



Michael Winn
Chairperson

Sue Luft
Vice Chairperson

Courtney Howard
Secretary

Room 207, County Government Center
San Luis Obispo CA 93401

PH (805) 781-1016
FAX (805) 788-2182

Members

Steve Sinton
District 1

Bill Garfinkel
District 2

Marilee Hyman
District 3

Michael Winn
District 4

Della Barrett
District 5

Chuck Fellows
Arroyo Grande

Russ Thompson
Atascadero

Robert Mires
Grover Beach

Betty Winholtz
Morro Bay

Christopher Alakel
Paso Robles

Ted Ehring
Pismo Beach

John Ashbaugh
San Luis Obispo

Jim Adams
Cambria CSD

John D'Ornellas
Heritage Ranch CSD

Dan Gilmore
Los Osos CSD

Ed Eby
Nipomo CSD

Barbara Mann
Oceano CSD

John Russell
San Simeon CSD

Mike Ellison
San Miguel CSD

Jeff Hodge
Templeton CSD

Linda Chipping
Coastal San Luis RCD

Tom Mora
Upper Salinas RCD

Ray Allen
Agriculture At-Large

Lowell Zelinski
Agriculture At-Large

Jackie Crabb
County Farm Bureau

Sue Luft
Environmental At-Large

Eric Greening
Environmental At-Large

Annie Gillespie
Environmental At-Large

John Neil
Atascadero MWC

Mike Vela
California Men's Colony

John Reid
Camp SLO

Edralin Maduli
Cuesta College

Mark Zimmer
Golden State Water

January 25, 2011

Honorable Adam Hill
Chairperson, Board of Supervisors
County of San Luis Obispo
976 Osos Street
San Luis Obispo, CA 93408-2040

Subject: Water Resources Advisory Committee Comments on California Regional Water Quality Control Board, Central Coast Region, Draft Order No. R3-2011-0006 ("Draft Ag Order"), dated November 2010, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Chairperson Hill:

On April 7, 2010, the Water Resources Advisory Committee (WRAC) formed an ad hoc subcommittee to review the Central Coast Regional Water Quality Control Board (RWQCB) Draft Agricultural Order. Ad hoc subcommittee members included Mike Broadhurst (Agriculture At-Large Alternate), Jackie Crabb (County Farm Bureau), Annie Gillespie (Environmental At-Large), Marilee Hyman (District 3), Sue Luft (Environmental At-Large), and Lowell Zelinski (Agriculture At-Large). Member Luft served as subcommittee chair.

One of the charges of the subcommittee was to review the draft letter from the Board of Supervisors to the Regional Water Quality Control Board (RWQCB) in June, 2010, regarding the Agricultural Order as drafted at that time. That letter was submitted by your Board to the RWQCB.

A revised Draft Agricultural Order was issued by the RWQCB staff on November 19, 2010, with a hearing scheduled for March 17, 2011. Written comments on the revised Draft Ag Order were to be submitted by the public by January 3, 2011. The public review timeframe did not allow for the WRAC subcommittee to meet and for the WRAC to vote on this issue. The WRAC subcommittee believes that written comments should be accepted by the RWQCB until the March 17, 2011 public hearing, in spite of RWQCB staff statements otherwise.

The ad hoc subcommittee met on December 15, 2010, and through subsequent email communications prepared the attached report. The WRAC approved the Ag Waiver Subcommittee report on January 5, 2011, by a vote of 16-1.

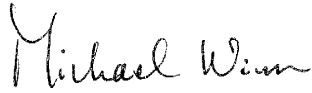
Purpose of the Committee:

To advise the County Board of Supervisors concerning all policy decisions relating to the water resources of the SLO County Flood Control & Water Conservation District. To recommend to the Board specific water resource programs. To recommend methods of financing water resource programs.

Excerpts from WRAC By-Laws dated 3/6/07

The WRAC requests that your Board send the attached draft letter of support and the WRAC report to the RWQCB for their consideration when they hear the proposed Draft Ag Order on March 17, 2011.

Respectfully,

A handwritten signature in cursive script that reads "Michael Winn".

MICHAEL WINN

Chairperson, Water Resources Advisory Committee

cc: SLO County Board of Supervisors w/attachments
Robert Lilley, SLO County Agricultural Commissioner w/attachments

Attachments: WRAC Comments on Draft Ag Order dated November 2010
Draft Letter to California Regional Water Quality Control Board

Comments on Draft Ag Order dated November 2010
SLO County Water Resources Advisory Committee (WRAC)
Prepared by WRAC Ag Waiver Ad Hoc Subcommittee

This report was approved by the SLO County Water Resources Advisory Committee (WRAC) on January 5, 2011, at their regularly scheduled monthly meeting for submittal to the SLO County Board of Supervisors.

The WRAC requests that the Board of Supervisors send a letter to the Regional Water Quality Control Board in support of this report for their consideration when the Water Board hears the proposed Ag Order on March 17, 2011.

Purpose of WRAC Subcommittee:

Review and comment on California Regional Water Quality Control Board, Central Coast Region, Draft Order No. R3-2011-0006 (“Draft Ag Order”), dated November 2010, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Summary:

The Draft Ag Order applies to farmers/growers engaged in irrigated agriculture and establishes tiers based on a relative risk criteria. In SLO County, the majority of growers will probably fall in Tier 1 (of three tiers, the least burdensome requirements). Due to the time constraints imposed by the Regional Water Quality Control Board and the enormous amount of material to be reviewed, the subcommittee focused their review on some general issues and the Tier 1 requirements.

General Discussion

1. Tone of Draft Ag Order does not reflect a spirit of cooperation

Though the step of introducing tiers was considered progress, the subcommittee had a number of general concerns with the current Draft Ag Order. Most significantly, the tone and much of the language of the Draft Ag Order conveys a distrust of farmers that is without basis. The Regional Water Quality Control Board (Water Board) staff did not act in the spirit of cooperation as particularly demonstrated by the unreasonable timeframe for public comment, compressing the schedule over the holidays.

The November 2010 staff report starts with the statement that “discharges of waste associated with agricultural discharges (e.g., pesticides, sediment, nutrients) are a major cause of water pollution in the Central Coast region. The water quality

impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and agricultural discharges continue to contribute to already significantly impaired water quality and impose certain risks and significant costs to public health, drinking water supplies, aquatic life, and valued water resources.” This language is inflammatory, does not accurately represent the situation, and does not acknowledge that relatively few farmers contribute to water quality problems.

Based on the data provided by the Water Board, water quality is impaired in some portions of the region. However, the majority of the waterbodies in San Luis Obispo County are not impaired by wastes associated with agricultural discharges. The lower Santa Maria watershed and its tributaries and lower Oso Flaco Creek (collectively titled “lower Santa Maria area”) is the only area in SLO County that has been adversely impacted based on the staff report.

In order to gain popular support for the necessary programs, it would be helpful for the Water Board staff to adopt a tone that reflects an interest in working with the regulated community rather than treating farmers as adversaries. The Water Board should also offer incentives for participation.

2. Use of tiers and impaired waterbodies lists

In spite of the tone of the staff report and some of the associated documents, the subcommittee believes that the latest version of the Ag Order is much improved over the previous version. The use of tiers helps differentiate between operations that represent various levels of risk to water quality.

There are some inconsistencies between the definitions and the charts provided by the Water Board. For example, missing from the tier identification table is a small vegetable grower who is not located near an impaired waterbody and is not using one of the listed insecticides. The definitions seem to indicate this grower would fall under Tier I. Also, the chart indicates that a grower could not have more than 1,000 irrigated acres of any crop nor grow crops with a high nitrate loading potential. However, the definition of Tier 1 only limits crops with a high nitrate loading potential to less than 1,000 acres. The tier definitions are at best confusing.

The 2010 Section 303(d) list of impaired waterbodies is referenced in the Ag Order. The reference needs to be to a single list that is based upon the constituents / impairments the order is meant to address. A grower should be able to know clearly what list is referenced and be assured that the tier classification for their operation does not change within the term of the Order.

3. **Costs of Draft Ag Order and Water Board staff's ability to utilize data**

Costs of the proposed Ag Order are estimated by the Water Board staff in Appendix F. A number of statements in this Appendix are of concern to the subcommittee. Page 37 states that "with the current staffing and budget, staff cannot review information from, nor inspect, most of the operations in the region." An obvious question is why more data are being requested if staff cannot review the information nor inspect the operations.

Many of the costs of the proposed Ag Order are overly burdensome for growers without providing meaningful protection of water quality. Table 7 in Appendix F lists an average cost to implement the management practices at \$40,000 per grower over five years. This cost does not include the other requirements of the Order. One local Tier 1 grower estimates his cost of compliance with the groundwater monitoring requirements alone at \$2,900 every five years. Based on the USDA statistics at <http://www.ers.usda.gov/statefacts/ca.htm>, 47% of California farmers have gross sales of \$10,000 per year or less. The cost of compliance with the Ag Order may prove prohibitive for many growers, particularly those with small operations.

The subcommittee would like to use a quote from Wendell Berry's *Agricultural Solutions for Agricultural Problems* (1978) to demonstrate our concern. Farmers are... "only a small part, and the worst-paid part, of a food production network that includes purchasers, wholesalers, retailers, processors, packagers, transporters, and the manufacturers and salesmen of machines, building materials, feeds, pesticides, herbicides, fertilizers, medicines, and fuel." Farmers generally operate on very small margins and cannot bear many additional costs.

In Appendix F, the Water Board states that a cost analysis is not required. The subcommittee instead strongly believes that a full cost / benefit analysis is needed. The Water Board needs to better define their rationale for the proposed requirements to justify the costs imposed on the agricultural community as well as provide a more accurate cost of the Ag Order.

One of the subcommittee members pointed out the lag time for analytical laboratories generating sampling results. There are instances of the SWAMP lab taking almost a full 12 months to provide bio-assessment data. Given the cost associated with the receiving water monitoring, we hope that Water Board staff would be able to commit the time and resources to review the data generated. If it takes 12 months to generate results and another six months to review these data, the data will be badly aged, which could impact the implementation timetable. It is also unclear how the Board can utilize almost 1,900 photo points for repeat monitoring if they do not have the staff to organize and review the data. The

framework for storing and utilizing bioassessment data has not yet been fully developed.

4. General concerns with Draft Ag Order

There needs to be a mechanism for data submission in a non-electronic form for those farmers who do not use, or do not have, internet access.

The Ag Order and the associated documents represent an enormous amount of material for anyone to review within the available timeframe. The lack of comments by many growers should not be considered by the Water Board as an indication of approval or disinterest.

Specific Comments on Tier 1 Requirements

5. Impaired waterbody lists are confusing

Based on the available time and the expertise of our members, the subcommittee chose to limit specific comments to the requirements that apply to Tier 1 growers. The subcommittee is under the assumption that the majority of the growers in irrigated agriculture in SLO County should fall under Tier 1. In determining this tier status, the subcommittee assumed that the lists in the Ag Order constituted the complete lists of impaired waterbodies. However, it is unclear whether this is in fact true.

6. Certain Tier 1 requirements make sense

Some of the Tier 1 requirements make sense from a water quality perspective and are reasonable for a grower to implement. These include the requirement to properly destroy all abandoned groundwater wells, minimize bare soil, maintain riparian functions, install backflow prevention devices, and obtain farm water quality education. In fact, these requirements should apply to all landowners within the basin, not just those in irrigated agriculture.

7. Guidance needed for Farm Plan updates which must remain confidential

Updating the Farm Plan is a reasonable requirement. However, the Water Board should develop guidelines and provide grants to organizations to assist growers with the proper development of updated Farm Plans and the associated practices. The Water Board should provide a model Farm Plan and/or detailed guidelines as to the requirements of the Farm Plan. The Water Board should also provide assistance with the preparation of QAPP documents.

Confidentiality is a concern to many growers. The Farm Plan needs to be kept onsite and available for review by Water Board staff. There should be no requirement to submit the Farm Plans to the Water Board or to the public. An onsite review of the Farm Plan can provide the inspector a much more complete understanding of the specific operation.

8. Cooperative Monitoring Program may involve additional costs

Most, if not all, growers will participate in the Cooperative Monitoring Program through Central Coast Water Quality Preservation, Inc. (Preservation, Inc.). As long as Preservation, Inc. can meet the deadlines and requirements, this approach makes sense. However, the subcommittee assumes that there will be additional costs to the growers for Preservation, Inc. to meet the new requirements of the Ag Order.

9. Groundwater sampling requirements are costly and not justified

The groundwater sampling requirements are the most costly part of the proposed Ag Order for Tier 1 growers. The Water Board did not clearly define their objectives or how they can manage such an enormous amount of data. It is important to note that water quality data are already available at the respective County Environmental Health Departments for all domestic wells that have been drilled in the recent past or are associated with homes that have been built in recent decades. These data should be used before requiring growers to obtain more groundwater quality data. The groundwater sampling requirement appears to be an expensive duplication of effort.

A grower should not have to pay a professional engineer, professional geologist or other approved third party to obtain the groundwater samples. This is a large and unnecessary expense. The information provided by the laboratory along with the sample bottles and the chain of custody form should provide adequate instruction and documentation to ensure proper sampling of the groundwater. By signing the chain of custody documentation, the sampler is certifying that the sample was properly obtained and transferred to the laboratory.

The requirement to sample the primary irrigation well and all wells used for domestic purposes is overly burdensome. The subcommittee believes that sampling the primary well should be adequate to provide data on the groundwater quality in the vicinity of the operation. In many cases, testing of only one well in a cluster of small farms relying on the same aquifer would provide adequate data.

Although several of the constituents required to be analyzed in the groundwater samples are of interest to agriculture, they do not have water quality impacts. The groundwater testing should be limited to contaminants which pose a water quality

concern. The subcommittee suggests that the groundwater testing be limited to nitrate, chloride, sodium and electrical conductivity (specific conductance).

Determination of groundwater depth is also listed as a requirement. Unless the groundwater levels are mapped and tracked on a regular basis by the Water Board, these data appear to have no purpose. Obtaining a water level can be quite costly if the well is not equipped with a permanent measuring device (as many wells on smaller operations are not). A sounding device may need to be rented or purchased by the grower, and many wells are not amenable to the use of a sounding device (i.e., casing too small in relation to pump discharge, well not straight, obstructions in well - including pins which may hold together pump discharge pipe sections, etc.). One subcommittee member's experience suggests a minimum cost of \$900 to determine groundwater depth in the absence of an appropriate sounding device. This data is better obtained as part of a local groundwater monitoring program.

In fact, a local groundwater monitoring program is a much more cost-effective way to review the groundwater situation in an area. The appropriate number of sampling locations can be determined, which should include all properties not just those in irrigated agriculture. Also, mapping, reporting and evaluation of groundwater concerns can be done on a local level. The Water Board should provide funding to assist such local programs.

10. Concluding remarks

The suggestions of the WRAC subcommittee are protective of water quality while being less burdensome to the agricultural community than the proposed requirements of the Draft Ag Order.

January __, 2011

Chairman Jeffrey Young
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Central Coast Regional Water Quality Control Board Draft Order No. R3-2011-0006
("Draft Ag Order"), dated November 2010, Conditional Waiver of Waste Discharge
Requirements for Discharges from Irrigated Lands

Dear Chairman Young:

Thank you for the opportunity to provide comments and recommendations on the revised Draft Ag Order that was issued for public review on November 19, 2010.

The San Luis Obispo (SLO) County Board of Supervisors expressed our concern with the Preliminary Draft Agricultural Order in our letter to the Regional Water Quality Control Board (RWQCB), dated June 8, 2010. We remain concerned about the tone of the Draft Ag Order and the impact of some of the requirements on our local agriculturalists.

Our County Water Resources Advisory Committee (WRAC) has prepared the attached comments regarding the Draft Ag Order, which are supported by the SLO County Board of Supervisors. We ask that your Board take these comments into account.

The public comment period on the Draft Ag Order did not allow adequate time for the WRAC to prepare and adopt comments. Although your staff has stated that written comments will not be accepted after January 3, 2011, most rulemaking processes allow for the submittal of written comments through the date of the public hearing.

We look forward to your consideration of these recommendations at the March 17, 2011 public hearing.

Sincerely,

Adam Hill
Chairperson, San Luis Obispo County Board of Supervisors