testing could be redundant, such as two immediately adjacent wells identical in their construction and screening. While we understand that extremely rare potential redundancies may occur, we believe the administrative costs of preparing and reviewing the argument for a well to not be tested and the confidence for the families drinking the water far outweigh the cost of a test. We have also heard the argument that contour mapping provides better information. We disagree; nothing can substitute for the confidence given by a test of the actual water being consumed. Contour mapping will provide an approximation of the depth of clean or contaminated groundwater. Is a tenant family expected to know the depth of their well? Does the approximation offer confidence? We think not and we believe the plan to characterize the groundwater (also a requirement) offers no substitute for testing of the water being delivered.

We have heard and appreciate the suggestion that "cooperative programs" are critical to the success of the Irrigated Lands Program. Our bad experiences on the Central Coast with the Water Quality Preservation Inc. Cooperative Monitoring Program have made us weary and wary (our bad experiences are described in our comments prepared for the Workshop and will not be repeated here). Our trepidation was heightened when the Central Coast Groundwater Coalition listing of key program benefits made no mention of domestic well testing and suggested that public data could substitute for

domestic well data. We look forward to better experiences with cooperatives and we trust that adding minimum requirements will help achieve both efficiencies for growers and transparency for the concerned public.

Strengthening of Provision 87A. Board staff states, “We will add a new provision to the Order to make explicit the Central Coast Water Board’s intent that implementation of increasingly more effective management practices in an iterative manner constitutes compliance with Provisions 22 – 23 and Provisions 84-87 of the Agricultural Order” (Section D, pg 24). Provision 87A has been added, as follows:

“To comply with Provisions 22, 23, and 84-87 of this Order, Dischargers must (1) implement management practices that prevent or reduce discharges of waste that are causing or contributing to exceedances of water quality standards; and (2) to the extent practice effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality standards, ***the Discharger must implement modified management practices***” (emphasis added).

We believe that the final phrase of this provision, “the Discharger must implement modified management practices,” is not nearly explicit enough to ensure that iterative implementation is increasingly effective to control discharges. Rather, Provision 87A would in effect equate implementation of iterative management practices, be they effective or not, with achievement of water quality standards. In practice, this provision would remove the Central Coast Water Board’s discretion to conduct enforcement even in cases of an egregious discharge or recalcitrance so long as the discharger in question could identify *any* modification of BMP implementation. We are concerned that Provision 87A is detrimental to the Central Coast Water Board’s ability to conduct enforcement activities, and we ask that the State Water Board consider alternative language to avoid this undesirable outcome.

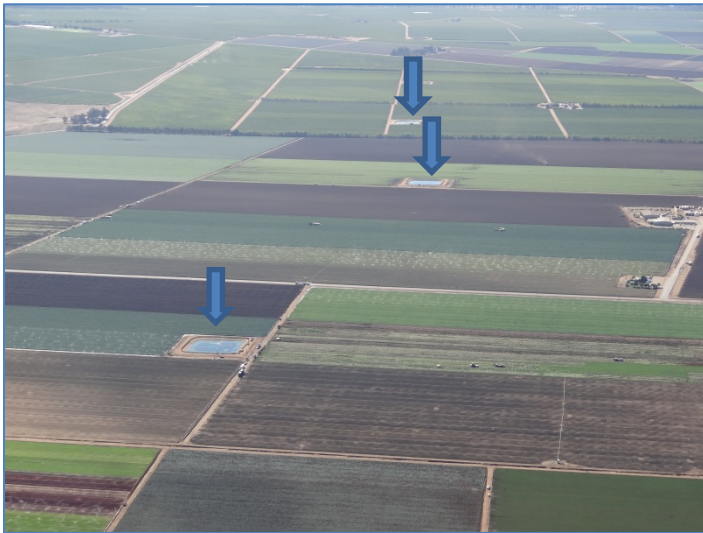
Important Issues Affirmed in the Order

Individual Monitoring and Reporting. This Order regulates discharges of waste from irrigated lands to ensure that such discharges do not cause or contribute to the exceedance of any Regional, State, or Federal numeric or narrative water quality standards. We have already established through ambient, in-stream monitoring that many water bodies throughout the Central Coast Region are chronically impaired. Ambient, in-stream monitoring alone, however, does nothing to determine if discharges are causing or contributing to exceedances. If we want to know if discharges are causing or contributing to exceedances, then we ultimately have to monitor discharges. There is no avoiding this fact.

Additionally, this Order requires the discharger to address impacts to water quality by evaluating the effectiveness of management practices and taking action to improve practices to reduce discharges. Short of eliminating a discharge altogether, it is highly difficult to envision any method of effectiveness verification that does not include some form of individual discharge monitoring. Individual discharge monitoring is a critical and integral aspect of this Order, and we support the board’s decision to uphold these requirements for Tier 3 growers.

Monitoring of Tailwater Ponds. The current Draft Order includes monitoring and reporting of water quality in containment (tailwater) ponds and we fully support this inclusion. On the Central Coast there are literally hundreds of these ponds and many (more likely most) percolate to groundwater.

Some may contain chemicals perhaps meant to kill aquatic vegetation, rendering the water useless for any potential beneficial reuse.



While we may agree there is limited data to understand the contributions of these ponds to groundwater loading, we believe it is essential to begin to understand how many there are and the chemicals they may contain.

Tiles drains are also numerous and their contributions are not completely understood. These drains (the white pipes draining sub-surface water from farm fields and into the creek) contain a blend of percolating irrigation water, storm water, and shallow groundwater.



What has Been Entirely Missed? Broader Toxicity Requirements. As mentioned above, the first version of the Order included a comprehensive list of pesticides potentially causing toxicity in Central Coast surface waters. Later iterations focused on Diazinon and chlorpyrifos. We believe there is clear evidence of switching from Diazinon and chlorpyrifos to other environmentally toxic pesticides such as malathion, possibly in order to avoid falling under Tier 3 requirements. Several monitoring sites have tested “toxic” every quarter for the past seven years; the Order’s focus on single chemicals may not serve the purpose of reducing environmental toxicity. We believe this is a missed opportunity as chronic toxicity is environmentally catastrophic, widespread, but most likely easier and more quickly solved than nitrates in deep groundwater.

In conclusion

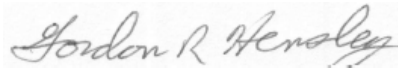
Santa Barbara Channelkeeper, San Luis Obispo Coastkeeper, and Monterey Coastkeeper (a program of The Otter Project) appreciate the opportunity to comment on the consolidated petitions and the Second Public Draft SWRCB Findings and Order. Quoting the CCRWQCB, we believe “These impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and the discharges causing the impairments continue. Immediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.”

Thank you for your attention and consideration.

Sincerely,



Kira Redmond
Executive Director
Santa Barbara Channelkeeper



Gordon Hensley
Executive Director
San Luis Obispo Coastkeeper



Steve Shimek
Executive Director
The Otter Project