



# CALIFORNIA FARM BUREAU FEDERATION

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July 20, 2012

Ben Zabinsky  
Agricultural Lands Discharge Program  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd., Ste A  
Santa Rosa, CA 95403-1072

**Re: *Comments on the Agricultural Lands Discharge Program Scope and Framework***

Dear Mr. Zabinsky:

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.

On behalf of the Del Norte County Farm Bureau, Humboldt County Farm Bureau, Lake County Farm Bureau, Marin County Farm Bureau, Mendocino County Farm Bureau, Modoc County Farm Bureau, Siskiyou County Farm Bureau, Sonoma County Farm Bureau, and the Trinity County Farm Bureau, the California Farm Bureau Federation (collectively hereinafter “Farm Bureau”) appreciates the opportunity to provide comments on the Agricultural Lands Discharge Program Draft Program Scope and Framework released on July 6, 2012 and respectfully presents the following remarks.

Farm Bureau appreciates many of the changes made to the July 6, 2012 draft Scope and Framework, such as the inclusion of the “Water Quality Stewardship Category” and the removal of various terms and conditions which dictate management practices. Notwithstanding these changes, many of Farm Bureau’s concerns from its May 18, 2012 comment letter remain valid and applicable, and thus, Farm Bureau incorporates by reference those comments. Farm Bureau also offers the following comments:

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN · KAREN NORENE MILLS · CHRISTIAN C. SCHEURING · KARI E. FISHER · JACK L. RICE

### **The Draft Scope and Framework Inappropriately Presumes that All Irrigated Agriculture Creates a Discharge of Waste**

The Draft Scope and Framework inappropriately presumes that all irrigated agriculture creates a discharge of waste. This presumption is the basis of the entire tiering structure in spite of the fact that acknowledgments have been made that there are numerous and varying irrigated agricultural operations within the North Coast Region that have varying degrees of impact on water quality. While the Regional Board has the authority to regulate discharges of waste from irrigated agricultural operations, the Regional Board does not have the unfettered regulatory authority to regulate all agricultural practices, especially those practices that do not create such discharges. A fundamental limitation to the Regional Board's authority is that an activity must result in a "discharge of waste" that impacts water quality in order for that activity to be subject to regulation. (Wat. Code, § 13260(a)(1).) While it may be difficult to determine whether individual irrigated lands are creating a discharge to waste, such difficulties do not eliminate the statutory authority to regulate only those activities that create a discharge of waste which could affect the quality of waters to the state.

### **Intellectual Property, Trade Secrets, and Proprietary Information Must Remain Confidential**

Within the requirements of Tier 2, "growers/operators will implement a [Farm Water Quality Management] Plan that was submitted to and approved by the Regional Water Board Executive Officer." Farm Bureau is concerned about the requirement that Farm Plans must be sent to the Regional Board. Information within Farm Plans contains intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the Regional Board's authority to regulate water quality. Prior to any request for the entire Farm Plan, the Regional Board should make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Such information must remain confidential. The Porter-Cologne Act explicitly provides protection to growers for intellectual property, trade secrets, and proprietary information that may be within a Farm Plan, monitoring report, or technical submittal:

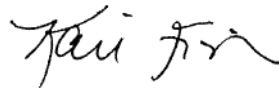
When requested by the person furnishing a report, **the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies.** However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(Wat. Code, § 13267(b)(2).) Thus, the Regional Board must acknowledge that farm specific information, including pesticide application, irrigation practices, crop rotations, best management practices, etc. are intellectual property, trade secrets, and proprietary information that must remain confidential.

**Conclusion**

Farm Bureau appreciates the opportunity to submit comments on the Draft Program Framework and Tiering Structure and looks forward to further involvement and discussion with the Regional Board on the development of the Agricultural Lands Discharge Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari Fisher", written in a cursive style.

KARI E. FISHER  
Associate Counsel

KEF:pkh