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6 Ocean Mist Farms and RC Farms

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8
9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10
11 OCEAN MIST FARMS AND RC FARMS

12 vs.

13 CALIFORNIA REGIONAL WATER
14 QUALITY CONTROL BOARD,
CENTRAL COAST REGION

SWRCB File No. _____

15 REQUEST FOR STAY AND PETITION FOR
16 REVIEW OF CALIFORNIA REGIONAL
17 WATER QUALITY CONTROL BOARD,
CENTRAL COAST REGION, ORDER NOS.
R3-2012-0011, R3-2012-0011-01, R3-2012-
0011-02, AND R3-2012-0011-03, AND
RESOLUTION NO. R3-2012-0012

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SACRAMENTO, CALIFORNIA 95814

1 Pursuant to Water Code section 13320, the Petitioners hereby petition the State Board to
2 review the California Regional Water Quality Control Board, Central Coast Region’s (“Regional
3 Board’s”) actions and inactions related to: (1) its adoption of Order No. R3-2012-0011:
4 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands
5 (“2012 Ag Waiver”); (2) its adoption of Monitoring and Reporting Program Order No. R3-2012-
6 0011-01: Tier 1 (“Tier 1 MRP Order”); (3) its adoption of Monitoring and Reporting Program
7 Order No. R3-2012-0011-02: Tier 2 (“Tier 2 MRP Order”); (4) its adoption of Monitoring and
8 Reporting Program Order No. R3-2012-0011-03: Tier 3 (“Tier 3 MRP Order”, and collectively
9 with Tier 1 MRP Order and Tier 2 MRP Order, the “Tier MRP Orders” or the “MRP”); (5) its
10 certification of a “Final Subsequent Environmental Impact Report” (“Final SEIR”) in its
11 Resolution No. R3-2012-0012, purporting to conduct analysis required by the California
12 Environmental Quality Act (“CEQA”) for regulating discharges from irrigated lands, for which a
13 Notice of Determination (“NOD”) was allegedly filed; and (6) its failure to properly conduct an
14 environmental impact analysis of the 2012 Ag Waiver as required by the CEQA.

15 In addition, pursuant to Water Code section 13321(a) and title 23, section 2053 of the
16 California Code of Regulations, the Petitioners hereby request the State Board to immediately
17 stay the 2012 Ag Waiver and Tier MRP Orders, or in the alternative, to schedule a hearing
18 regarding the Petitioners’ Request for Stay.

19 Attached as **Exhibit A** to this Petition is a copy of Order No. R3-2012-0011. Attached as
20 **Exhibit B** to this Petition is a copy of Order No. R3-2012-0011-01. Attached as **Exhibit C** to
21 this Petition is a copy of the Order No. R3-2012-0011-02. Attached as **Exhibit D** to this Petition
22 is a copy of Order No. R3-2012-0011-03. Attached as **Exhibit E** to this Petition is a copy of
23 Resolution No. R3-2012-0012. Attached as **Exhibit F** to this Petition is a copy of Notice of
24 Determination, dated April 3, 2012. Attached as **Exhibit G** to this Petition is the Declaration of
25 Dale Huss in support of the Petitioners’ Request for Stay and Petition (“Huss Decl.”). Attached
26 as **Exhibit H** to this Petition is the Declaration of Dennis Sites in support of the Petitioners’
27 Request for Stay and Petition (“Sites Decl.”). Attached as **Exhibit I** to this Petition is the
28 Declaration of William J. Thomas in support of the Petitioners’ Request for Stay and Petition

1 (“Thomas Decl.”). Attached as **Exhibit J** to this Petition is a copy of the transcript for the
2 Regional Board’s hearing held on March 14, 2012 (“Hearing Tr. (3/14/2012)”). Attached as
3 **Exhibit K** to this Petition is a copy of the transcript for the Regional Board’s hearing held on
4 March 15, 2012 (“Hearing Tr. (3/15/2012)”).

5 This Petition and Request for Stay satisfy the requirements of title 23, sections 2050 and
6 2053 of the California Code of Regulations. Petitioners request the opportunity to file
7 supplemental points and authorities in support of this Petition once the administrative record
8 becomes available. Petitioners also request the opportunity to amend its Request for Stay,
9 Petition and statement of points and authorities as the Petitioners have been delayed by the
10 Regional Board’s slow response time in providing the necessary documents to submit this
11 Petition and as the limitations period to object to Resolution No. R3-2012-0012 and the Notice of
12 Determination has not expired. Pursuant to title 23, section 2050.5(a) of the California Code of
13 Regulations, Petitioners also reserve the right to submit additional argument and evidence in reply
14 to the Regional Board’s or other interested parties’ responses to this Petition.

15 **I. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 Petitioners submit this Petition in compliance with Water Code sections 13320(a),
17 13321(a), and 13330(c). Section 13320(a) provides that an aggrieved person may petition the
18 State Board to review any action or inaction of a Regional Board under Water Code section
19 13260 *et seq.*, including actions or inactions relating to waiver of waste discharge requirements.
20 Section 13321(a) allows the State Board to stay a regional board’s decision and order and to hold
21 a hearing regarding the request for stay. Section 13330(c) states that “[t]he time for filing an
22 action or proceeding subject to Section 21167 of the Public Resources Code for a person who
23 seeks review of the regional board’s decision or order under Section 13320 . . . , shall commence
24 upon the state board’s completion of that review” Based on this provision of the Water
25 Code, Petitioners are required to submit a challenge to the Regional Board’s actions with respect
26 to CEQA to the State Board for review prior to filing a writ of mandate pursuant to Public
27 Resources Code section 21167. Throughout the 2012 Ag Waiver review process, which included
28 the CEQA review, Petitioners had protested the Regional Board’s improper reliance on its

1 negative declaration issued in 2004 (“2004 Negative Declaration”) in connection with its
2 adoption of the 2004 conditional waiver of waste discharge requirements for discharges from
3 irrigated lands (“2004 Ag Waiver”). The 2012 Ag Waiver contains new conditions and
4 regulations, and is significantly different in scope from the 2004 Ag Waiver. As such, the 2012
5 Ag Waiver qualifies as a new “project” for which a full CEQA review is required. However, the
6 Regional Board relied heavily on the 2004 Negative Declaration and issued a draft subsequent
7 EIR (“Draft SEIR”) on November 19, 2010, which purported to analyze the 2010 draft of the
8 proposed waiver, the Final SEIR on March 17, 2011, which purported to analyze the March 17,
9 2011 draft of the proposed waiver, and an addendum to the Final SEIR on August 10, 2011
10 (“Addendum”). As further discussed in the attached Statement of Points and Authorities, the
11 Final SEIR fails to satisfy CEQA requirements for many reasons and no environmental impact
12 analysis was ever prepared for the actual project that adopted on March 15, 2012.

13 **II. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF**
14 **PETITIONERS**

15 Ocean Mist Farms
16 Attention: Dale Huss
17 10855 Ocean Mist Parkway
18 Castroville, CA 95012
19 Phone: (831) 633-2144
20 Email: daleh@OceanMist.com

21 RC Farms
22 Attention: Dennis Sites
23 25350 Paseo del Chaparral
24 Salinas, CA 93908
25 Phone: (831) 595-3618
26 Email: dsitesagmt@aol.com

27 In addition, Petitioners request that all materials in connection with the Petition and
28 administrative record be provided to Petitioners’ counsel as identified on the caption page of this
Petition.

29 **III. THE PETITIONERS**

30 **A. Ocean Mist Farms**

31 Ocean Mist Farms is a major vegetable grower and packer based in Castroville and with
32 farms also in the Salinas Valley and Pajaro Valley areas of the Central Valley region. Ocean Mist

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1 Farms actively participates in the Presentation, Inc.’s monitoring program and has aggressively
2 engaged in water quality management on its farm properties. Ocean Mist Farms is enrolled in the
3 2004 Ag Waiver and its operations and management of its farms would be significantly impacted
4 by the 2012 Ag Waiver.

5 **B. RC Farms**

6 RC Farms is a major vegetable grower based in the Salinas Valley area of the Central
7 Valley region. RC Farms actively participates in the Presentation, Inc.’s monitoring program and
8 has aggressively engaged in water quality management on its farm properties. RC Farms is
9 enrolled in the 2004 Ag Waiver and its operations and management of its farms would be
10 significantly impacted by the 2012 Ag Waiver.

11 **IV. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH**
12 **PETITIONERS REQUEST THE STATE BOARD TO REVIEW**

13 Petitioners seek review of the Regional Board’s: (1) adoption of the 2012 Ag Waiver; (2)
14 adoption of the Tier 1 MRP Order; (3) adoption of the Tier 2 MRP Order; (4) adoption of Tier 3
15 MRP Order; (5) certification of the Final SEIR in its Resolution No. R3-2012-0012, purporting to
16 conduct analysis required by CEQA, for which a Notice of Determination was allegedly filed; and
17 (6) failure to properly conduct an environmental impact analysis of the 2012 Ag Waiver as
18 required by the CEQA.

19 More specifically, the Petitioners request the State Board review the Regional Board’s
20 adoption of a complex and confusing regulatory scheme that requires applicable dischargers to
21 comply with unreasonable and inappropriate conditions. In doing so, the Regional Board failed
22 to consider the reality facing the agricultural industry and imposed certain regulations that are
23 simply unfeasible and impossible to comply. Consequently, farmers in the Central Valley region
24 will be subject to enforcement actions for their inability to meet the Regional Board’s unrealistic
25 goals and milestones. Moreover, as discussed in further detail in the attached Statement of Point
26 and Authorities, the Regional Board exceeded its authority and violated applicable laws in
27 adopting these orders and resolution, which are substantively and procedurally defective. Many
28 of the conditions contained therein are not directly tied to the protection of the water quality;

1 rather, they target certain agricultural practices that are critical to the industry and seek to alter the
2 operations and managements of farmlands. Such provisions include unreasonable restrictions on
3 the use of nitrate, certain insecticides, tile drains, and retention ponds.

4 Further, the Petitioners request that the State Board review the Regional Board’s failure to
5 proceed in a manner required by law with respect to complying with the substantive and
6 procedural requirements under the CEQA. The 2012 Ag Waiver is substantively and
7 significantly different from the prior 2004 Ag Waiver. As such, for the purposes of CEQA, the
8 2012 Ag Waiver is a separate and distinctive project from the 2004 Ag Waiver. Consequently,
9 the Regional Board should have conducted a separate environmental impact analysis, instead of
10 relying on the 2004 Negative Declaration. Even assuming that the 2012 Ag Waiver does not
11 constitute a new project, the Regional Board failed, among other things, (1) to conduct an
12 environmental impact analysis on the actual project adopted, (2) to properly assess the
13 environmental impacts, their significance, project alternatives and mitigations, (3) to properly
14 make the required CEQA findings and overriding statement, and (4) to abide by required
15 procedures mandated by CEQA and chapter 13 of title 14 of the California Code of Regulations
16 (“CEQA Guidelines”).

17 **V. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO**
18 **ACT**

19 The Regional Board adopted the 2012 Ag Waiver, the Tier MRP Orders, and Resolution
20 No. R3-2012-0012 on March 15, 2012. Pursuant to CEQA guidelines, the Regional Board is
21 required to file the Notice of Determination by March 22, 2012 (five working days from the date
22 of project approval).¹ (See CEQA Guidelines, §15094(c).) The Petitioners have thirty days
23 from the date on which the Regional Board acted or refused to act to file this Petition. Since the
24 thirtieth day from March 15, 2012 falls on a weekend, the Petitioners may file their papers on the
25 following Monday. (Cal. Code Regs., tit. 23, §2050(b).) Accordingly, this Petition is timely
26 filed pursuant to Water Code section 13320 and title 23, California Code of Regulations, section

27 _____
28 ¹ To date, the Regional Board has not provided the Petitioners with a copy of the notice bearing the Office of
Planning and Research’s stamp, which indicates that the notice has been filed.

1 2050.

2 **VI. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS**
3 **INAPPROPRIATE OR IMPROPER**

4 As explained in more detail in the Statement of Points and Authorities herein, the
5 Regional Board's adoption of 2012 Ag Waiver, the Tier MRP Orders, and Resolution No. R3-
6 2012-0012 constitutes a prejudicial abuse of discretion because the Regional Board exceeded its
7 legal authority and failed to proceed in a manner required by law. These orders and resolutions
8 are substantively and procedurally defective.

9 The extreme new regulations contained in the 2012 Ag Waiver and the Tier MRP Orders
10 are unreasonable and inappropriate, are not tied to the improvement of water quality, are
11 impractical and unfeasible to implement, and will subject dischargers to unnecessary costs and
12 exposure to liabilities. Moreover, this regulatory scheme unreasonably targets certain essential
13 agricultural practices that are critical to the industry. In doing so, the Regional Board is
14 interfering with a farmer's operations and management of its farmland. Such unlawful intrusions
15 include the unreasonable restriction on the use of nitrate, certain insecticides, tile drains, and
16 retention ponds.

17 Furthermore, CEQA requires that an agency analyze the potential environmental impacts
18 of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub.
19 Resources Code, § 21100.) CEQA is designed to inform decision makers and the public about
20 potential, significant environmental effects of a project. (CEQA Guidelines, § 15002(a)(1).) "Its
21 purpose is to inform the public and its responsible officials of the environmental consequences of
22 their decisions before they are made. Thus, the EIR 'protects not only the environment, but also
23 informed self-government.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.
24 3d 553, 564.) Here, the Regional Board failed to comply with substantive and procedural
25 requirements of CEQA in that it, among other things, did not conduct an environmental impact
26 analysis on the actual project adopted, failed to properly assess the environmental impacts, their
27 significance, project alternatives and mitigations, failed to properly make the required CEQA
28 findings and overriding statement, and did not abide by required procedures mandated by CEQA.

1 Because the Regional Board failed to properly comply with CEQA, the Regional Board's
2 certification of the Final SEIR, approval of the 2012 Ag Waiver and the MRP, and execution of a
3 Notice of Determination constitute a prejudicial abuse of discretion.

4 **VII. THE MANNER IN WHICH PETITIONERS ARE AGGRIEVED**

5 Petitioners are participants under the 2004 Ag Waiver and are subject to regulation under
6 the 2012 Ag Waiver and Tier MRP Orders. Because the Petitioners own farms exceeding certain
7 acreage, may have used certain chemicals, and have farmland near certain impaired waterbodies,
8 they are automatically subject to the most stringent requirements under the 2012 Ag Waiver and
9 Tier MRP Orders. These requirements would significantly impact the Petitioners' management
10 and operations of their farm.

11 Further, Petitioners are aggrieved by the Regional Board's failure to comply substantively
12 and procedurally with CEQA and other applicable laws.

13 **VIII. THE SPECIFIC ACTION REQUESTED BY PETITIONERS**

14 Based on the foregoing, and as supported by the Statement of Points and Authorities and
15 the attached declarations, Petitioners request the State Board: (1) to immediately stay the 2012 Ag
16 Waiver and the Tier MRP Orders, or in the alternative, to schedule a hearing regarding the
17 Petitioners' request for stay; (2) to order the Regional Board to vacate the 2012 Ag Waiver, the
18 Tier MRP Orders, and Resolution No. R3-2012-0012; (3) to order the Regional Board to
19 withdraw its Notice of Determination; (4) to cure the flaws indentified herein in the existing 2012
20 Ag Waiver and the Tier MRP Orders by modifying the 2012 Ag Waiver and the Tier MRP
21 Orders; and (5) to prepare and circulate an EIR pursuant to CEQA requirements for the State
22 Board's conditional waiver of waste discharge requirements for discharges from irrigated lands.

23 A stay of the 2012 Ag Waiver and the Tier MRP Orders is appropriate to prevent
24 substantial harm to the Petitioners and other similarly situated farm owners or operators. As
25 explained in more detail in the Statement of Points and Authorities herein, the 2012 Ag Waiver
26 requires applicable dischargers to take certain actions either immediately or by October 1, 2012,
27 which is less than six months or 168 days from April 16, 2012. To comply with the 2012 Ag
28 Waiver, the Petitioners would have to take immediate actions at substantial costs during the time

1 that this Petition is subject to the State Board's review. Accordingly, the State Board should
2 immediately stay the 2012 Ag Waiver and the Tier MRP Orders pursuant to Water Code section
3 13321(a) and title 23, section 2053 of the California Code of Regulations because supporting
4 declarations attached hereto as **Exhibits G, H, and I** clearly demonstrate:

- 5 (1) substantial harm to the Petitioners or to the public interest if a stay is not granted;
6 (2) a lack of substantial harm to other interested persons and to the public interest if a stay
7 is granted; and
8 (3) substantial questions of fact or law regarding the disputed action.

9 **IX. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
10 **ISSUES RAISED IN THIS PETITION**

11 As required by title 23, section 2050(a)(7) of the California Code of Regulations,
12 Petitioners have included a Statement of Points and Authorities in support of this Petition
13 beginning on page 10.

14 **X. A STATEMENT THAT THIS PETITION WAS SENT TO THE REGIONAL**
15 **WATER BOARD**

16 In accordance with title 23, section 2050(a)(8) of the California Code of Regulations,
17 Petitioners caused a true and correct copy of this Petition and accompanying Exhibits and
18 Declarations to be delivered in person to the Regional Board on April 13, 2012. The address to
19 which Petitioners served the copy is:

20 Roger W. Briggs, Executive Officer
21 Central Coast Regional Water Quality Control Board
22 895 Aerovista Place, Suite 101
23 San Luis Obispo, CA 93401-7906

24 Petitioners are the very dischargers subject to the 2012 Ag Waiver and the Tier MRP
25 Orders. Therefore, Petitioners did not serve a separate copy of this Petition to the dischargers.

26 **XI. A STATEMENT AS TO WHETHER THE PETITIONERS RAISED THE**
27 **SUBSTANTIVE ISSUES OR OBJECTIONS IN THE PETITION TO THE**
28 **REGIONAL BOARD**

Petitioners raised the substantive issues and objections in this Petition before the Regional
Board in written comment letters submitted in December 2010, March 2001, July 2011, August

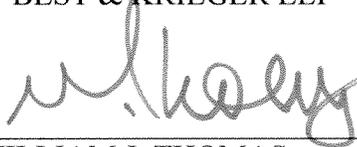
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2011, and January 2012, and in testimony provided to the Regional Board at the March 14 and 15, 2012 public hearings and during the Regional Board Workshop held in March and May of 2011. Petitioners also participated in another Regional Board workshop and in meetings with the Executive Officer and staff.

Dated: April 16, 2012

BEST BEST & KRIEGER LLP

By: 
WILLIAM J. THOMAS
WENDY Y. WANG
Attorneys for Ocean Mist Farms and RC Farms

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STATEMENT OF POINTS AND AUTHORITIES

On March 15, 2012, the Regional Board adopted the 2012 Ag Waiver, the MRP and Resolution No. R3-2012-0012, which certified the Final SEIR. However, the orders and resolution are substantively and procedurally flawed. The 2012 Ag Waiver and the MRP contain unreasonable and inappropriate provisions, and the Regional Board failed to comply with CEQA requirements in approving the 2012 Ag Waiver and the MRP. As such, the Regional Board’s certification of the Final SEIR constitutes a prejudicial abuse of discretion under Public Resources Code section 21168.5.

I. INTRODUCTION

Petitioners Ocean Mist Farms and RC Farms and their related operations are major farm operations based in the Salinas and Pajaro Valley areas of the Region. They grow various vegetable crops in the lower half of the Salinas Valley, Castroville, and the Pajaro Valley. Petitioners have been aggressively engaged in water quality management on their farm properties and have been fully involved in the Central Coast waiver implementation and in all the deliberations over amendments to this new waiver. Petitioners are currently enrolled in the 2004 Ag Waiver and have been actively involved in the Preservation, Inc.’s monitoring program and in proposing and expanding the agricultural alternative to the 2012 Ag Waiver. Petitioners have testified at each of the March and May 2011 workshops, have met with the Regional Board’s staff, and have fully participated in the two days of hearings recently conducted in San Luis Obispo on the conditional waiver.

During the nearly year long period where the Regional Board could take no formal action for lack of quorum, the Petitioners had encouraged all parties, including the agriculture community and the Regional Board’s staff, to make use of this valuable time to find and promote moderated and responsible positions somewhere between the very responsible agriculture alternative² (which incorporates many protective provisions well beyond the 2012 Ag Waiver)

² Although the Petitioners believe that the agricultural alternative is a superior means to address the region’s water quality issues, this Petition focuses on the unreasonable and inappropriate provisions of the waiver as adopted by the Regional Board.

1 and the extreme alternative proposed by the Regional Board’s staff (which incorporated
2 unreasonable and unworkable provisions, as discussed below). Petitioners have been frustrated
3 with the Regional Board’s rejection of all efforts to resolve substantive problems with the
4 proposed waiver and with the Regional Board’s adoption of an extreme regulatory waiver, which
5 contains inappropriate, unreasonable and impractical conditions. As discussed below, many of
6 the drastic regulations are not tied to water quality risks, but are driven by a desire to regulate
7 certain agricultural practices. In short, the Regional Board has refused to address the short-
8 comings of the 2012 Ag Waiver and the Tier MRP Orders and has merely kicked this matter up to
9 the State Board to resolve these issues.

10 Throughout the 2012 Ag Waiver review process, which included the CEQA review,
11 Petitioners had protested the Regional Board’s improper reliance on the 2004 Negative
12 Declaration adopted in connection with the 2004 Ag Waiver. The 2012 Ag Waiver contains new
13 conditions and regulations, and is significantly different in scope from the 2004 Ag Waiver. As
14 such, the 2012 Ag Waiver qualifies as a new “project” for which a full CEQA review is required.
15 However, the Regional Board relied heavily on the 2004 Negative Declaration and issued the
16 Draft SEIR on November 19, 2010, which purported to analyze the 2010 draft of the proposed
17 waiver, the Final SEIR on March 17, 2011, which purported to analyze the March 17, 2011 draft
18 of the proposed waiver, and the Addendum on August 10, 2011. As discussed in further detail
19 below, no environmental impact analysis was ever prepared for the 2012 Ag Waiver and the
20 Regional Board failed to satisfy many of CEQA’s substantive and procedural requirements.

21 Accordingly, Petitioners respectfully request the State Board (1) to immediately stay the
22 2012 Ag Waiver and the MRP, or in the alternative, to schedule a hearing regarding the
23 Petitioners’ request for stay; (2) to order the Regional Board to vacate the 2012 Ag Waiver, the
24 Tier MRP Orders, and Resolution No. R3-2012-0012; (3) to order the Regional Board to
25 withdraw its Notice of Determination; (4) to cure the flaws indentified herein in the existing 2012
26 Ag Waiver and the Tier MRP Orders by modifying the 2012 Ag Waiver and the Tier MRP
27 Orders; and (5) to prepare and circulate an EIR pursuant to CEQA requirements for the State
28 Board’s conditional waiver of waste discharge requirements for discharges from irrigated lands.

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II. ARGUMENT

A. An Immediate Stay of the 2012 Ag Waiver and the Tier MRP Orders Are Required to Prevent the Petitioners From Suffering Irreparable and Substantial Harm

A stay of the 2012 Ag Waiver and the Tier MRP Orders is appropriate to prevent substantial harm to the Petitioners and other similarly situated farm owners or operators. (See Cal. Code Regs., tit. 23, §2053(a); Dale Decl. at ¶4; Sites Decl. at ¶4.) The 2012 Ag Waiver requires applicable dischargers to take certain actions either immediately or by October 1, 2012, which is less than six months or 168 days from April 16, 2012. Since the State Board has at least 270 days to render a decision on the Petition, the 2012 Ag Waiver requires applicable dischargers to take immediate actions during the period the Petition is subject to review. (See Cal. Code Regs., tit. 23, § 2050.5(b).)

Specifically, the 2012 Ag Waiver requires that all dischargers immediately comply with applicable Total Maximum Daily Loads, prevent its existing containment structures (such as retention ponds or reservoirs) from percolating any waste to groundwater, and maintain riparian vegetative covers and riparian areas for aquatic and wildlife support. (See 2012 Ag Waiver, p. 24, ¶24, & p. 20, ¶33 & 39.) To satisfy the new regulations that are currently subject to review by the State Board, the Petitioners need to hire experts and consultants to development a program to comply with the Total Maximum Daily Loads, design and construct new containment structures to replace their existing retention ponds, and hire and/or train their employees to maintain riparian vegetative covers and riparian areas. (Huss Decl. at ¶5; Sites Decl. at ¶5.)

Moreover, by October 1, 2012, dischargers must install backflow prevention devices at its wells and pumps and develop a farm water quality management plan. (See 2012 Ag Waiver, p. 19, ¶31, & p. 21, ¶44.) Tier 2 and Tier 3 dischargers must also submit an Annual Compliance Form, calculate its nitrate loading risk, and conduct photo monitoring of impaired waterbodies by October 1, 2012 – less than six months from now. (See 2012 Ag Waiver, pp. 27-28, ¶¶67, 68 & 69.)

As growers of high nitrate load risk crops (vegetables), Petitioners are required to determine the nitrate uptake for each crop type. The new regulations would require the

1 Petitioners to calculate nitrate chemical uptake for each of their many crops, each different soil
2 type, each different soil pH, and considerable other variables within a short amount of time.
3 These studies and calculations take many experts, and considerable time to evaluate. Petitioners
4 could not possibly comply within the October 1, 2012 regulatory deadline. (Huss Decl. at ¶7;
5 Sites Decl. at ¶7.)

6 Because the Petitioners own farms exceeding certain acreage, have used certain pesticides
7 as agronomic need arises, plant certain crops, and have farmland near certain impaired
8 waterbodies, they are automatically subject to the most stringent requirements under the 2012 Ag
9 Waiver and must comply with these new conditions. (Huss Decl. at ¶2; Sites Decl. at ¶2.) Given
10 the size of the Petitioners' operations, six months will not even be enough time to implement the
11 required actions. To ensure compliance, the Petitioners must take action now to (a) retain experts
12 and consultants to develop management plan and calculate nitrate loading risks, (b) purchase,
13 install, and maintain the backflow prevention devices for its wells and pumps, and (c) train and/or
14 hire additional employees to perform the required work. (Huss Decl. at ¶9; Sites Decl. at ¶9.)

15 If a stay is not granted immediately, the Petitioners will suffer irreparable and substantial
16 harm as they implement measures to comply with the 2012 Ag Wavier. (Huss Decl. at ¶¶5-10;
17 Sites Decl. at ¶¶5-10.) As the State Board may not render its decision on the Petition until after
18 October 1, 2012, each Petitioner will have to take the above-described actions and will incur costs
19 estimated to be several hundreds of thousands of dollars during the time that the Petition is
20 subject to review. (*Id.*)

21 The Petition raises substantial questions of facts and law, including (a) whether the
22 Regional Board exceed its authorities and violated applicable laws in enacting the 2012 Ag
23 Waiver and the Tier MRP Orders; (b) whether the Regional Board complied with CEQA
24 requirements; and (c) whether the Regional Board's staff failed to properly examine the impact of
25 the 2012 Ag Waiver pursuant to CEQA. Staying the 2012 Ag Waiver and the Tier MRP Orders
26 will allow the State Board to resolve these substantial questions of facts and laws prior to
27 implantation of the new regulations. (Thomas Decl. at ¶4.)

28 Such stay will not cause substantial harm to other interested persons or to the public

1 interest in that dischargers will still be obligated to abide by the water quality control and
2 regulations of the 2014 Ag Waiver, whose effective period was extended till September 30,
3 2012.³ (2012 Ag Waiver, p. 2, ¶4.)

4 **B. Petitioners' Effective Time for Appeal Has Been Prejudicially Delayed By the**
5 **Regional Board**

6 The Petitioners' ability to prepare the Request for Stay and the Petition has been
7 prejudicially impeded by the Regional Board's slow response time in providing the necessary
8 documents. Section 13320 of the Water Code affords Petitioners 30 days to appeal the Regional
9 Board's action or failure to act. (Water Code § 13320(a).) However, the Regional Board has
10 hampered the Petitioners' ability to prepare this Petition and Request for Stay by withholding key
11 documents and, in effect, has shortened the Petitioners' statutorily permitted time to appeal.

12 Although the Regional Board adopted the 2012 Ag Waiver, the MRP, and Resolution No.
13 R3-2012-0012 on March 15, 2012, mandating the Petition to be filed by April 16, 2012, the
14 Regional Board did not make available the 2012 Ag Waiver and the MRP until March 26, 2012,
15 and did not provide the Petitioners with Resolution No. R3-2012-0012 until April 10, 2012.
16 (Thomas Decl. at ¶6.) To prepare this Petition, Petitioners require the executed copies of these
17 orders and resolution, because the Regional Board verbally amended several provisions of the
18 proposed waiver during its March 14 and 15, 2012 hearings. Without the executed copies, the
19 Petitioners would have no method of verifying what was actually incorporated into the 2012 Ag
20 Waiver, the MRP, and Resolution No. R3-2012-0012.

21 Moreover, despite repeated requests for expedited transcripts for the Regional Board's
22 hearing conducted on March 14 and 15, 2012, the Regional Board did not provide the draft March
23 14, 2012 hearing transcript until April 11, 2012 and the final transcript until April 13, 2012.
24 (Thomas Decl. at ¶6.) The Petitioners only received the March 15, 2012 hearing transcript on
25 April 3, 2012. (*Id.*) Without final hearing transcripts or executed orders and resolutions, the
26 Petitioners could not effectively draft this Petition.

27 _____
28 ³ Petitioners are not aware of any interested persons or public interest that will be substantially harmed if a stay is
granted. (Huss Decl. at ¶11; Sites Decl. at ¶11; Thomas Decl. at ¶5)

1 Furthermore, to date, the Regional Board has not produced a NOD that bears the stamp of
2 the Office of Planning and Research, indicating that the NOD has been filed. (Thomas Decl. at
3 ¶6.) The filing of the NOD starts the 30-day statute of limitation on challenges to project approval
4 under CEQA. (CEQA Guidelines, §15094(g); Public Resource Code §21167.) Without
5 confirmation that the NOD was filed, the Petitioners are ignorant as to the filing deadline for
6 challenges to project approval under CEQA. Consequently, the 30 day statutory period for
7 Petitioners to exercise their due process appeal rights has effectively been cut to only a few days.

8 Accordingly, Petitioners request the opportunity to amend its Request for Stay, Petition
9 and statement of points and authorities as the Petitioners have been prejudicially delayed by the
10 Regional Board’s slow response time in providing the necessary documents to submit this
11 Petition and as the limitations period to object to Resolution No. R3-2012-0012 and the Notice of
12 Determination has not expired.

13 **C. THE 2012 AG WAIVER AND THE MRP CONTAIN EXTREME,**
14 **UNREASONABLE AND INAPPROPRIATE PROVISIONS AND THE REGIONAL**
15 **BOARD EXCEEDS ITS AUTHORITY IN ADOPTING THIS EXTREME AND**
16 **UNPRECEDENTED REGULATORY SCHEME**

17 **1. The 2012 Ag Waiver Advances Extreme And Unreasonable Requirements**
18 **For Nitrate Nutrient Management and the Regional Board Exceeds Its**
19 **Authority in Proposing to Control a Farmer’s Use Of Fertilizer**

20 (a) Nitrate Load Risk Calculations

21 The 2012 Ag Waiver demands that by October 1, 2012 – less than six months from now –
22 a farmer must “determine nitrate loading risk factors” and report the amount calculated for each
23 farm or unit. (2012 Ag Waiver, p. 28, ¶ 68.) As the Petitioners will need to retain experts and
24 consultants to make such determinations, the October 2012 deadline for compliance is clearly
25 unreasonable.

26 The Regional Board’s staff has indicated that vegetable farms will be deemed to have a
27 high nitrate load risk. Under the 2012 Ag Waiver and the MRP, such farmer must determine the
28 nitrate uptake for each crop type. Paragraph 74 of the 2012 Ag Waiver requires that by October
1, 2013, a Tier 3 discharger must determine “typical crop nitrogen” uptake for each crop. Plant
physiology studies for every crop, soil type, moisture, soil nutrient, soil pH, and climactic

1 conditions on a farm will take several years to complete and hundreds of thousands of dollars,
2 since this information is not presently available in any documents or any scientific resource. To
3 comply with this new condition, Petitioners will have to retain experts for several years to
4 calculate the nitrate used by each of their many crops in each of the different soil conditions on
5 which each crop is grown and under various moisture and climate conditions. The uptake
6 calculation will also have to take into consideration numerous other important variables,
7 including the pH level of the soil. These studies and calculations take many experts, and
8 considerable time to evaluate. The provisions requiring nitrate uptake calculation are, therefore,
9 not just unreasonable, but are designed by the Regional Board’s staff to be impossible to be
10 achieved by the farmers.

11 Tier 2 MRP Order and Tier 3 MRP Order contain pages of complex and severe regulatory
12 obligations and restrictions dealing with nitrate. These regulations require the calculation of
13 nitrate risk by crop and by irrigation system. (Tier 2 MRP Order, pp. 11-12; Tier 3 MRP Order,
14 pp. 10-12.) Among the duties imposed is the reporting all nitrogen usage to calculate the
15 supposed nitrate risk. Tier 3 dischargers are further required to consider nitrate uptake of each
16 crop in their INMP. (2012 Ag Waiver, p. 29, ¶74.) If a Tier 2 or Tier 3 discharger divides his
17 farm/ranch to units of different risk, independent records must be maintained for each unit. (Tier
18 2 MRP Order, p. 11, ¶2; Tier 3 MRP Order, p. 11, ¶ 2.) All of these unreasonable requirements
19 are demanded in accordance with specified timelines and any slippage is an enforceable violation.

20 The Tier 2 and Tier 3 MRP Orders allow a discharger to calculate the nitrate loading risk
21 by employing one of two methods: (1) criteria and methodology set forth in Table 4, which
22 arbitrarily calculates nitrate loading risk based on the types of crops, irrigation system, and nitrate
23 concentration in the irrigation water (“Table 4 Methodology”); or (2) the controversial Nitrate
24 Groundwater Pollution Hazard Index developed by the University of California (“UC
25 Methodology”). (Tier 2 MRP Order, p. 11; Tier 3 MRP Order, p. 11.) Neither of these
26 methodologies is appropriate. As cautioned by the University of California, the controversial UC
27 Method was never designed to be used as a regulatory provision. Further, the Table 4
28 Methodology is new, untested, and perhaps even less reliable for calculating nitrate loading risk

1 than the UC Methodology. The Table 4 Methodology is also entirely unmanageable as it
2 mandates separate calculations for individual farms, including “any variability in soil types,” crop
3 type, irrigation types, and deep rip practices, and various other components which may only be
4 found by a grower “utilizing the index tool at [an] internet link” maintained by the University of
5 California. (Tier 2 MRP Order, p. 11, ¶4; Tier 3 MRP Order, p. 11, ¶4.) This reference to an
6 internet link website is an improper method to regulate the targeted growers as access to the
7 website may be unavailable to many farmers. Moreover, the reliance on a third-party website,
8 which may be altered at any time by the University of California, would in fact allow the
9 Regional Board to alter conditions under the 2012 Ag Waiver without revising the actual waiver.

10 (b) Nitrate Calculations Regarding Groundwater

11 The 2012 Ag Waiver also requires that Tier 3 farmers initiate an Irrigation and Nutrient
12 Management Plan (“INMP”) which is to be certified by an experienced Certified Crop Advisor
13 (“CCA”) or propose a Groundwater Monitoring and Reporting Plan (“GMRP”) for each ranch
14 unit and assess if waste will cause exceedances of nitrate in groundwater. (2012 Ag Waiver, pp.
15 29-30, ¶¶ 74-79.) It is totally an unreasonable requirement for a farmer to calculate the nitrogen
16 uptake for each crop at each locations, much less calculate how much of a particular nutrient
17 would not be taken up by plants, and would be tied to soil particles or would otherwise be
18 attenuated by the soil and its organic components and therefore may actually percolate to
19 groundwater.

20 (c) Nitrogen Limitations

21 The attempt to control a farmer’s on-farm crop nutrient management is beyond the
22 Regional Board’s authority. The simple formula restrictions (1:1 and 1:2 ratios) advanced by
23 the 2012 Ag Waiver and the MRP are regulatory attempts to limit a farmer’s management of
24 his crops’ nutritional needs and is completely void of any consideration of soil types, soil
25 compaction, or amount of organic material in the soil. Also, there is no consideration of the
26 crop’s actual nutritional needs, or the differences in need as a result of microclimate, or the
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1 demand differences due to the growing season⁴. The soil’s assimilative capacity and soil
2 organic matter are totally disregarded by the 2012 Ag Waiver. The overarching issue,
3 however, is that the Regional Board cannot legally dictate specific management practices on
4 the farm.

5 By October 1, 2015, a Tier 3 farmer must report his progress toward a Nitrogen Balance
6 ratio, or implement an alternative to demonstrate nitrate load reduction. (2012 Ag Waiver, pp.
7 29-30, ¶78.) This “Nitrogen Balance ratio” refers to the total number of nitrogen units applied to
8 the crop (considering all sources of nitrogen) relative to the typical nitrogen uptake value of the
9 crop. Thus, within three years, farmers would be further restricted in their fertilization of their
10 crop by imposition of “nitrogen balance” limits, which in annual crops would be limited to
11 only the “calculated” crop needs (100%), and in perennial crops 120% of the average crop needs.
12 (2012 Ag Waiver, pp. 29-30, ¶¶78-79.) This regulatory provision expresses that the target will
13 be a ratio of 1:1 where a farmer would only be allowed to apply the amount of nitrogen that the
14 Regional Board’s staff believes is needed by that particular vegetable crop. A year-long crop,
15 such as strawberries or perennial artichokes, can use only a ratio of 1:2.

16 After three years, these ratios must be “improved” and the Nitrogen Balance ratio should
17 compare the amount of nitrogen applied to the crop against nitrogen removed at harvest, rather
18 than the typical nitrogen crop uptake. (2012 Ag Waiver, p. 30, ¶78(c).) This requirement totally
19 ignores realities of agriculture. The nitrogen levels in the harvested and removed portions of
20 plants are not presently available for most crops. As an example, in a field corn situation, perhaps
21 150 pounds of nitrate may be required to produce the stalks and head out the corn. At harvest,
22 less than 1 pounds of nitrate (approximately 4 oz.) would actually be in the harvested kernels
23 removed from the field. Certainly, that 1 pound of nitrate will not commence to grow a corn crop.
24 All crops vary widely in this “required” versus “harvested” comparison, but this example merely
25 points out the absurdity of having the Regional Board’s staff, who have limited knowledge of
26 agriculture, try to dictate critical farm management practices. This is why the legislature has

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28 ⁴ There are large differences in nitrogen demands for each crop between seasons.

1 made clear that while the Regional Board’s legal authority commences at the point of discharge,
2 the Regional Board cannot to dictate management practices in the factory, in the plant or on the
3 farm.

4 (d) Groundwater Nitrate

5 After three years, a Tier 3 farmer must also demonstrate that he has reduced nitrate
6 loading to groundwater. (2012 Ag Waiver, p. 30, ¶78(c).) The Regional Board’s attempt to
7 control agriculture’s necessary use of nitrogen/nitrate is oppressively regulatory and simplistic
8 and does not reflect an understanding of either agricultural production or soil chemistry
9 dynamics. The 2012 Ag Waiver entirely ignores the major relevant components of the
10 assimilative capacity of the soil column, temperature (season), and depth of aquifers. The
11 Regional Board assumes that total nitrogen applied and the total nitrate uptake by the crop should
12 be equal. It does not even consider volatilization or absorption by organic matter, or nitrates tied
13 to soil particles. The approach adopted in the 2012 Ag Waiver is to concoct a regulatory
14 limitation on a farm’s ability to provide nutrients essential for plant function. The nitrate loading
15 calculation of how much nitrogen can get to groundwater is nothing short of bizarre. A grower
16 is in no position to determine how much nitrate, originally sourced from his fertilization, might
17 migrate to an underlying aquifer, perhaps 200-400 feet deep, some 2 to 8 years into the future.

18 (e) The Irrigation and Nutrient Management Plan

19 Tier 3 MRP Order describes the purpose of the INMP as “to budget and manage the
20 nutrients applied to each farm/ranch or nitrate loading risk unit considering all sources of
21 nutrients, crop requirements, soil types, climate, and local conditions in order to minimize nitrate
22 loading to surface water and groundwater in compliance with this Order.” (Tier 3 MRP Order, p.
23 17, ¶A2.) Petitioners do not take issue with the requirement of an INMP or the purposes
24 expressed for the INMP. However, some elements of the INMP are unreasonable. Specifically,
25 the INMP of a Tier 3 discharger with high nitrate loading risks must contain:

- 26 c. Identification of nitrate loading risk factors or input to the
27 Groundwater Pollution Nitrate Hazard Index and overall Nitrate
28 Loading Risk level calculation for each ranch/farm or nitrate
loading risk unit;

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- d. Identification of crop nitrogen uptake values for use in nutrient balance calculations; . . .
- g. Annual balance of nitrogen applied compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);
- h. Annual estimation of nitrogen loading to groundwater and surface water, including subsurface drainage (e.g., tile drains), from each ranch/farm or nitrate loading risk unit

(Tier 3 MRP Order, p. 18, ¶A4.) As discussed herein, the restriction on the use and calculations of the nitrogen and the use of tile drains in the 2012 Ag Waiver and the MRP Orders is unreasonable. These provisions, as well as requirements to include information regarding nitrogen balance ratio, nitrogen uptake value, nitrate loading in the Annual Compliance Form, should be stricken. (See Tier 3 MRP Order, pp. 19-20.)

While it is reasonable in the INMP to require that farmers identify available nitrogen in their soil and their irrigation water and to take those contributions into consideration in making their management plans on fertilization, it is irresponsible, and also beyond the Regional Board’s authority to impose on-farm management plans or restrictions. The former assures informed and responsible farm management, but the latter is a prejudicial abuse of power that seeks to regulate the operations and managements of their farms. Consequently, the fertilizer limits must be eliminated from the waiver. As counsel for the Petitioners testified at the Regional Board’s hearing on March 14, 2012:

The nutrient limit, the encircled nutrient management plans are appropriate. You should know the amount of nitrate in the water, in the soil and make the determination of your need. That’s appropriate. That’s asking for proper management, but this goes beyond that and puts a limit on the amount of nitrogen you could use. That’s making a management decision.”

(Hearing Tr. (3/14/2012) at 312:17-24.)

Moreover, the requirement of the use of a scientist, agronomist, or CCA to certify the INMP would result in unnecessary hardship of the Tier 3 dischargers. (Tier 3 MRP Order, p. 17, ¶¶A1, A4.) This is an unnecessary cost and a harsh condition to implement as there are very few qualified professionals in the Central Coast region. For example, Joel Wiley, a 33-year licensed CCA, practicing crop nutrition in the region and speaking to the requirement of needing CCA’s

1 experienced in hydrology, testified at the Regional Board’s hearing held on March 14, 2012: “The
2 hydrologist – the hydrology requirement as CCA having that certification, I don’t know if there is
3 very many of those available in the State of California that have that certification.” (Hearing Tr.
4 (3/14/2012) at 334:5-9.)

5 Further, by October 1, 2016, a Tier 3 farmer must file an INMP Effectiveness Report,
6 prepared by a registered professional engineer, geologist or CCA to “evaluate the effectiveness”
7 of the INMP. (Tier 3 MRP Order, p. 18, ¶A5.) As discussed above, the shortage in qualified
8 professionals to perform work will make this unreasonable and unnecessary condition difficult to
9 implement. Moreover, most Salinas Valley operations are fully capable of putting together
10 effective INMPs. Therefore, the requirements for the INMP to be certified and evaluated by a
11 qualified professional should be stricken.

12 In addition, the requirement for the “Effectiveness Report” to document “measured
13 progress towards protecting groundwater quality” must be stricken. (Tier 3 MRP Order, p. 19, ¶
14 B2.) The Regional Board attempts to use the INMP requirements to clean-up or “restore”
15 groundwater quality. (*Id.*) However, groundwater restoration and cleanup are well beyond the
16 authority granted to the Regional Board pursuant to section 13269 of the Water Code, which
17 governs waivers.

18 (f) Certain Provisions of the Farm Plan Are Unreasonable and Inappropriate

19 Petitioners generally do not object to or challenge the requirement that farmers develop
20 and maintain an individual farm plan to govern farm management designed to protect water
21 quality, including individual irrigation, pesticide, nutrient, salinity and sediment management
22 plans. However, subparagraphs (c), (d), and (f) of Paragraph 44 of the 2012 Ag Waiver MRP
23 Order should be stricken. (2012 Ag Waiver, pp. 21-22.). Subparagraph (c) requires maps
24 “identifying . . . stormwater runoff discharge locations where . . . they may leave the farm.”
25 (2012 Ag Waiver, p. 21.) This provision is impossible to implement as such discharge points
26 may be undefined for stormwater drainage in non-point source situations. Subparagraph (d)
27 requires the Farm Plan to include “[d]escription of typical volume of discharges.” This is
28 similarly impossible to implement and unreasonable for many agricultural non-point discharges.

1 Subparagraph (f) requires the Petitioners to describe and manage tile drain discharges. As
2 described below, it is unreasonable to commence regulating tile drains that are critically
3 important to agriculture and, in many applications, are important to regional/municipal
4 reclamation water programs. Accordingly, these subparagraphs should be stricken.

5 **2. Tile Drains Are Inappropriately Targeted by the 2012 Ag Waiver**

6 The original draft of the proposed waiver had targeted tile drains, but after that
7 proposal was first circulated, the proposed restriction on tile drains fostered considerable
8 focused reaction. Consequently, the Regional Board’s staff indicated that it would back
9 away from that misstep and would remove, from the waiver, provisions regarding tile drain
10 irrigation facilities. However, the 2012 Ag Waiver and the MRP once again targeted the tile
11 drains, which are crucial to agricultural production. Specifically, the 2012 Ag Waiver allows
12 the Executive Officer to require “additional monitoring and reporting for discharges to tile
13 drains,” and the Tier 3 MRP Order requires the Sampling and Analysis Plan to include sites to
14 evaluate water quality impacts resulting from areas receiving tile drain discharges. (2012 Ag
15 Waiver, p. 5, ¶12; Tier 3 MRP Order, p. 5, ¶9.)

16 Tile drains are widely used to remove the problem of excessive water from the crop’s
17 root zone. The drains have been used by California agriculture industry for decades and have
18 made otherwise unproductive areas productive. Any restriction on the use of the tile drains
19 would limit the productivity of the land where they are used and would likely result in significant
20 amount of land taken out of agricultural production altogether. Restricting tile drains would not
21 just eliminate agricultural productivity on an immediate basis, but would also render the
22 farmland virtually unproductive and worthless forever.

23 Moreover, the Regional Board’s authority covers the issue of water quality – not
24 irrigation infrastructures. Field water collected in tile drains is still field water, even through
25 some of it may be collected below the root zone (which in vegetables and strawberries may only
26 be a matter of inches), and in some areas is incorporated into a farm’s irrigation re-circulating
27 systems. The Regional Board should not be regulating or monitoring tile drain water. It is still
28 field water and not yet waters of the state. Because of that, water quality objectives are not

1 applicable to such water, so monitoring this field water is meaningless and thus inappropriate.
2 The use of recycled water has reached widespread acclaim from all sectors, including
3 municipal users, regulators, environmentalists, and those interested in water conservation and
4 water reuse. Agriculture communities in Monterey County and in the Pajaro Valley have taken
5 low quality, but treated, municipal discharges that would otherwise have gone directly into the
6 ocean and have used them for irrigation. The irrigation process dramatically improves the quality
7 of the municipal discharges by cleaning such water before it returns to the environment.
8 Consequently, not only are the Petitioners' operations (1) conserving water, (2) reusing water,
9 and (3) taking problem discharges from municipalities, but are discharging far cleaner water than
10 what would have been discharged by the municipalities. For these reasons, these water
11 recycling programs have reached widespread acclaim.

12 The recycling of municipal discharges in order to clean them up through field irrigation
13 relies heavily on the tile drains to protect these crops. If the farmers are prohibited from using
14 tile drains, their land would be unproductive, consequently there would be no use of the low
15 quality municipal discharges. This land would go out of production and the discharges would go
16 to the ocean uncleaned. The 2012 Ag Waiver now commences to regulate these important
17 facilities by requiring the monitoring and reporting of the water in the drains. The Regional
18 Board should, however, avoid impacting these important recycling programs. California Water
19 Code section 13241(f) expressly encourages the use of recycled water. The 2012 Ag Waiver will
20 put these highly acclaimed water re-use programs in jeopardy.

21 Instead of trying to regulate tile drains and thereby taking land out of production, the
22 Regional Boards, universities and the agriculture industry should collectively focus research on
23 how to effectively reclaim tile drainage for particular uses. The ultimate answer to the tile drain
24 issue requires long-term scientific analysis and development of treatment alternatives which will,
25 in addition, to cleaning the tile drain discharge, will make it fit for reuse. The goal of developing
26 treatment strategies is for the drain discharge to be captured, treated, and recycled for farm use.
27 To be effective, this effort needs to be a multifaceted cooperative effort. The approach set forth
28 in the 2012 Ag Waiver to simply disallow impoundments and to commence regulation on tile

1 drains is going in the wrong direction. (See Hearing Tr. (3/14/2012) at 312:15-17.)

2 **3. The Three Tier Regulatory System Is Complex and Difficult to Administer**
3 **and not Linked to Actual Water Quality Risk**

4 Provisions concerning the complex and confusing multi-tier system are set forth in some
5 16 pages of the 2012 Ag Waiver and some 70 pages of the Tier MRP Orders. The tier system
6 arbitrarily separates dischargers into three separate tiers, based on the size and location of the
7 farmland and the dischargers' use of certain chemical. Tier 1 dischargers are subject to the
8 least amount of regulations, with which they must comply. Tier 2 and Tier 3 dischargers are
9 subject to progressively more stringent level of regulations.

10 The tier system constitutes an inappropriate attempt to lump virtually all agricultural
11 operations into the most severely regulated tiers merely based on the size, crop, proximity to
12 impaired waterbodies and the use of two particular agricultural chemicals. For example, Tier
13 1 dischargers must have farmlands that are less than 50 acres. (2012 Ag Waiver, p. 16, ¶15.)
14 As a result, virtually no commercial operations can qualify. Moreover, if a farmer uses either
15 of the targeted two organophosphate insecticides (chlorpyrifos or diazinon), it cannot qualify
16 for Tier 1 regardless of whether their land drains water to the state.⁵ (*Id.*) Further, the 2012
17 Ag Waiver subjects a farmer to the strict requirements of Tier 3, if the farmer farms vegetables
18 (which require more nitrate), farms more than 500 acres, uses chlorpyrifos or diazinon, or farms
19 next to a listed impaired waterbody. (2012 Ag Waiver, p. 17, ¶17.)

20 The size of the farm operation or the use of certain individual pest control agents
21 should not automatically subject the farm to the unprecedentedly strict regulatory regimes.
22 Mere size of the operations or the use of a particular agricultural management product does
23 not necessarily equate to a discharge problem. For example, Mr. Wiley, a licensed CCA with
24 experience in crop nutrition in the Region, testified as to the absurdity of using acreage of
25 operations to categorize various dischargers in the tier structure and offered: "I am trying to figure

26 ⁵ To be Tier 1 discharger, a farmer: (a) cannot use chlorpyrifos or diazinon, (b) cannot have farmlands within 1000
27 feet of an impaired water body, and (c) must not (1) farm high risk nitrate crops (vegetables and artichokes), (2) farm
28 more than 50 acres or (3) farm closer than 1000 feet of a well that exceeds nitrate standards. (2012 Ag Waiver, p.
16, ¶15.) Under this criteria, virtually no agricultural operation in the Central Coast region will qualify as a Tier 1
discharger.

1 out the Tier process, because I can identify [an] one acre parcel that has as much influence on
2 groundwater than a 500-acre parcel would have” (Hearing Tr. (3/14/2012) at 334:13-16.)
3 Further, the larger sized operations may actually increase that farmer’s ability to implement
4 management strategies to eliminate or control discharge. Similarly, good farm practices
5 coupled with irrigation controls can avoid problems even if a large farm responsibly relies on
6 any particular crop protection pesticide. Rather than imposing bureaucratic attitudes against
7 large vegetable operations or use of important agricultural chemicals, the severe regulatory
8 proscriptions advanced by the increased Tiers should be governed by increased water quality
9 risk.

10 Furthermore, while the provisions in the 2012 Ag Waiver Order (page 13, paragraph 6,
11 and page 15, paragraph 13) allows a farm operator to separately identify parcels of its
12 farmlands as to group each of those parcels within the same tiers; however, paragraphs 19 and
13 20 of page 18 of the 2012 Ag Waiver permits the Executive Officer to elevate lands to a higher
14 tier and to require a landowner or farm operator to group what the Executive Officer feels is
15 “similar lands” as a single farm. These latter provisions, in essence, take away what was
16 supposed to be a positive provision to allow farmers this flexibility which was added to
17 alleviate concerns of the agriculture community.

18 **4. Unreasonable Restriction on Retention Ponds**

19 The agriculture industry has found that in the Central Cost region as well as other regions,
20 the most direct way to control the discharge of agricultural crop control materials to waters of the
21 state is to control, capture, retain, and reuse irrigation water. Such procedure is widely used as an
22 important mitigation practice in the Central Valley. The Regional Board, as part of its effort to
23 target on-farm production and management decisions, strives to prevent farmers from using these
24 mitigation efforts. Specifically, the Regional Board oversteps its authority by prohibiting
25 percolation of waste to groundwater through retention ponds and by compelling the Tier 3
26 farmers to monitor their on-farm re-circulating and tailwater ponds. (2012 Ag Waiver, p. 20, ¶33;
27 Tier 3 MRP Order, p. 16, ¶¶7 & 8.)
28

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1 **5. The 2012 Ag Waiver Inappropriately Targets Chlorpyrifos and Diazinon**

2 The Regional Board’s targeting of specific agricultural chemicals is unreasonable. The
3 2012 Ag Waiver improperly targets particular pesticides (chlorpyrifos and diazinons), which are
4 important tools that farmers use to manage their operations. For example, Tier 3 dischargers are
5 required to monitor runoff or tailwater within one week of applying chlorpyrifos or diazinons.
6 (Tier 3 MRP Order, p. 16, ¶¶7 & 8.) The focus on only two of organophosphate pesticides is
7 meritless. Rather than identifying problematic uses of these pesticides that directly impact
8 water quality, the Regional Board is attempting to eliminate the use of two of the most important
9 insecticide tools on which farmers rely. By subjecting users of these pesticides to stringent
10 regulatory requirements, the Regional Board has designed a monitoring regime to maximize the
11 chance of incriminating farmers and to thereby change farm management operations “on-the
12 farm.” These provisions are beyond the Regional Board’s authority and constitute an improper
13 and unwarranted attack on coastal agriculture.

14 Moreover, chlorpyrifos and diazinons are heavily regulated by California Department of
15 Pesticide Regulation (“CDPR”) and local agricultural commissioners. Applicators of such
16 chemicals are required to employ the most focused management practices, all designed around
17 water quality. Further, the 2012 Ag Waiver loses sight of the fact that if pests cannot be
18 controlled by one of these organophosphate pesticides, alternative pesticides not subject to
19 local agricultural and CDPR regulatory protections will have to be used. Many of the
20 alternate chemicals are themselves toxic at low dosage and may also result in sediment
21 toxicity, which has been particularly problematic to some sensitive aquatic species.

22 When the Regional Board targets a particular pesticide, the regulation will merely
23 shift utilization to other products, which may have equal or different toxic results. This
24 approach also fails to take into account that the implementation of certain best management
25 practices may be more effective in protecting water quality than merely shifting pesticide
26 use. Targeting of these two insecticides is merely a way for the Regional Board to
27 improperly control on-farm management of practices and will only shift product use resulting
28 in unknown net affect on water quality risk.

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1 **6. Regional Board Overreached By Imposing Regulations Based on Proximity to**
2 **Impaired Waterbody**

3 The 2012 Ag Waiver contains several regulations purporting to protect waterbodies that
4 are listed as impaired in Table 1 (2010 Clean Water Action Section 303(d) List of Impaired
5 Waterbodies). Table 1 lists waterbodies that are impaired for toxicity, pesticides, nutrients,
6 temperature, turbidity, or sediment. Pursuant to the 2012 Ag Waiver, if a Tier 3 farm is adjacent
7 to a Table 1 waterbody that is impaired for temperature, turbidity, or sediment, the farmer must
8 develop a water quality buffer plan that includes a 30 foot buffer. (2012 Ag Waiver, pp. 30-31,
9 ¶¶80 & 81; Tier 3 MRP Order, p. 21, ¶2.) In addition, Tier 2 and Tier 3 farms that border such a
10 waterbody must conduct photo monitoring to document riparian areas to demonstrate compliance
11 with sediment controls. (2012 Ag Waiver, p. 28, ¶69.)

12 These provisions are overbroad as such regulations should be restricted to lands adjacent
13 to and capable of draining to the Table 1 impaired waterbodies. If there is no nexus on the farm
14 to the impaired waterbody, there is no reason to impose these 30 feet “no farm” restrictions,
15 which constitutes uncompensated regulatory taking.

16 **7. Milestones for Toxic and Nutrient Controls Are Unreasonable**

17 The milestones advanced by the 2012 Ag Waiver are totally unreasonable. The waiver
18 seeks to: (1) control all toxics by 2014, (2) control sediment by 2015, (3) control nutrients to
19 surface water by 2016, and (4) control nutrients to groundwater by 2016. (2012 Ag Waiver, p.
20 32, ¶¶ 84-87) Controlling all toxics in a year and a half is laughable, and controlling nitrates in
21 groundwater aquifers in five years is likewise unreasonable and counters the assessment of all
22 experts in this area as well as the recent University of California, Davis Nitrate Report presently
23 under review by the State Board. Moreover, these “milestones” do not protect farmers from over
24 aggressive enforcement actions, which may be taken even prior to these aggressive milestone
25 dates.

26 Additionally, many of the deadlines and milestones in the waiver are not only rigid, but do
27 not take into account that many of the larger and most responsible farm operations have invested
28 hundreds of thousands of dollars, management efforts and operational amendments to improve

1 water quality. The regulations, however, offer no recognition of such efforts and demand further
2 improvements which will be difficult for those operations to demonstrate because those
3 reductions have already been effectuated.

4 **8. The Regional Board Should Adopt a Holistic Approach to Regulating**
5 **Groundwater**

6 The 2012 Ag Waiver provides that “the Executive Officer may require Dischargers to
7 locate (inventory) and conduct monitoring of private domestic wells in or near agricultural areas
8 with high nitrate in groundwater and submit technical reports evaluating the monitoring results.”
9 (2012 Ag Waiver, p. 7, ¶21.) However, the waiver contains few specifics as to the regulation of
10 groundwater. To properly address the situation of nitrate in the region’s groundwater, a far more
11 holistic and scientific approach should be undertaken. All existing groundwater data should be
12 assembled; all well inventory, well depth, draw depth and casing information should be mapped;
13 and, if necessary, additional monitoring wells should be added. Only when that information is
14 gathered, can the Regional Board properly assess the region’s aquifers and their condition. The
15 Regional Board can then identify problem source contributions and employ appropriate
16 mitigations.⁶ However, the 2012 Ag Waiver merely empowers the Executive Officer to conduct
17 spot well monitoring and submit reports. This reflects a completely naïve means to address
18 groundwater, as it wrongfully presumes that a groundwater problem is directly linked to the
19 overlying farm. This is not the case.

20 In addition, the 2012 Ag Waiver references that pursuant to Water Code section 13304,
21 “the Central Coast Water Board may require Dischargers to provide alternative water supplies or
22 replacement water service, including wellhead treatment, to affected public water suppliers or
23 private domestic well owners.” (2012 Ag Waiver, p. 7, ¶21.) This is a mischaracterization of
24 Section 13304, which does not allow the Regional Board to compel farmers to provide alternative
25 water to private well owners.

26 **9. The Regulations Under 2012 Ag Waiver Are Costly to Implement**

27 As discussed above, many of the new regulatory provisions require fundamental and

28 ⁶ Other regions are moving towards this holistic approach.

1 costly changes in farm operations and management. Such impacts include surface water
2 monitoring, groundwater monitoring, non-farmed buffer zones, changes in pesticide tools,
3 possible crop impacting reductions in fertilizer, hiring engineers and certified consultants, and
4 diversion of management efforts. Moreover, some of the regulations, such as the nitrate risk
5 assessment and nitrate groundwater percolation studies are presently impossible to implement and
6 will require substantial investment in new research. These are huge undertakings compelling
7 untold direct costs. Since many, if not most farmers, will not be able to meet the regulatory
8 deadlines, these farmers will also incur substantial legal costs to defend against enforcement
9 actions. The Regional Board has ignored these costs considerations that would potentially
10 jeopardize the region's agricultural industry.

11 At the outset of the waiver adoption hearing, Congressman Sam Farr pleaded, "agriculture
12 isn't trying to deny there's a problem. They're trying, you know, they're working with you to try
13 to figure out, how do we get a workable solution so we can both win." (Hearing Tr. (3/14/2012)
14 at 80:8-11.) Mr. Farr acknowledged that cooperation is far more effective than adversarial
15 regulation:

16 the only way it could be solved [the problem] is if the people . . .
17 who own the land where it's been contaminated for 100 years, how
18 do you get that cleaned up? You've got to have their cooperation, it
seems to me. Put out those objectives that you want to achieve and
get their suggestion on how to solve them

19 (*Id.* at 85:20-86:1.) In keeping with Congressman Farr's call for cooperative efforts, many
20 witnesses spoke about progress that has been achieved through industry and local efforts. One
21 such speaker was Sara Green-Lopez, who is the technical program manager for Preservation, Inc,
22 which manages the Cooperative Monitoring Program. Ms. Green-Lopez testified to the
23 cooperative efforts on Quail Creek, a previous troubled tributary to the Salinas River:

24 This monitoring site has shown significant reduction of nitrogen to
25 the Salinas River. By significant, I mean that, at the beginning of
26 the waiver period 2005, -06, and -07, the instantaneous nitrogen
27 loads at that monitoring site were 4.2, 12.8, and 5.5 pounds of
28 nitrogen per hour. In 2009, -10, and -11, the nitrogen levels were
0.00, 0.9, and 0.00 pounds of nitrogen per hour. The load
reductions are the direct result of actions taken by farmers on the
watershed for tail water run-off.

1 (Id. at 241:21-242:5)

2 Other local and state office holders are similarly frustrated by the extreme measures
3 proposed by the Regional Board staff. Mr. Bill Ritz, speaking for State Senator Cannella,
4 testified:

5 the cost of Tier 3 compliance at approximately \$600 per acre per
6 year making that land infeasible for farming based on row crops
7 economics. I think it is imperative that we reconcile the percentage
8 of our agricultural land that may be forced out of production under
the provisions of the Tier 3 regulatory requirements contained in
the Draft Order.

9 (Hearing Tr. (3/14/2012) at 111:8-16.) None of these testimonies or pleas registered with
10 the Regional Board or its staff. The Regional Board simply ignored them.

11 **D. REMEDY**

12 Pursuant to the State Board’s appellate authority regarding challenges to Regional Board’s
13 actions (California Water Code section 13320), “[t]he State Board is vested with all the powers of
14 the Regional Board.” (CWC 13320(c).) The State Board may therefore either a) uphold the
15 Regional Board as orders and resolutions, b) craft an amended waiver order (“take the appropriate
16 action itself”), or c) remand the deficient order back to the Board with remedial instructions.
17 (Cal. Water Code § 13320(c).)

18 In this particular instance, it is important for the State Board to “take the appropriate
19 action itself.” In so doing, the State Board should either draft an entirely new alternative waiver
20 or re-write the offending provisions of the order as passed. Such modification would be required
21 to address each the 2012 Ag Waiver and the Tier MRP orders so as to amend those provisions
22 which are inconsistent with the law, are impossible or unreasonable, are widely inconsistent with
23 similar programs in other regions and those provisions simply deemed to be inappropriate
24 overreaches.

25 Follows is a summary, but not exhaustive, list of such 17 provisions requiring redress.

26

	INAPPROPRIATE PROVISION	LOCATION
28 1.	Eliminate or revise requirement to calculate nitrate loading	2012 Ag Waiver, p. 28, ¶¶

1	risk, determine typical crop uptake	68 and 74
2	2. Eliminate for each ranch unit the requirement to assess if practices will cause exceedance of nitrate to groundwater	2012 Ag Waiver, p. 29 ¶¶ 74-79 Tier 1 MRP Order, pg. 27
3		
4	3. Eliminate the reference to Table 4, and the use of the UC Nitrate Hazard Index	Tier 1 MRP Order, pp. 27 and 11
5		
6	4. Remove the nitrate fertilizer limits (1:1 and 1:2) Eliminate the limit on the fertilizer use based on nutrients removed in the harvested crop	2012 Ag Waiver, pp., 29-30, ¶¶ 78, 79
7		
8	5. Remove the requirement to calculate the nitrate load going to groundwater	2012 Ag Waiver, p. 30, ¶ 78c
9		
10	6. Eliminate elements c, d, g, h from Tier 3 MRP regarding nitrogen loads and nitrates limits and rates	Tier 3 MRP Order, p. 18, ¶ 4
11	7. Remove or reduce the requirement that certified and licensed engineers and advisors must evaluate all INMP elements	Tier 3 MRP Order, p. 18, ¶ 5, and pp. 17-20 (Part 6)
12		
13	8. Eliminate the requirement that farmers must “restore”/clean up groundwater	Tier 3 MRP Order, p. 19, ¶ B2
14	9. Eliminate the sections which require monitoring a) field water, b) tile drains and c) field ponds	Tier 3 MRP Order, Part 5, Sect. 3, 7; Part B, ¶ 44
15		
16	10. Add a provision that to be subject to the buffer provisions the farm must be capable to drain to the waterbody	Tier 3 MRP Order, 2012 Ag Waiver, pp. 30-31, ¶ 80
17	11. Eliminate all references to tile drains	2012 Ag Waiver, p. 5, ¶¶ 12, ¶ 9
18		
19	12. Amend Tier 1 to allow farms over 50 acres and their choice chemical use so long as there is no risk	2012 Ag Waiver, p. 14, ¶ 14; p. 17, ¶ 17
20	13. Eliminate the E.O. authority to compel farmers to combine his farms for regulatory purposes	2012 Ag Waiver, pp. 18, 19, ¶¶ 19, 20
21	14. Eliminate retention pond monitoring	Tier 3 MRP Order, p. 16, ¶¶ 7, 8
22		
23	15. Eliminate the requirement to monitor field runoff within 2 weeks of Chlorpyrifos/Diazinon use	2012 Ag Waiver, p. 16, ¶¶ 7, 8
24	16. Modify the Milestones – lengthen the timelines	
25	17. Modify the groundwater section reference which overstates section 13304 authority	2012 Ag Waiver, p. 7, ¶ 21
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27		
28		

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1 **E. THE 2012 AG WAIVER IS PROCEDURALLY DEFECTIVE IN THAT IT**
2 **CONTAINS POST RECORD AMENDMENTS FROM THE ENVIRONMENTAL**
3 **COMMUNITY**

4 Paragraph 11 of page 4 of the 2012 Ag Waiver is a new provision first raised and adopted
5 at the Regional Board hearing on March 15, 2012. Paragraph 11 provides:

6 Dischargers may form third party groups to develop and implement
7 alternative water quality management practices (i.e., group projects)
8 or cooperative monitoring and reporting programs to comply with
9 this order. At the discretion of the Executive Officer, Dischargers
10 that are a participant in a third party group that implements
11 Executive Officer-approved water quality improvement projects or
12 Executive Officer-approved alternative monitoring and reporting
13 programs may be moved to a lower Tier ... and/or provided
14 alternative project-specific timelines, and milestones.

15 (2012 Ag Waiver, p. 14, ¶ 11.) While Petitioners do not object to the substance of this new
16 language, which was crafted by the environmental community, its introduction at the March 2012
17 hearing renders the entire 2012 Ag Waiver procedurally defective for violation of the Brown Act.
18 This particular provision was circulated the week before the March 2012 hearing in Sacramento
19 to the California Environmental Protection Agency. The provision was also conveyed to
20 Regional Board member Michael Johnston, who introduced it, on the behalf of the environmental
21 community, at the very end of the hearing. The language itself was not introduced at the hearing
22 until all official hearing input had ended and public participation was closed. (Hearing Tr.
23 (3/15/2012) at 109:18-113:17.)

24 It is noteworthy that at the commencement of the March 14, 2012 hearing, Board
25 members Bruce Delgado and Russell Jeffries had made disclosures of all discussions they had
26 had relative to the proposed waiver prior to the hearing, and Board member Jean-Pierre Wolff
27 recused himself for conflicts. (Hearing Tr. (3/14/2012) at 11:1-13:22.) In response, Chairman
28 Jeffrey Young asked the remaining Board members if there are any other outside discussions by
asking, "Any one else have anything to add?" No other Board member responded. (*Id.* at 13:24-
25.) Mr. Johnston and the other Board members should have disclosed their discussion regarding
26 this new paragraph outside of the public hearing.

27 Although the Petitioners are not challenging the substance of the new paragraph 11, the
28 fact that there were improper undisclosed exchanges between Board members and that this

1 language was not timely submitted in the record is troubling and renders the Regional Board's
2 actions on March 15, 2012 procedurally defective.

3 **F. THE REGIONAL BOARD'S CERTIFICATION AND FILING OF A NOTICE OF**
4 **DETERMINATION FOR THE FINAL SEIR CONSTITUTES A PREJUDICIAL**
5 **ABUSE OF DISCRETION⁷**

6 In adopting the 2012 Ag Waiver, the MRP, and Resolution No. R3-2012-0012, the
7 Regional Board failed to comply with CEQA requirements. Instead of conducting a full CEQA
8 review of the 2012 Ag Waiver and the MRP, the Regional Board improperly relied on the
9 antiquated 2004 Negative Declaration, which was prepared for the 2004 Ag Waiver. Even
10 assuming that a full CEQA review is not required, the Final SEIR falls short of the thorough
11 analysis required by CEQA and contains conclusory statements not supported by substantial
12 evidence. Furthermore, after receiving public comments for the draft SEIR, the Regional Board
13 failed to re-circulate the revised SEIR for public comment and instead issued the Final SEIR on
14 March 17, 2011 – nearly a year before the proposed waiver was finalized. Moreover, the Final
15 SEIR does not take into consideration the subsequent amendments that changed the scope and
16 nature of the project. Hence, the analysis in the Final SEIR is inapplicable to the 2012 Ag Waiver
17 and the Regional Board never conducted the required environmental impact analysis on the
18 project that was actually adopted. As such, the Regional Board's certification of the Final SEIR
19 constitutes a prejudicial abuse of discretion under Public Resources Code section 21168.5.
20 Specific inadequacies with respect to CEQA are discussed further herein.

21 **1. The 2012 Ag Waiver Is a New Project With New Conditions and the Regional**
22 **Board Should Not Have Relied on the 2004 Negative Declaration for the 2004**
23 **Ag Waiver**

24 In an effort to avoid a full CEQA review and environmental analysis, the Regional Board
25 attempts to disguise the 2012 Ag Waiver as a mere renewal of the 2004 Ag Waiver with "some
26 new conditions" and relied on findings in the 2004 Negative Declaration to declare that the "new
27 conditions" would not have significant environmental impact. (Final SEIR at pp. 1 & 8.) For

28 ⁷ The Petitioners hereby incorporate by reference CEQA portion of California Farm Bureau Federation's ("CFBF's")
Petition filed on or about April 16, 2012, and the CEQA-related comments in CFBF's January 3, 2011 letter to the
Regional Board regarding the 2011 Draft Agricultural Order.

1 example, in response to comments that the “new conditions” could change land use, alter aquatic
2 habitats, and result in negative economic impacts, the Final SEIR absurdly concludes that “[t]hese
3 environmental effects were previously evaluated in the Negative Declaration for the 2004
4 Agricultural Order and were found at that time not to be significant.” (*Id.* at p. 8.) This
5 conclusion defies logic for many reasons. First, several years have passed since the 2004
6 Negative Declaration was adopted. Since the completion of the 2004 Ag Waiver, significant new
7 information is available and the landscape, economy, and habitats of the region may have
8 changed. Even if the 2012 Ag Waiver is a mere renewal of the 2004 Ag Waiver, the Regional
9 Board should not be allowed to impute conclusions from an eight-year old analysis on the current
10 project.

11 Second, the 2012 Ag Waiver is a new project and is separate and distinct from the 2004
12 waiver. As such, a full CEQA review and environmental analysis is required. The so-called
13 “new conditions” are in actuality a whole new regulatory scheme that regulates dischargers’
14 management and operation of their farmland. As discussed herein, these new regulations include
15 a complex and arbitrary tiered MRP, an extreme and unreasonable nutrient management plan, the
16 creation of buffer zones, and restriction on use of tile drains, retention ponds, and certain
17 pesticides. This new regulatory scheme significantly alters the scope and nature of the waiver,
18 and was not considered in the 2004 Negative Declaration. Case law is clear that an agency
19 simply cannot rely on an earlier negative declaration, which did not examine the new proposals.
20 (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App. 3d 577, 594
21 [holding that an EIR was required for an airport runway extension because the earlier negative
22 declaration prepared for the airport project did not mention the runway extension].)

23 **2. The Final SEIR’s Description of Project Is Improper**

24 To further disguise the 2012 Ag Waiver as the same “project” as the 2004 Ag Waiver, the
25 Regional Board drastically altered the description of the project to create the impression that the
26 two waivers are essentially the same. The Draft SEIR lists, as examples, ten new conditions in
27 the 2011 draft waiver:
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- Implement pesticide management practices to reduce toxicity in discharges so receiving waterbodies meet water quality standards;
- Implement nutrient management practices to eliminate or minimize nutrient and salt in discharges to surface water so receiving waterbodies meet water quality standards;
- Implement nutrient management practices to minimize fertilizer and nitrate loading to groundwater to meet nitrate loading targets;
- Install and properly maintain back flow prevention devices for wells or pumps that apply fertilizers, pesticides, fumigants or other chemicals through an irrigation system;
- Implement erosion control and sediment management practices to reduce sediment in discharges so receiving water bodies meet water quality standards;
- Protect and manage existing aquatic habitat to prevent discharge of waste to waters of the State and protect the beneficial uses of these waters;
- Implement stormwater runoff and quality management practices.
- Develop, implement, and annually-update Farm Water Quality Management Plans.
- Submit an Annual Compliance Document (for higher threat dischargers) that includes individual discharge monitoring results, nitrate loading risk evaluation and, if nitrate loading risk is high, irrigation and nutrient management plan, verification of irrigation and nutrient management plan effectiveness.
- Submit a water quality buffer plan (for higher threat dischargers), if operations contain or are adjacent to a waterbody identified on the Clean Water Act Section 303(d) List of Impaired Waterbodies as impaired for temperature or turbidity.

(Draft SEIR at p. 4) After receiving numerous comments that the Regional Board should not rely on the 2004 Negative Declaration, the Regional Board deleted these bullet points from the project description of the Final SEIR. The revised project description emphasizes the similarities between the 2004 Ag Waiver and 2011 draft waiver. (Compare Draft SEIR at pp. 3-5 with Final SEIR at pp. 5-7.) Revising the project description to hide or de-emphasize the “new conditions” is improper, especially since such revision result in a less comprehensive description of the

1 project.

2 “An accurate, stable and finite project description is the *sine qua non* of an informative
3 and legally adequate EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185,
4 192.) Without a well-defined project or program, the lead agency cannot properly conduct an
5 impact analysis or compare the project against alternatives. The specific differences between the
6 2004 and 2012 Ag Waivers are particularly important, since the Final SEIR relies heavily on the
7 analysis done for the 2004 Negative Declaration.

8 Further, the project description is defective on its face because it does not contain a
9 description of the project’s economic characteristics. (CEQA Guidelines, §15124(c) [“The
10 description of the project shall contain the following [:] . . . [a] general description of the project’s
11 technical, economic, and environmental characteristics”].)

12 **3. The Final SEIR’s Analysis of Impacts Is Improper**

13 The Final SEIR fails to properly analyze the potential impacts associated with the 2012
14 Ag Waiver. The Final SEIR is filled with cursory analysis, conclusory statements, and pure
15 speculations, and fails to take into consideration comments made regarding the inadequacies of
16 the Draft SEIR. For example, the Draft SEIR concludes that “the Water Board can only speculate
17 with respect to the extent there could be adverse environmental effects because it is not known
18 with specificity what actions dischargers may take to comply. There is not sufficient information
19 to determine the scope of any changes in environmental effects and any potential impacts are very
20 speculative.” (Draft SEIR at p. 8.) Rather than gathering new information, providing an in-depth
21 analysis of all potential impacts or revising its proposed waiver, the Regional Board simply
22 deleted the sentence that it “can only speculate with respect to the extent there could be adverse
23 environmental effects” from the Final SEIR. (Final SEIR at p. 11.) The mere deletion of that
24 sentence without further analysis does not cure the fundamental flaw that the Regional Board
25 made speculations and unjustified assumptions in reaching the Final SEIR’s conclusion that the
26 2012 Ag Waiver “may not result in significant adverse environmental effects.” (*Id.*) A “rigorous
27 analysis” is required to dispose of an impact as insignificant. (*Kings County Farm Bureau v. City
28 of Hanford*, 2221 Cal. App. 3d 692 (1990).)

1 One of the primary purposes of an EIR is to inform the public and decision makers of the
2 significant environmental effect of a project. (CEQA Guidelines, §§15002(a), & 15121(a).) Such
3 purpose is not achieved when the EIR does not provide a thorough analysis of all potential
4 impacts and simply provides conclusory statements.⁸ The EIR must also disclose all information
5 it relied upon and provide the “analytic route the . . . agency traveled from evidence to action.”
6 (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376,
7 404.) Failure to do so constitutes an abuse of discretion. While the courts review an EIR using
8 an “abuse of discretion” standard, . . . ‘clearly inadequate or unsupported study is entitled to no
9 judicial deference.’” (*Berkeley Keep Jets Over the Bay v. Board of Port Comm’rs* (2001) 91 Cal.
10 App. 4th 1344, 1355 (quoting *Laurel Heights Improvement Assn.*, *supra*, 47 Cal. 3d at p. 409, n.
11 12).) “A prejudicial abuse of discretion occurs ‘if the failure to include relevant information
12 precludes informed decision-making and informed public participating, thereby thwarting the
13 statutory goals of the EIR process.’” (*Id.* at 1355.)

14 Further, the Final SEIR is inadequate in that the Regional Board failed to properly analyze
15 the potential impact associated with the project. Specifically, the Final SEIR lacks proper review
16 of impacts such as the loss of agricultural lands taken out of production due to proposed
17 requirements and the cost of compliance, loss of agricultural lands, reduced productivity of
18 farmland resulting from restriction on use of tile drains, pesticide, and chemicals that may render
19 the farmland unproductive. The Final SEIR also fails to properly examine the impact of
20 sedimentation basins that the dischargers may employ to comply with the 2012 Ag Waiver. The
21 Final SEIR merely concluded that the 2012 Ag Waiver would not result in a “significant adverse
22 effect on the environment” solely on the basis that a large number of growers may not install
23 sedimentation basins. (Final SEIR at p. 16.) The Final SEIR offers no analysis of the impact, if
24 growers do install these basins as part of their compliance.

25 Moreover, the analysis of the buffer is inadequate in that the analysis only examines the
26 actual land used for the buffer, but not the impact that the buffer may have on surrounding

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28 ⁸ “Mere conclusions simply provide no vehicle for judicial view.” (*Citizens Association for Sensible Development of
Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.)

1 farmland and habitat. Such impact may constitute an indirect physical change that must be
2 evaluated. “In evaluating the significance of the environmental effect of a project, the lead
3 agency shall consider direct physical changes in the environment which may be caused by the
4 project and reasonably foreseeable indirect physical changes in the environment which may be
5 caused by the project.” (Cal. Code Regs., tit. 14, § 15064(d).) “An indirect physical change in
6 the environment is a physical change in the environment which is not immediately related to the
7 project, but which is caused indirectly by the project. If a direct physical change in the
8 environment in turn causes another change in the environment, then the other change is an
9 indirect physical change in the environment.” (*Id.* at § 15064(d)(2).) The buffer analysis is also
10 flawed in that the Final SEIR does not offer any facts or evidence to support its conclusion that
11 the use of riparian buffers “will result in beneficial, not adverse, impacts on the environment.”
12 (Final SEIR at p. 15.) Such unsupported conclusory and general statements are inappropriate.

13 **4. The Final SEIR’s Assessment of Significant Impacts and Effects on the**
14 **Environment is Inadequate**

15 The Final SEIR improperly concludes that “potential adverse environmental impacts to
16 agricultural resources are less than significant.” (Final SEIR at p. 11.) This conclusion is flawed.
17 CEQA Guidelines defines “significant effect” as “a substantial, or potentially substantial, adverse
18 change in any of the physical conditions within the area affected by the project.” (CEQA
19 Guidelines, §15382.) The lead agency should consider any “social or economic change related to
20 a physical change . . . in determining whether the physical change is significant.” (*Id.*) While the
21 Final SEIR acknowledges that the 2012 Ag Waiver “will result in increased costs of compliance”
22 and “agricultural land may be converted to buffers or sold for other uses,” the Final SEIR largely
23 ignores the possibility that social or economic change would result in physical change. (Final
24 SEIR at p. 17.) Common sense dictates that if cost of compliance exceeds potential profit from
25 agricultural use, the land will not be used for agricultural purposes. The Regional Board attempts
26 to shift the burden to the public to demonstrate that the economic impact would result in “a chain
27 of cause and effect to physical changes” and alleges that the public commenters have not
28 provided such proof. (*Id.*) This contradicts the Regional Board’s admission that cost will

1 increase for at least some dischargers and that some farmlands will no longer be used for
2 agricultural purposes. (Final SEIR at pp. 14 & 17.)

3 As discussed above, the 2012 Ag Waiver proposed a new regulatory scheme that will have
4 dramatic and sever impacts on the agricultural industry and significant effect on the economic and
5 social environment of the region. Such impacts include negative economic consequences, the
6 loss of productivity, the loss of food supply, the loss of prime agricultural crops, the loss of jobs,
7 the loss of groundwater recharge areas, and other social and economic impacts. All of these
8 changes will either directly or indirectly result in physical changes.

9 These physical changes in the environment must be evaluated based on factual evidence,
10 reasonable assumptions supported by facts, and expert opinion based on facts. (CEQA
11 Guidelines, §§15064(f) & 15384.) The Regional Board should not rely on an eight-year old
12 negative declaration in assessing whether the 2012 Ag Waiver, which contains new provisions
13 not in the 2004 Ag Waiver, poses significant impacts and effects on the environment. Rather, the
14 Regional Board must review all scientific data and facts, especially information collected since
15 the initiation of the 2004 Ag Waiver.

16 **5. The Final SEIR's Analysis of Project Alternatives is Cursory and Improper**

17 CEQA requires the Regional Board to rigorously examine all reasonable alternatives and
18 to include in the Final SEIR sufficient information "to allow meaningful evaluation, analysis, and
19 comparison." (CEQA Guidelines, §15126.6.) The Final SEIR's cursory treatment of the
20 alternatives is inadequate in that none of the project alternatives are fully analyzed and discussed
21 in detail to provide meaningful comments. For example, the Regional Board admitted that it did
22 not conduct an environmental analysis of the December 2010 and the January 2011 alternatives
23 submitted by agricultural groups ("Ag Alternative"). The Regional Board simply concluded that
24 the Ag Alternative is "similar" to the 2004 Ag Waiver and no further environmental analysis was
25 required "because it was included in the 2004 Negative Declaration." (Final SEIR at p. 30.) As
26 discussed above, reliance on the 2004 Negative Declaration is improper. At the very least, the
27 Final SEIR should have identified parts of the Ag Alternative that are different from the 2004 Ag
28 Waiver, and assess the potential environmental benefits and impacts of those new elements and

1 the feasibility and costs associated with the Ag Alternative.

2 **6. The Regional Board Failed to Assess Mitigation Options to Reduce**
3 **Significant Adverse Effect on Biological Resources**

4 The Regional Board concluded that the 2011 draft waiver “will have significant [adverse
5 environmental] effects” on biological resources, but does not assess potential mitigation
6 measures. (Final SEIR at p. 26.) CEQA Guidelines forbid the Regional Board from approving a
7 project if there are mitigating measures available that would lessen the significant effects. (Cal.
8 Code. Regs., tit. 14, §§15021(a)(2) & 15096(g).) To that end, the Regional Board must assess
9 the mitigating measure’s feasibility. (*Ibid.*) However, the Final SEIR offers only cursory
10 overview of mitigating measures with no discussion on their feasibility. (Final SEIR at p. 26.)

11 **7. The Required Findings and Overriding Statements Contained in Resolution**
12 **No. R3-2012-0012 Are Legally Flawed**

13 Since the Final SEIR “concludes that [the 2012 Ag Waiver will have] a significant effect”
14 on the region’s biological resources, the Regional Board must make findings that (1) changes
15 have been made in the project to lessen the environmental effect, (2) mitigating measures or
16 alternatives are within jurisdiction of another agency, or (3) mitigating measures or alternatives
17 are infeasible. (CEQA Guidelines, §15091.) The Regional Board must further make a statement
18 of overriding considerations that economic, legal, social, technological, or other benefits
19 outweigh the unavoidable adverse environmental effects. (CEQA Guidelines, §15093.) Such
20 findings and statements must be supported by substantial evidence in the record. (CEQA
21 Guidelines, §§15091(b) & 15093(b).) However, the records do not support the Regional
22 Board’s findings and statements. (See CEQA Guidelines, § 15064(f)(5) [“[a]rgument,
23 speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or
24 erroneous, or evidence that is not credible, shall not constitute substantial evidence[.]”]) The
25 Regional Board makes general and cursory remarks in the Final SEIR and Resolution No. R3-
26 2012-0012, but fails to specify that other agencies have *exclusive* jurisdiction over the mitigation
27 measures as required by CEQA Guidelines. (CEQA Guidelines, §15091(c).) In fact, the only
28 rationale proffered by the Regional Board for rejecting the mitigating measures as unfeasibility is
that the Regional Board cannot control the mitigation measures. (Resolution No. R3-2012-0012

1 at ¶18.)

2 Further, CEQA requires the Regional Board to balance economic, legal, social,
3 technological, or other benefits with adverse environmental effects. The record does not provide
4 any evidence of the economic, legal, social, or technological benefit that outweigh the impact on
5 biological resources. The Final SEIR merely contains allegations that the “reduced flows could
6 be offset by increased recharge, higher quality of the discharges, and other beneficial impacts of
7 compliance.” Such general allegations fall short of the substantial evidence required by CEQA
8 Guidelines.

9 **8. The Regional Board Failed to Re-Circulate the SEIR as Required by CEQA**

10 A lead agency is required to re-circulate an EIR “when significant new information is
11 added to the EIR after public notice is given of the availability of the draft EIR for public review
12 under Section 15087 but before certification.” (CEQA Guidelines, §15088.5(a).) After receiving
13 public comments for the Draft SEIR, the Regional Board included significant new information in
14 the Final SEIR, such as a new description of the project, responses to comments, new analysis
15 and conclusion of impact. In fact, the Regional Board changed its assessment of the project’s
16 impact to agricultural resources from “less than significant with mitigation” to “less than
17 significant impact.” (Final SEIR at p. 9.) The public has a right to assess and comment on
18 whether the new conclusion drawn in the Final SEIR is supported by substantial evidence.
19 Moreover, the Region Board purported to have examined new “information provided at and
20 following the August 16, 2010 scoping meeting,” including new project alternatives that would
21 have reduced the adverse impact. (Final SEIR at pp. 2, 30-31.)

22 Further, the scope of the project was amended several times after the Region Board issued
23 the Final SEIR on March 17, 2011 – a year before the 2012 Ag Wavier was finalized. The
24 Addendum⁹ prepared for the September 1, 2011 draft waiver only addresses one of the many

25 _____
26 ⁹ The addendum of the Final SEIR (“Addendum”) should have been circulated as well. The Regional Board
27 introduced the Addendum via its Staff Report prepared for the September 1, 2011 hearing. The Addendum contains
28 conclusory statements regarding the September 1, 2011 revisions to the proposed project and claims that the revisions
to the tier structure would further reduce adverse environmental impact. (September 1, 2011 Staff Report, at p. 25-
26.) Failure to do so deprives the public its right to assess and comment on whether the substantial evidence supports
new conclusion drawn in the Addendum.

1 changes to the proposed waiver. The 2012 Ag Waiver is significantly different from the proposed
2 project considered by the Final SEIR. For example, the criteria for tier structure changed
3 dramatically. Under the proposed project considered by the Final SEIR, a discharger that is likely
4 to discharge nitrogen to groundwater would be classified as a Tier 3 discharger if its total
5 irrigated acreage is greater than or equal to 1000 acres. However, under the 2012 Ag Waiver,
6 such discharger would be categorized as a Tier 3 discharger if the total irrigated acreage for its
7 farm/ranch equals or exceeds 500 acres. Consequently, the Final SEIR, which was drafted nearly
8 a year before project approval, is inapplicable to the 2012 Ag Waiver in that it was prepared for
9 an earlier project that is substantively different from the actual project that was adopted.

10 **9. The Notice of Determination Was Not Timely Filed**

11 As another indicator of the Regional Board's disregard to CEQA Guidelines, the Regional
12 Board did not file the Notice of Determination in a timely manner. Pursuant to CEQA Guidelines
13 section 15094, the Regional Board is to file the NOD with the Office of Planning and Research
14 within five working days after approval of the project. Since the Regional Board approved the
15 2012 Ag Waiver on March 15, 2012, the deadline to file the NOD is March 22, 2012. However,
16 the Regional Board waited until April 3, 2012 – almost three weeks after project approval – to
17 execute the NOD. To date, the Petitioners have not received a stamped copy of the NOD and
18 have no knowledge whether the Regional Board actually filed the notice.

19 **III. CONCLUSION**

20 Based on this Petition and the evidence in the record, Petitioners respectfully request the
21 State Board (1) to immediately stay the 2012 Ag Waiver and the Tier MRP Orders, or in the
22 alternative, to schedule a hearing regarding the Petitioners' request for stay; (2) to order the
23 Regional Board to vacate the 2012 Ag Waiver, the Tier MRP Orders, and Resolution No. R3-
24 2012-0012; (3) to order the Regional Board to withdraw its Notice of Determination; (4) to cure
25 the flaws identified herein in the existing 2012 Ag Waiver and the Tier MRP Orders by
26 modifying the 2012 Ag Waiver and the Tier MRP Orders; and (5) to prepare and circulate an EIR
27 pursuant to CEQA requirements for the State Board's conditional waiver of waste discharge
28

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requirements for discharges from irrigated lands.

Dated: April 16, 2012

BEST BEST & KRIEGER LLP

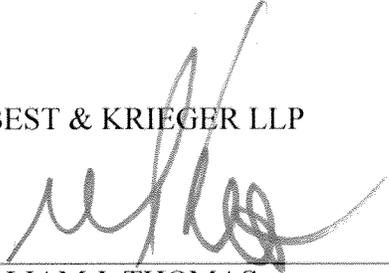
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EXHIBIT “A”

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

ORDER NO. R3-2012-0011

**CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS**

The California Regional Water Quality Control Board, Central Coast Region finds that:

1. The Central Coast Region has approximately 435,000 acres of irrigated land and approximately 3000 agricultural operations, which may be generating wastewater that falls into the category of discharges of waste from irrigated lands.
2. The Central Coast Region has more than 17,000 miles of surface waters (linear streams/rivers) and approximately 4000 square miles of groundwater basins that are, or may be, affected by discharges of waste from irrigated lands.
3. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) are the principal state agencies with primary responsibility for the coordination and control of water quality pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne Act, codified in Water Code Division 7). The legislature, in the Porter-Cologne Act, directed the Water Board to exercise its full power and jurisdiction to protect the quality of the waters in the State from degradation, considering precipitation, topography, population, recreation, agriculture, industry, and economic development (Water Code § 13000).
4. On July 9, 2004, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2004-0117 establishing a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (2004 Agricultural Order). In the 2004 Agricultural Order, the Central Coast Water Board found that the discharge of waste from irrigated lands has impaired and polluted the waters of the State and of the United States within the Central Coast Region, has impaired the beneficial uses, and has caused nuisance. The 2004 Agricultural Order expired on July 9, 2009, and the Central Coast Water Board renewed it for a term of one year until July 10, 2010 (Order No. R3-2009-0050). On July 8, 2010, the Central Coast Water Board renewed the 2004 Agricultural Order again for an additional eight months until March 31, 2011 (Order No. R3-2010-0040).

The Central Coast Water Board did not have a quorum to take action to adopt a renewal of the 2004 Agricultural Order with modifications by the March 31, 2011 termination date. On March 29, 2011, the Executive Officer signed Executive Officer Order No. R3-2011-0208 to extend the 2004 Agricultural Order again for an additional six months, with a September 30, 2011 termination date. The Central Coast Water Board did not have a quorum to take action to adopt a renewal of the 2004 Agricultural Order with modifications by the September 30, 2011 termination date. On September 30, 2011, the Executive Officer issued Executive Officer Order No. R3-2011-0017 to extend the 2004 Agricultural Order again for an additional year, with a September 30, 2012 termination date. Executive Officer Order No. R3-2011-0017 also required dischargers to implement an updated Monitoring and Reporting Program No. R3-2011-0018. This *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, Order No. R3-2012-0011 (Order) renews and revises the 2004 Agricultural Order as set forth herein.

5. Since the issuance of the 2004 Agricultural Order, the Central Coast Water Board has compiled additional and substantial empirical data demonstrating that water quality conditions in agricultural areas of the region continue to be severely impaired or polluted by waste discharges from irrigated agricultural operations and activities that impair beneficial uses, including drinking water, and impact aquatic habitat on or near irrigated agricultural operations. The most serious water quality degradation is caused by fertilizer and pesticide use, which results in runoff of chemicals from agricultural fields into surface waters and percolation into groundwater. Runoff and percolation include both irrigation water and stormwater. Every two years, the Water Board is required by Section 303(d) of the federal Clean Water Act to assess water quality data for California's waters to determine if they contain pollutants at levels that exceed protective water quality criteria and standards. This Order prioritizes conditions to control pollutant loading in areas where water quality impairment is documented in the 2010 Clean Water Act section 303(d) List of Impaired Waterbodies (hereafter referred to as 2010 List of Impaired Waterbodies). As new Clean Water Act section 303(d) Lists of Impaired Waterbodies are adopted, the Central Coast Water Board will consider such lists for inclusion in tiering criteria and conditions for this and subsequent Orders.
6. Nitrate pollution of drinking water supplies is a critical problem throughout the Central Coast Region. Studies indicate that fertilizer from irrigated agriculture is the largest primary source of nitrate pollution in drinking water wells and that significant loading of nitrate continues as a result of agricultural fertilizer practices¹. Researchers estimate that tens of millions of pounds of nitrate leach into groundwater in the Salinas Valley alone each year. Studies indicate that irrigated agriculture contributes approximately 78 percent of the nitrate loading to

¹ Carle, S.f., B.K. Esser, J.E. Moran, High-Resolution Simulation of Basin-Scale Nitrate Transport Considering Aquifer System Heterogeneity, *Geosphere*, June 2006, v.2, no. 4, pg. 195-209.

groundwater in agricultural areas². Hundreds of drinking water wells serving thousands of people throughout the region have nitrate levels exceeding the drinking water standard³. This presents a significant threat to human health as pollution gets substantially worse each year, and the actual numbers of polluted wells and people affected are unknown. Protecting public health and ensuring safe drinking water is among the highest priorities of this Order. This Order prioritizes conditions to control nitrate loading to groundwater and impacts to public water systems. In the case where further documentation indicates nitrate impacts to small water systems and/or private domestic wells, the Central Coast Water Board will consider proximity to impacted small water systems and private domestic wells for inclusion in tiering criteria.

7. Agricultural use rates of pesticides in the Central Coast Region and associated toxicity are among the highest in the State⁴. Agriculture-related toxicity studies conducted on the Central Coast since 1999 indicate that toxicity resulting from agricultural discharges of pesticides has severely impacted aquatic life in Central Coast streams^{5,6,7}. Some agricultural drains have shown toxicity nearly every time the drains are sampled. Twenty-two sites in the region, 13 of which are located in the lower Salinas/Tembladero watershed area, and the remainder in the lower Santa Maria area, have been toxic in 95% (215) of the 227 samples evaluated. This Order prioritizes conditions to address pesticides that are known sources of toxicity and sources of a number of impairments on the 2010 List of Impaired Waterbodies, specifically chlorpyrifos and diazinon. In the case where further documentation indicates that additional pesticides are a primary source of toxicity and impairments in the Central Coast region, the Central Coast Water Board will consider such pesticides for inclusion in tiering criteria.
8. Existing and potential water quality impairment from agricultural waste discharges takes on added significance and urgency, given the impacts on public health, limited sources of drinking water supplies and proximity of the region's agricultural lands to critical habitat for species of concern.

² Monterey County Flood Control and Water Conservation District, "Report of the Ad Hoc Salinas Valley Nitrate Advisory Committee." Zidar, Snow, and Mills. November 1990.

³ California Department of Public Health Data obtained using GeoTracker GAMA (Groundwater Ambient Monitoring and Assessment) online database, <http://geotracker.waterboards.ca.gov/gama/>.

⁴ Starner, K., J. White, F. Spurlock and K. Kelley. Pyrethroid Insecticides in California Surface Waters and Bed Sediments: Concentrations and Estimated Toxicities. California Department of Pesticide Regulation. 2006.

⁵ Anderson, B.S., J.W. Hunt, B.M. Phillips, P.A. Nicely, V. De Vlaming, V. Connor, N. Richard, R.S. Tjeerdema. Integrated assessment of the impacts of agricultural drainwater in the Salinas River (California, USA). *Environmental Pollution* 124, 523 - 532. 2003.

⁶ Anderson B.S., B.M. Phillips, J.W. Hunt, V. Connor, N. Richard, R.S. Tjeerdema. "Identifying primary stressors impacting macroinvertebrates in the Salinas River (California, USA): Relative effects of pesticides and suspended particles" *Environmental Pollution* 141(3):402-408. 2006a.

⁷ Anderson, B.S., B.M. Phillips, J.W. Hunt, N. Richard, V. Connor, K.R. Worcester, M.S. Adams, R.S. Tjeerdema. Evidence of pesticide impacts in the Santa Maria River Watershed (California, USA). *Environmental Toxicology and Chemistry*, 25(3):1160 - 1170. 2006b.

9. This Order regulates discharges of waste⁸ from irrigated lands by requiring individuals subject to this Order to comply with the terms and conditions set forth herein to ensure that such discharges do not cause or contribute to the exceedance of any Regional, State, or Federal numeric or narrative water quality standard (hereafter referred to as exceedance of water quality standards) in waters of the State and of the United States.

10. This Order requires compliance with water quality standards. Dischargers must implement, and where appropriate update or improve, management practices, which may include local or regional control or treatment practices and changes in farming practices to effectively control discharges, meet water quality standards and achieve compliance with this Order. Consistent with the Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy, 2004), dischargers comply by implementing and improving management practices and complying with the other conditions, including monitoring and reporting requirements. This Order requires the discharger to address impacts to water quality by evaluating the effectiveness of management practices (e.g., waste discharge treatment and control measures), and taking action to improve management practices to reduce discharges. If the discharger fails to address impacts to water quality by taking the actions required by this Order, including evaluating the effectiveness of their management practices and improving as needed, the discharger may then be subject to progressive enforcement and possible monetary liability. The Discharger has the opportunity to present their case to the Central Coast Water Board before any monetary liability may be assessed.

11. The Central Coast Water Board encourages Dischargers to coordinate the effective implementation of cooperative water quality improvement efforts, local or regional scale water quality protection and treatment strategies (such as managed aquifer recharge projects), and cooperative monitoring and reporting efforts to lower costs, maximize effectiveness, and achieve compliance with this Order. In cases where Dischargers are participating in effective local or regional treatment strategies, and individual on-farm discharges continue to cause exceedances of water quality standards in the short term, the Executive Officer will take into consideration such participation in the local or regional treatment strategy and progress made towards compliance with water quality standards in evaluating compliance with this Order. In cases where cooperative water quality improvement efforts, or local or regional treatment strategies, coordinated by a third-party group (e.g., watershed group, water quality coalition, or other similar cooperative effort) or by a group of Dischargers, necessitate alternative water quality monitoring or a longer time

⁸ This Order regulates discharge of "waste" as defined in Water Code section 13050 and "pollutants" as defined in the Clean Water Act. For simplicity, the term "waste" or "wastes" is used throughout. The term "waste" is very broad and includes "pollutants" as defined in the Clean Water Act.

schedule to achieve compliance than required by this Order, Dischargers may submit an alternative water quality monitoring and reporting plan or time schedule for approval by the Executive Officer. Groups of Dischargers and/or third party groups (e.g., a watershed group or water quality coalition) may submit to the Executive Officer for approval alternative water quality monitoring and reporting programs. An alternative monitoring and reporting program must include collection of data that will provide indicators of water quality improvement or pollution load reduction, and aggregate monitoring and reporting must be on a scale sufficient to track progress in small sub-basins and be sufficiently representative of conditions. Aggregate monitoring may apply to surface and groundwater. The Executive Officer will evaluate the alternative monitoring and reporting programs on a case-by-case basis considering the potential effectiveness of the aggregate or alternative monitoring (e.g., request to conduct aggregate monitoring for a certain timeframe to give new practices or treatment time to maximize effectiveness, and other factors such as whether the farms are currently significantly contributing to impaired surface water or ground water with drinking water wells, or whether farms are in compliance with other provisions such as enrollment, or submittal of annual compliance information). Dischargers who participate in an alternative monitoring and reporting program maintain individual responsibility to comply with this Order's conditions.

Dischargers may continue to implement alternative treatment or monitoring programs approved by the Executive Officer as long as they demonstrate continuous improvement and sufficient progress towards water quality improvement based upon measurable indicators of pollutant load reduction. Dischargers may seek review of Executive Officer decisions by the Water Board.

12. The Central Coast Water Board encourages Dischargers to coordinate the implementation of management practices with other Dischargers discharging to common tile drains, including efforts to develop regional salt and nutrient management plans. The Executive Officer may require additional monitoring and reporting for discharges to tile drains as necessary to evaluate compliance with this Order.
13. The Central Coast Water Board encourages Dischargers to participate in regional or local groundwater monitoring efforts conducted as part of existing or anticipated groundwater monitoring programs, including efforts related to regional and local salt and nutrient management plans, integrated regional water management (IRWM) plans, or the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program.
14. Dischargers have the option of complying with surface receiving water quality monitoring conditions identified in MRP Order No. R3-2012-0011, either individually or through a cooperative monitoring program. The Central Coast Water Board encourages Dischargers to participate in a cooperative monitoring program to

comply with surface receiving water quality monitoring conditions. In the development of any cooperative monitoring program fee schedule, the Central Coast Water Board encourages Dischargers to scale the assessment of fees based on relative level of waste discharge and threat to water quality.

15. The Central Coast Water Board will evaluate various types of information to determine compliance with this Order such as, a) management practice implementation and effectiveness, b) treatment or control measures, c) individual discharge monitoring results, d) receiving water monitoring results, and e) related reporting.
16. Many owners and operators of irrigated lands within the Central Coast Region have taken actions to protect water quality. In compliance with the 2004 Agricultural Order, most owners and operators enrolled in the 2004 Agricultural Order, implemented the Cooperative Monitoring Program (CMP), participated in farm water quality education, developed farm water quality management plans and implemented management practices as required in the 2004 Agricultural Order. The 2004 Agricultural Order did not include conditions that allowed for determining individual compliance with water quality standards or the level of effectiveness of actions taken to protect water quality, such as individual discharge monitoring or evaluation of water quality improvements. This Order includes new or revised conditions to allow for such evaluations.
17. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (ROWD) containing such information and data as may be required by the Central Coast Water Board, unless the Central Coast Water Board waives such requirement.
18. Water Code section 13263 requires the Central Coast Water Board to prescribe waste discharge requirements (WDRs), or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
19. Water Code section 13269(a) provides that the Central Coast Water Board may waive the requirement to obtain WDRs for a specific discharge or specific type of discharge, if the Central Coast Water Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest, provided that any such waiver of WDRs is conditional, includes monitoring conditions designed to support the development and implementation of the waiver program, including, but not limited to verifying the adequacy and effectiveness of the waiver's conditions, unless waived, does not exceed five years in duration, and may be terminated at any time by the Central Coast Water Board.

20. As authorized by Water Code section 13269, this Order conditionally waives the requirement to obtain WDRs for Dischargers who comply with the terms of this Order. See Attachment A to this Order for additional findings related to legal and regulatory considerations, and rationale for this Order.
21. Pursuant to Water Code section 13267, the Executive Officer may require Dischargers to locate (inventory) and conduct monitoring of private domestic wells in or near agricultural areas with high nitrate in groundwater and submit technical reports evaluating the monitoring results. In addition, in compliance with Water Code section 13304, the Central Coast Water Board may require Dischargers to provide alternative water supplies or replacement water service, including wellhead treatment, to affected public water suppliers or private domestic well owners.

SCOPE OF ORDER NO. R3-2012-0011

Irrigated Lands and Agricultural Discharges Regulated Under this Order

22. This Order regulates (1) discharges of waste from irrigated lands, including, but not limited to, land planted to row, vineyard, field and tree crops where water is applied for producing commercial crops; (2) discharges of waste from commercial nurseries, nursery stock production, and greenhouse operations with soil floors that do not have point-source type discharges and are not currently operating under individual WDRs; and (3) discharges of waste from lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops.
23. Discharges from irrigated lands regulated by this Order include discharges of waste to surface water and groundwater, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, runoff resulting from frost control, and/or operational spills. These discharges can contain wastes that could affect the quality of waters of the State and impair beneficial uses.

Dischargers Regulated Under this Order

24. This Order regulates both landowners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater (Dischargers). Dischargers are responsible for complying with the conditions of this Order. The Central Coast Water Board will hold both the landowner and the operator liable for noncompliance with this Order.

25. The Central Coast Water Board recognizes that due to different types of operations and/or locations, discharges of waste from irrigated lands may have the potential for different levels of impacts on waters of the state or of the United States. This Order establishes three tiers of regulation to take into account the variation, including different regulatory conditions for the three tiers.
26. Dischargers who have not enrolled to comply with a previous order must submit to the Central Coast Water Board a completed electronic Notice of Intent (NOI) to comply with the conditions of this Order to comply with the Water Code.
27. Dischargers who have submitted a completed electronic NOI to the Central Coast Water Board to comply with a previous order must update their NOI to reflect current operation and farm/ranch information.
28. Landowners and operators of irrigated lands who obtain a pesticide use permit from a local County Agricultural Commissioner and that have a discharge of waste that could affect surface water or groundwater, must submit to the Central Coast Water Board, a completed electronic NOI to comply with the conditions of this Order to comply with the Water Code.
29. The NOI serves as a report of waste discharge (ROWD) for the purposes of this Order.
30. The Central Coast Water Board recognizes that certain limited resource farmers (as defined by the U.S. Dept. of Agriculture) may have difficulty achieving compliance with this Order. The Central Coast Water Board will prioritize assistance for these farmers, including but not limited to technical assistance, grant opportunities, and necessary flexibility to achieve compliance with this Order (e.g., adjusted monitoring, reporting, or time schedules).

Agricultural Discharges Not Covered Under this Order and Who Must Apply for Individual Waste Discharge Requirements

31. This Order does not waive WDRs for commercial nurseries, nursery stock production and greenhouse operations that have point-source type discharges, and fully contained greenhouse operations (those that have no groundwater discharge due to impervious floors). These operations must eliminate all such discharges of wastes or submit a ROWD to apply for individual WDRs as set forth in Water Code section 13260.

PUBLIC PARTICIPATION PROCESS

32. The Central Coast Water Board notified interested persons that the Central Coast Water Board will consider the adoption of this Order, which conditionally waives individual WDRs and establishes conditions for the control of discharges of waste from irrigated lands to waters of the State, and provided several opportunities for public input.
33. In December 2008, the Central Coast Water Board invited members of the public to participate in development of this Order and provide recommendations to Central Coast Water Board staff. In particular, the Central Coast Water Board requested the assistance of an agricultural advisory panel in developing appropriate milestones, timetables, and verification monitoring programs to resolve water quality problems and achieve compliance with the Basin Plan. Additionally, in early 2009, the Central Coast Water Board notified all water purveyors, water districts and municipalities that staff was developing recommendations for this Order.
34. In December 2009, the Central Coast Water Board encouraged any interested person who wanted to present alternative recommendations to this Order to provide those recommendations in writing by April 1, 2010.
35. On February 1, 2010, the Central Coast Water Board publicly released a preliminary report and preliminary draft order for the regulation of discharges from irrigated lands and accepted comments on the preliminary draft order through June 4, 2010.
36. The Central Coast Water Board held two public workshops (May 12, 2010, and July 8, 2010) to discuss the preliminary draft order, public comments, and alternative recommendations.
37. The Central Coast Water Board released a Draft Agricultural Order and staff report on November 19, 2010, for public review and comment, and held an additional public workshop on February 3, 2011. The Central Coast Water Board released further revised versions of the Draft Agricultural Order in March, July, and August 2011 and held an additional public workshop on February 1, 2012.
38. Between November 2009 and February 2012, Central Coast Water Board staff attended more than 60 meetings and conferences to describe the process for developing the Draft Agricultural Order, discuss options, and hear public input regarding the Draft Agricultural Order. These events included numerous stakeholders representing the agricultural industry and its technical assistance providers, environmental and environmental justice organizations, local and state government agencies and other members of the public.

39. Interested persons were notified that the Central Coast Water Board will consider adoption of an Order, which conditionally waives WDRs for discharges of waste from irrigated lands, as described in this Order, and were provided an opportunity for a public hearing and an opportunity to submit written comments.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

40. For purposes of adoption of this Order, the Central Coast Water Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21100 et seq.).

41. In 2004, the Central Coast Water Board adopted the 2004 Agricultural Order and a Negative Declaration prepared in compliance with CEQA. CEQA Guidelines state that no subsequent environmental impact report (SEIR) shall be prepared when an EIR has been certified or negative declaration adopted for a project unless the lead agency determines based on substantial evidence in light of the whole record, one or more of the following:

(1) if substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; or,

(2) if substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously identified significant effects; or

(3) if new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, becomes available.

(Cal. Code Regs., tit. 14, § 15162(a).)

This regulation applies if there is a modification of a previous project. In this case, the Central Coast Water Board is proposing to renew the 2004 Agricultural Order, which is the previous project, with clarifications and new conditions. To assist in determining whether an SEIR would be necessary, the Central Coast Water Board staff held a CEQA scoping meeting on August 16, 2010, to receive input from interested persons and public agencies on potentially significant environmental effects of the proposed project. Staff also accepted written comments regarding

scoping up until August 27, 2010, in order to allow for comments from those who were unable to attend the meeting and/or for those who wished to submit additional comments. Members of the public and representatives of public agencies provided comments regarding their views on significant environmental effects associated with the adoption of a renewed Agricultural Order. As described in Findings 30 - 37 and prior to the scoping meeting in August 2010, significant public participation activities had occurred.

In preparing the Draft SEIR, Central Coast Water Board staff reviewed the 2004 Negative Declaration, including the Initial Study (Environmental Checklist), considered the comments received during the public participation process with respect to renewal of the 2004 Agricultural Order, including evidence in the record, written and oral comments, proposed alternatives, and information provided at and following the August 16, 2010 scoping meeting, and comments received on the Draft SEIR. Review of this information did not result in identification of any new environmental effects that had not already been evaluated in the 2004 Negative Declaration. Staff identified two areas included on the Environmental Checklist where there was a potential for an increase in the severity of environmental effects previously identified. These areas are (1) the potential for more severe impacts on agricultural resources due to the potential for an increase in the use of vegetated buffer strips and economic impacts due to new requirements that could take some land out of direct agricultural use and (2) the potential for more severe impacts on biological resources due to the potential for a reduction in water flows in surface waters.

The Central Coast Water Board issued a Notice of Availability on October 25, 2010, and provided the public with 45 days to submit written comments on the Draft SEIR. The Water Board received 12 written comment letters. Responses to the comments are in Section 7 of the Final SEIR. In response to comments, the Central Coast Water Board staff revised the Draft SEIR and prepared a draft Final SEIR for the Central Coast Water Board's certification. The 2004 Negative Declaration and the Final SEIR constitute the environmental analysis under CEQA for this Order.

42. With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale end to agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in Section 2.4 of this Final SEIR, the draft 2012 Agricultural Order would impose additional conditions on approximately 100 to 300 of the estimated 3000 owners or operators currently enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub.

Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may be required to implement vegetated buffer strips, could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less than significant and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the draft 2012 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts.

With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation could result in lower flows into surface water resulting in impacts on aquatic life. The Central Coast Water Board may not specify the manner of compliance so it has insufficient information to evaluate the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Reduction in toxic runoff may offset impacts due to the reduced flows that could occur. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water to surface water.

Based on this information, the Final SEIR concludes that the environmental effects associated with the draft 2012 Agricultural Order may be significant with respect to biological resources. However, given the uncertainty associated with evaluating the available information, it is possible that the effects may turn out to be less than significant. In Resolution R3-2012-0012, the Central Coast Water Board has made findings consistent with the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091) and a statement of overriding considerations (Cal. Code Regs., tit. 14, § 15093) with respect to biological resources.

ADDITIONAL FINDINGS

43. Attachment A to this Order, incorporated herein, includes additional findings that further describe a) the Water Board's legal and regulatory authority, b) the rationale for this Order, c) a description of the environmental and agricultural resources in the Central Coast Region, and d) impacts to water quality from agricultural discharges. Attachment A also identifies applicable plans and policies adopted by the State Water Board and the Central Coast Water Board that contain regulatory condition

that apply to the discharge of waste from irrigated lands. Attachment A also includes definitions of terms for purposes of this Order.

IT IS HEREBY ORDERED that:

1. Pursuant to Water Code sections 13260, 13263, 13267, and 13269, Dischargers must comply with the terms and conditions of this Order to meet the provisions contained in Water Code Division 7 and regulations and plans and policies adopted there under.
2. This Order shall not create a vested right to discharge, and all discharges of waste are a privilege, not a right, as provided for in Water Code section 13263(g).
3. Dischargers must not discharge any waste not specifically regulated by this Order except in compliance with the Water Code.
4. Pursuant to Water Code section 13269, the Central Coast Water Board waives the requirement that Dischargers obtain WDRs pursuant to Water Code section 13263(a) for discharges of waste from irrigated lands, if the Discharger enrolls in and complies with this Order, including Attachments and Monitoring and Reporting Program (MRP) Order No. R3-2012-0011.
5. Pursuant to Water Code section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: 1) is conditional; 2) may be terminated by the Central Coast Water Board at any time; 3) may be superseded if the State Water Board or Central Coast Water Board adopts specific WDRs or general WDRs for this type of discharge or any individual discharger; 4) does not permit any illegal activity; 5) does not preclude the need for permits which may be required by other local or governmental agencies; 6) does not preclude the Central Coast Water Board from requiring WDRs for any individual discharger or from administering enforcement remedies (including civil liability) pursuant to the Water Code; and 7) includes conditions for the performance of individual, group, and watershed-based monitoring in the form of monitoring requirements designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.
6. Dischargers or groups of Dischargers seeking regulatory requirements tailored to their specific operation, farm/ranch, geographic area, or commodity may submit an ROWD to obtain individual or general orders for a specific discharge or type of discharge (e.g., commodity-specific general order). This Order remains applicable until such individual or general orders are adopted by the Central Coast Water Board.

7. The Executive Officer may propose, and the Water Board may adopt, individual WDRs for any Discharger at any time.
8. The Central Coast Water Board or the Executive Officer may, at any time, terminate applicability of this Order with respect to an individual Discharger upon written notice to the Discharger.
9. Dischargers are defined in this Order as both the landowner and operator of irrigated cropland, and both must comply with this Order.
10. Dischargers may comply with this Order by participating in third-party groups (e.g., watershed group, or water quality coalition, or other similar cooperative effort) approved by the Executive Officer or Central Coast Water Board. In this case, the third-party group will assist individual growers in achieving compliance with this Order, including implementing water quality improvement projects and required monitoring and reporting programs as described in MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03, or alternative monitoring and reporting programs as provided in Condition 11 below. Consistent with the Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy, 2004), the ineffectiveness of a third-party group through which a Discharger participates in nonpoint source control efforts cannot be used as an excuse for lack of individual discharger compliance. Individual Dischargers continue to be responsible for complying with this Order.
11. Dischargers may form third party groups to develop and implement alternative water quality management practices (i.e., group projects) or cooperative monitoring and reporting programs to comply with this Order. At the discretion of the Executive Officer, Dischargers that are a participant in a third party group that implements Executive Officer-approved water quality improvement projects or Executive Officer-approved alternative monitoring and reporting programs may be moved to a lower Tier (e.g., Tier 3 to Tier 2, Tier 2 to Tier 1) and/or provided alternative project-specific timelines, and milestones.

To be subject to Tier changes or alternative timelines, Projects will be evaluated for, among other elements:

- Project Description. Description must include identification of participants, methods, and time schedule for implementation.
- Purpose. Proposal must state desired outcomes or goals of the project (e.g., pollutants to be addressed, amount of pollution load to be reduced, water quality improvement expected).
- Scale. Solutions must be scaled to address impairment.

- Chance of Success. Projects must demonstrate a reasonable chance of eliminating toxicity within the permit term (five years) or reducing discharge of nutrients to surface and groundwater.
- Long term solutions and contingencies. Proposals must address what new actions will be taken if the project does not meet goals and how the project will be sustained through time.
- Accountability. Proposals must set milestones that indicate progress towards goals stated as above in "purpose."
- Monitoring and reporting. Description of monitoring and measuring methods, and information to be provided to the Water Board. Monitoring points must be representative but may not always be at the edge-of-farm so long as monitoring results demonstrate water quality improvement and the efficacy of a project. In addition, monitoring must 1) characterize and be representative of discharge to receiving water, 2) demonstrate project effectiveness, 3) and verify progress towards water quality improvement and pollutant load reduction,

Project proposals will be evaluated by a Technical Advisory Committee (TAC) comprised of: Two researchers or academics skilled in agricultural practices and/or water quality, one farm advisor (e.g., from Natural Resources Conservation Service or local Resource Conservation Districts), one grower representative, one environmental representative, one environmental justice or environmental health representative, and one Regional Board staff. The TAC must have a minimum of five members to evaluate project proposals and make recommendations to the Executive Officer. The Executive Officer has discretion to approve any project after receiving project evaluation results and recommendations from the committee. If the Executive Officer denies approval, the third party group may seek review by the Regional Board. As stated in the NPS Policy, management practice implementation is not a substitute for compliance with water quality requirements. If the project is not effective in achieving water quality standards, additional management practices by individual Dischargers or the third party group will be necessary.

12. Dischargers who are subject to this Order shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards.

Part A. Tiers

13. Dischargers are classified into a tier based upon criteria that define the risk to water quality and the level of waste discharge. The Central Coast Water Board may update the criteria, as necessary.
14. Dischargers must determine the tier that applies to the individual farm(s)/ranch(es) at their operation or lands when they enroll or update their Notice of Intent (NOI), via electronic submittal. See Part D. Submittal of Technical Reports.
15. **Tier 1** – Applies to all Dischargers whose individual farm/ranch meets all of the criteria described in **(1a)**, **(1b)**, and **(1c)**, or whose individual farm/ranch is certified in a sustainable agriculture program identified in **(1d)** that requires and verifies effective implementation of management practices that protect water quality:
 - 1a. Discharger does not use chlorpyrifos or diazinon at the farm/ranch, which are documented to cause toxicity in surface waters in the Central Coast Region;
 - 1b. Farm/ranch is located more than 1000 feet from a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies⁹ (Table 1);
 - 1c. If the Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and the farm/ranch total irrigated acreage is *less than* 50 acres, and is *not* within 1000 feet of a well that is part of a public water system (as defined by the California Health and Safety Code, section 116275) that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite¹⁰;
 - 1d. Sustainability in Practice (SIP, certified by the Central Coast Vineyard Team) or other certified programs approved by the Executive Officer.

⁹ The 2010 List of Impaired Waterbodies is available on the Water Board's Impaired Water Bodies website at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml.

¹⁰ California Department of Health Services (CDPH) has determined that public water system well location records are confidential and exempt from disclosure to the public. Until such time that public water system well location records become available to the public, the Central Coast Water Board will identify Dischargers who are within 1000 feet of a public water system well that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite. Dischargers should evaluate their tier for the purposes of this Order based on all information available. In the case where a Discharger should be placed into a different tier based on proximity to a public water system well, the Central Coast Water Board will provide appropriate notice to the Discharger. Approximate locations for public water system wells are available on the Water Board's GeoTracker GAMA website at <http://geotracker.waterboards.ca.gov/gama/>.

16. **Tier 2** – Applies to all Dischargers whose individual farm/ranch does not meet the Tier 1 or Tier 3 criteria. In general, a Tier 2 Discharger's farm/ranch meets at least one of the characteristics described in **(2a), (2b), or (2c)**:
- 2a. Discharger applies chlorpyrifos or diazinon at the farm/ranch, which are documented to cause toxicity in surface waters in the Central Coast Region;
 - 2b. Farm/ranch is located within 1000 feet of a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies⁹ (see Table 1);
 - 2c. Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and the farm/ranch total irrigated acreage is greater or equal to 50 acres and *less than* 500 acres, or the farm/ranch is *within* 1000 feet of a well that is part of a public water system (as defined by the California Health and Safety Code, section 116275) that exceeds the maximum contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite¹⁰;
17. **Tier 3** – Applies to all Dischargers whose individual farm/ranch meets one of the following sets of criteria **(3a) or (3b)**:
- 3a. Discharger grows crop types with high potential to discharge nitrogen to groundwater (as defined in Attachment A) at the farm/ranch, and farm/ranch total irrigated acreage is *greater than or equal* to 500 acres;
 - 3b. Discharger applies chlorpyrifos or diazinon at the farm/ranch, and the farm/ranch discharges irrigation or stormwater runoff to a waterbody listed for toxicity or pesticides on the 2010 List of Impaired Waterbodies⁹ (Table 1);
18. Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier. The Discharger must provide information to demonstrate a lower level of waste discharge and a lower threat to water quality, including site-specific operational and water quality information to characterize the waste discharge and resulting effect on water quality. Dischargers remain in the tier determined by the criteria above and must meet all conditions for that tier until the Executive Officer approves the request to transfer to a lower tier. At a minimum, information provided by Dischargers requesting transfer to a lower tier must include the following:
- a. Farm/ranch maps(s) identifying discharge points and any water quality sampling locations;

- b. Schematic showing the flow of irrigation and stormwater runoff, including where it leaves the farm/ranch and where the discharge enters receiving water;
 - c. Description of the volume of discharges and when the discharge is present;
 - d. Description of type of chemicals applied (e.g., pesticide and fertilizer use);
 - e. Description of estimated pollutant loading to groundwater;
 - f. Description and results of any individual discharge water quality sampling information available (e.g., irrigation runoff and stormwater sampling, lysimeter sampling);
19. The Executive Officer may elevate Tier 1 or Tier 2 Dischargers to a higher tier if the Discharger poses a higher threat to water quality based on information submitted as part of the NOI, MRP, or information observed upon inspection of a ranch/farm, or any other appropriate evidence that indicates the ranch/farm meets the criteria for a higher tier.
20. The Executive Officer may require Dischargers to enroll irrigated land with similar characteristics (e.g., same landowner or operator), and proximal, adjacent, or contiguous location, as a single operation or farm/ranch.
21. Unless otherwise specified, the conditions of this Order apply to all Dischargers, including Tier 1, Tier 2, and Tier 3.

Part B. General Conditions and Provisions for All Dischargers - Tier 1, Tier 2, and Tier 3

Water Quality Standards-

22. Dischargers must comply with applicable water quality standards, as defined in Attachment A, protect the beneficial uses of waters of the State and prevent nuisance as defined in Water Code section 13050.
23. Dischargers must comply with applicable provisions of the Central Coast Region Water Quality Control Plan (Basin Plan) and all other applicable water quality control plans as identified in Attachment A.
24. Dischargers must comply with applicable Total Maximum Daily Loads (TMDLs), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL. A list of TMDLs adopted by the Central Coast Water Board is available on the Central Coast Water Board website at:
http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/index.shtml.

25. Dischargers shall not discharge any waste not specifically regulated by the Order described herein, unless the Discharger complies with Water Code section 13260(a) by submitting a ROWD and the Central Coast Water Board either issues WDRs pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269, or the conditions specified in Water Code section 13264(a) must be met by the Discharger. Waste specifically qualifying for conditional discharge under this Waiver includes earthen materials, including soil, silt, sand, clay, rock; inorganic materials (such as metals, salts, boron, selenium, potassium, nitrogen, etc.); organic materials; and pesticides that may enter or threaten to enter into waters of the state. Examples of wastes not qualifying for conditional discharge under this Order include hazardous waste and human waste.
26. Dischargers shall not discharge any waste at a location or in a manner different from that described in the NOI.
27. Dischargers shall not discharge chemicals such as fertilizers, fumigants or pesticides down a groundwater well casing.
28. Dischargers shall not discharge chemicals used to control wildlife (such as bait traps or poison) directly into surface waters, or place the chemicals in a location where they may be discharged to surface waters.
29. Dischargers shall not discharge agricultural rubbish, refuse, irrigation tubing or tape, or other solid wastes into surface waters, or place such materials where they may contact or may eventually be discharged to surface waters.
30. This Order does not authorize persons to discharge pollutants from point sources to waters of the United States, including wetlands, where the Discharger is required to obtain an NPDES permit under Clean Water Act section 402 (NPDES), or a dredge and fill permit under Clean Water Act section 404 (dredge and fill), except as authorized by an NPDES permit or section 404 permit. An area is considered a wetland, subject to Clean Water Act section 404, if it meets the United States Army Corps of Engineers' definition as described in the Code of Federal Regulations and associated wetland delineation procedures, or relevant Water Board definitions.

Waste Discharge Control-

31. **By October 1, 2012**, Dischargers that apply fertilizers, pesticides, fumigants or other chemicals through an irrigation system must have functional and properly maintained back flow prevention devices installed at the well or pump to prevent pollution of groundwater or surface water, consistent with any applicable DPR requirements or local ordinances. Back flow prevention devices used to protect

water quality must be those approved by USEPA, DPR, CDPH, or the local public health or water agency.

32. **By October 1, 2015**, Dischargers must properly destroy all abandoned groundwater wells, exploration holes or test holes, as defined by Department of Water Resources (DWR) Bulletin 74-81 and revised in 1988, in such a manner that they will not produce water or act as a conduit for mixing or otherwise transfer groundwater or waste constituents between permeable zones or aquifers. Proper well abandonment must be consistent with any applicable DWR requirements or local ordinances.
33. Dischargers who utilize containment structures (such as retention ponds or reservoirs) to achieve treatment or control of the discharge of wastes must manage, construct, or maintain such containment structures to avoid percolation of waste to groundwater that causes or contributes to exceedances of water quality standards, and to minimize surface water overflows that have the potential to impair water quality.
34. Dischargers must implement proper handling, storage, disposal and management of pesticides, fertilizer, and other chemicals to prevent or control the discharge of waste to waters of the State that causes or contributes to exceedances of water quality standards.
35. Upon request, Dischargers must submit information regarding compliance with any Department of Pesticide Regulation (DPR) adopted or approved surface water or groundwater protection requirements.
36. Dischargers must implement water quality protective management practices (e.g., source control or treatment) to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place.
37. Dischargers must minimize the presence of bare soil vulnerable to erosion and soil runoff to surface waters and implement erosion control, sediment, and stormwater management practices in non-cropped areas, such as unpaved roads and other heavy use areas.
38. Dischargers must comply with any applicable stormwater permit.
39. Dischargers must a) maintain existing, naturally occurring, riparian vegetative cover (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the discharge of waste; and b) maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste;

40. In the case where disturbance of aquatic habitat is necessary for the purposes of water quality improvement, restoration activities, or other permitted activities, Dischargers must implement appropriate and practicable measures to avoid, minimize, and mitigate erosion and discharges of waste, including impacts to aquatic habitat.
41. Upon request, where required by California Fish and Game Code, Dischargers must submit proof of an approved Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) for any work conducted within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State.
42. Upon request, where required by California Forest Practice Rules, Dischargers must submit proof of California Department of Forestry and Fire Protection authorization, and enrollment in the Central Coast Water Board's General Conditional Waiver of WDRs – Timber Harvest Activities in the Central Coast Region, for any commercial harvesting of timber that has the potential to result in erosion and discharges of waste to waters of the State.
43. Upon request, where required by Clean Water Act Section 404, Dischargers must submit proof of a dredge and fill permit from the United States Army Corps of Engineers (USACOE) for any work that has the potential to discharge wastes considered "fill," such as sediment, to wetlands.
44. **By October 1, 2012**, Dischargers must develop a farm water quality management plan (Farm Plan), or update the Farm Plan as necessary, and implement it to achieve compliance with this Order. Farm Plans must be kept current, kept on the farm, and a current copy must be made available to Central Coast Water Board staff, upon request. At a minimum, Farm Plans must include:
 - a. Copy of this Order and a copy of the Notice of Intent (NOI) submitted to the Central Coast Water Board for reference by operating personnel and inspection by Central Coast Water Board staff;
 - b. Date the Farm Plan was last updated;
 - c. Farm/ranch maps(s) identifying irrigation and stormwater runoff discharge locations where irrigation and stormwater runoff leaves or may leave the farm/ranch and where the discharge enters or may enter receiving water;
 - d. Description of the typical volume of discharges and when the discharge is typically present;
 - e. Description of type of chemicals applied (e.g., pesticide and fertilizer use);
 - f. Description and time schedule for any farm water quality management practices, treatment and/or control measures implemented to comply with this Order. This includes, but is not limited to, management practices

related to irrigation efficiency and management, pesticide management, nutrient management, salinity management, sediment and erosion control (including stormwater management), and aquatic habitat protection to achieve compliance with this Order. In addition, Farm Plans must describe tile drain discharges and the management measures Dischargers have implemented or will implement to minimize impacts to water quality;

- g. Description and results of methods used to verify practice effectiveness and compliance with this Order (e.g., water quality sampling, discharge characterization, reductions in pollutant loading);
45. Dischargers must obtain appropriate farm water quality education and technical assistance necessary to achieve compliance with this Order. Education should focus on meeting water quality standards by identifying on-farm water quality problems, implementing pollution prevention strategies and implementing practices designed to protect water quality and resolve water quality problems to achieve compliance with this Order.

Other Provisions and Conditions-

46. Pursuant to Water Code section 13267(c), the Central Coast Water Board staff or its authorized representatives may investigate the property of persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the Discharger is complying with the conditions of this Order. The inspection shall be made with the consent of the owner or possessor of the facilities, or if consent is withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with Section 1822.50). However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.
47. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code Sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the Dischargers must obtain authorization for an incidental take prior to taking action. Dischargers must be responsible for meeting all requirements of the applicable Endangered Species Act for the discharge authorized by this Order.
48. Dischargers must pay a fee to the State Water Resources Control Board in compliance with the fee schedule contained in Title 23 California Code of Regulations.

49. Dischargers must pay any relevant monitoring fees (e.g., Cooperative Monitoring Program) necessary to comply with monitoring and reporting conditions of this Order or comply with monitoring and reporting requirements individually.

Part C. Monitoring Conditions for All Dischargers- Tier 1, Tier 2, and Tier 3

50. Dischargers must comply with MRP Order No. R3-2012-0011, as ordered by the Executive Officer or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.

Monitoring and reporting conditions are different for each tier, based on level of waste discharge and affect on water quality. Attached to this Order are three specific MRPs, one for each tier:

- a. Tier 1 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-01;
 - b. Tier 2 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-02;
 - c. Tier 3 Dischargers must comply with monitoring and reporting conditions specified in MRP Order No. R3-2012-0011-03;
51. Tier 1, Tier 2, and Tier 3 Dischargers must conduct groundwater monitoring and reporting in compliance with MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11, so that the Central Coast Water Board can evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for waste discharge and nitrogen loading and exceedance of drinking water standards, and identify priority areas for nutrient management.
52. Tier 1, Tier 2, and Tier 3 Dischargers must conduct surface receiving water quality monitoring and reporting in compliance with MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03, either individually or through a cooperative monitoring program, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.
53. For Dischargers who choose to participate in a cooperative monitoring program, failure to pay cooperative monitoring program fees voids a selection or notification of the option to participate in a cooperative monitoring and hence requires individual monitoring report submittal per MRP Order No. R3-2012-0011, MRP Order No. R3-2012-0011-02, and MRP Order No. 2012-0011-03.

Part D. Submittal of Technical Reports for All Dischargers- Tier 1, Tier 2, Tier 3

Notice of Intent (NOI) to Enroll under the Order for All Dischargers in Tier 1, Tier 2 and Tier 3

54. Submittal of the electronic NOI is required pursuant to Water Code section 13260. Submittal of all other technical reports pursuant to this Order is required pursuant to Water Code section 13267. Failure to submit technical reports or the attachments in accordance with schedules established by this Order or MRP, or failure to submit a complete technical report (i.e., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to Water Code sections 13261, 13268, or 13350. Dischargers must submit technical reports in the format specified by the Executive Officer.
55. Dischargers seeking authorization to discharge under this Order must submit a completed electronic NOI form to the Central Coast Water Board. Dischargers already enrolled in the 2004 Agricultural Order and who have submitted their NOI electronically are not required to submit a new NOI. Upon submittal of an accurate and complete electronic NOI, the Discharger is enrolled under the Order, unless otherwise informed by the Executive Officer.
- a. In the case where an operator may be operating for a period of less than 12 months, the landowner must submit the electronic NOI.
 - b. **Within 60 days** of the adoption of this Order, any Discharger who did not enroll in the 2004 Agricultural Order must submit an electronic NOI, unless otherwise directed by the Executive Officer.
 - c. **Prior to any discharge or commencement of activities that may cause a discharge**, including land preparation prior to crop production, any Discharger proposing to control or own a new operation or farm/ranch that has the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater must submit an electronic NOI.
 - d. Dischargers must submit any updates to the electronic NOI by **October 1, 2012 and annually thereafter by October 1**, to reflect changes to operation or ranch/farm information.
 - e. **Within 60 days**, in the event of a change in control or ownership of an operation, farm/ranch, or land presently owned or controlled by the

- Discharger, the Discharger must notify the succeeding owner and operator of the existence of this Order by letter, and forward a copy of the letter to the Executive Officer.
- f. **Within 60 days** of acquiring control or ownership of an operation or farm/ranch, any Discharger acquiring control or ownership of an existing operation or farm/ranch must submit an electronic NOI.
56. Dischargers must submit all the information required in the electronic NOI form including, but not limited to, the following information for the operation and individual farm/ranch:
- a. Identification of each property covered by enrollment,
 - b. Tier applicable to each farm/ranch,
 - c. Landowner(s),
 - d. Operator(s),
 - e. Contact information,
 - f. Option selected to comply with surface receiving water quality monitoring conditions (cooperative monitoring or individual),
 - g. Option selected to comply with groundwater monitoring conditions (cooperative monitoring or individual),
 - h. Location of operation, including specific farm(s)/ranch(es),
 - i. Farm/ranch map with discharge locations and groundwater wells identified,
 - j. Total and irrigated acreage,
 - k. Crop type,
 - l. Irrigation type,
 - m. Discharge type,
 - n. Chemical use,
 - o. Presence and location of any perennial, intermittent, or ephemeral streams or riparian or wetland area habitat.
57. Dischargers must submit a statement of understanding of the conditions of the Order and MRP signed by the Discharger (landowner or operator) with the electronic NOI form. If the operator signs and submits the electronic NOI, the operator must provide a copy of the completed NOI form to the landowner(s).
58. Dischargers must identify in the electronic NOI if the farm/ranch is a Tier 1, Tier 2, or Tier 3 and provide complete and accurate information in the NOI that allows the Central Coast Water Board to confirm the appropriate tier. For Dischargers who do not provide adequate information for the Water Board to confirm or determine the appropriate tier, the Executive Officer will place the farm/ranch in the appropriate tier based upon information submitted in the Notice of Intent or further communication with the Discharger.

59. Coverage under this Order is not transferable to any person except after submittal of an updated electronic NOI and approval by the Executive Officer.
60. For Dischargers who do not enroll in the Order in a timely manner as specified in this Order, the Executive Officer may require submittal of an ROWD, and the Discharger may be subject to WDRs.

Notice of Termination (NOT) for All Dischargers

61. **Immediately**, if a Discharger wishes to terminate coverage under the Order for the operation or an individual farm/ranch, the Discharger must submit a completed Notice of Termination (NOT). Termination from coverage is the date specified in the NOT, unless specified otherwise. All discharges, as defined in Attachment A, must cease before the date of termination, and any discharges on or after the date of termination shall be considered in violation of the Order, unless covered by other waivers of WDRs, general WDRs, or individual WDRs cover the discharge.

Monitoring and General Technical Reports for All Dischargers

62. Dischargers must submit monitoring reports in compliance with MRP Order No. R3-2012-0011, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11, electronically in a format specified by the Executive Officer.
63. Any laboratory data submitted to the Central Coast Water Board by Dischargers must be submitted by, or under the direction of, a State registered professional engineer, registered geologist, State certified laboratory or other similarly qualified professional. Surface water quality data must be submitted electronically, in a format that is compatible with the Central Coast Ambient Monitoring Program (CCAMP), the State's Surface Water Assessment Program (SWAMP) or as directed by the Executive Officer. Groundwater quality data must be submitted in a format compatible with the electronic deliverable format (EDF) used by the State Water Board's Geotracker data management system, or as directed by the Executive Officer.
64. Dischargers must submit technical reports that the Executive Officer may require to determine compliance with this Order as authorized by Water Code section 13267, electronically in a format specified by the Executive Officer.
65. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g., trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. Also, the Discharger must clearly indicate on the cover of the report (typically an electronic submittal)

that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

66. Dischargers or a representative authorized by the Discharger must sign technical reports submitted to comply with the Order. Any person signing a report submitted as required by this Order must make the following certification:

"In compliance with Water Code section 13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision, following a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Part E. Additional Conditions that Apply to Tier 2 and Tier 3 Dischargers

Annual Compliance Reporting for Tier 2 and Tier 3 Dischargers

67. By **October 1, 2012, and updated by October 1 annually thereafter**, Tier 2 and Tier 3 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer that includes all the information requested, per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively. The purpose of the electronic Annual Compliance Form is to provide up-to-date information to the Central Coast Water Board to assist in the evaluation of affect on water quality from agricultural waste discharges and evaluate progress towards compliance with this Order, including implementation of management practices, treatment or control measures, or changes in farming practices.

68. **By October 1, 2012**, Tier 2 and Tier 3 Dischargers must determine nitrate loading risk factor(s) in accordance with MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03 and report the nitrate loading risk factors and overall Nitrate Loading Risk level calculated for each ranch/farm or nitrate loading risk unit in the Annual Compliance Form, electronically (or in a format specified by the Executive Officer).

Photo Monitoring for Tier 2 and Tier 3 Dischargers with farms/ranches *adjacent to or containing* a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment

69. **By October 1, 2012**, and every four years thereafter, Tier 2 and Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment (identified in Table 1) must conduct photo monitoring per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively. Photo monitoring must document the condition of perennial, intermittent, or ephemeral streams and riparian and wetland area habitat, and demonstrate compliance with Basin Plan erosion and sedimentation requirements (see Part F. 80 of this Order), including the presence of bare soil vulnerable to erosion and relevant management practices and/or treatment and control measures implemented to address impairments. Photo documentation must be submitted electronically, in a format specified by the Executive Officer.

Total Nitrogen Reporting for Tier 2 and Tier 3 Dischargers with farms/ranches with High Nitrate Loading Risk

70. **By October 1, 2014 and by October 1 annually thereafter**, Tier 2 and Tier 3 Dischargers with a farm/ranch with High Nitrate Loading Risk must record and report total nitrogen applied in the Annual Compliance Form, electronically in a format specified by the Executive Officer, per MRP Order No. R3-2012-0011-02 and MRP Order No. R3-2012-0011-03, respectively.
71. As an alternative to reporting total nitrogen applied in the electronic Annual Compliance Form, Tier 2 and Tier 3 Dischargers with a farm/ranch with High Nitrate Loading Risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit with a High Nitrate Loading Risk.

Part F. Additional Conditions that Apply to Tier 3 Dischargers

72. **By October 1, 2013**, Tier 3 Dischargers must initiate individual surface water discharge monitoring per MRP Order No. R3-2012-0011-03 or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11.
73. **By March 15, 2014, October 1, 2014** and annually thereafter by October 1, Tier 3 Dischargers must submit individual surface water discharge monitoring data and reports per MRP Order No. R3-2012-0011-03, electronically, in a format specified by the Executive Officer, or alternative monitoring and reporting programs approved by Executive Officer as set forth in Finding 11 and Condition 11 .

Irrigation and Nutrient Management Plan for Tier 3 Dischargers with farms/ranches with High Nitrate Loading Risk

74. **By October 1, 2013**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must determine the typical crop nitrogen uptake for each crop type produced and report the basis for the determination (e.g., developed by commodity or industry group, published agronomic literature, research trials, site specific analysis of dry biomass of crop for the nitrogen concentration), per MRP Order No. R3-2012-0011-03.
75. Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must develop and initiate implementation of an Irrigation and Nutrient Management Plan (INMP) certified by a Professional Soil Scientist, Professional Agronomist, or Crop Advisor certified by the American Society of Agronomy, or similarly qualified professional, per MRP Order No. R3-2012-0011-03.
76. As an alternative to the development and implementation of an INMP, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.
77. **By October 1, 2015 and annually thereafter**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must report specific INMP elements in the Annual Compliance Form per MRP Order No. R3-2012-0011-03, electronically in a format specified by the Executive Officer.
78. **By October 1, 2015**, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must report progress towards the following Nitrogen Balance ratio

milestones or implement an alternative to demonstrate an equivalent nitrogen load reduction. The Nitrogen Balance ratio refers to the total number of nitrogen units applied to the crop (considering all sources of nitrogen) relative to the typical nitrogen uptake value of the crop (crop need to grow and produce, amount removed at harvest plus the amount remaining in the system as biomass).

- a. Dischargers producing crops in annual rotation (such as a cool season vegetable in a triple cropping system) must report progress towards a Nitrogen Balance ratio target equal to one (1). A target of one (1) allows a Discharger to apply 100% of the amount of nitrogen required by the crop to grow and produce yield for every crop in the rotation. (Nitrogen applied includes any product, form or concentration, including but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil and nitrate in irrigation water.)
- b. Dischargers producing annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) must report progress towards a Nitrogen Balance ratio target equal to 1.2. A target of 1.2 allows a Discharger to apply 120% of the amount of nitrogen required by the crop to grow and produce a yield.
- c. Beyond three years, Dischargers must demonstrate improved irrigation and nutrient management efficiency, improved Nitrogen Balance ratios, and reduced nitrate loading to groundwater. In the long term, the Nitrogen Balance ratio should compare the total amount of nitrogen applied to the crop against the total nitrogen removed at harvest, rather than the typical nitrogen crop uptake, to accurately calculate the nitrogen remaining and available to the crop or that could load to groundwater.

79. By October 1, 2016, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches must verify the overall effectiveness of the INMP per MRP Order No. R3-2012-0011-03. Dischargers must identify the methods used to verify effectiveness and include the results as a report with the Annual Compliance Form, submitted electronically in a format specified by the Executive Officer.

Water Quality Buffer Plan for Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment

80. By October 1, 2016, Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment (see Table 1) must develop a Water Quality Buffer Plan per MRP Order No. R3-2012-0011-03 that protects the

listed waterbody and its associated perennial and intermittent tributaries, including adjacent wetlands as defined by the Clean Water Act. Dischargers must submit the Water Quality Buffer Plan as a report with the Annual Compliance Form, submitted electronically in a format specified by the Executive Officer. The purpose of the Water Quality Buffer Plan is to control discharges of waste that cause or contribute to exceedances of water quality standards in waters of the State or United States in compliance with this Order and the following Basin Plan requirement:

- a. Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip shall be thirty feet, wherever possible. . .”*
 - b. As an alternative to the development and implementation of a Water Quality Buffer Plan, Tier 3 Dischargers may submit evidence to the Executive Officer to demonstrate that any discharge of waste is sufficiently treated or controlled such that it is of sufficient quality that it will not cause or contribute to exceedances of water quality standards in waters of the State or of the United States.
81. Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment must implement the Water Quality Buffer Plan immediately upon submittal, unless the plan requests a time extension that is approved by the Executive Officer. If the Executive Officer determines the Water Quality Buffer Plan is not in compliance with this Order, the Executive Officer will notify the Discharger and the Discharger must make necessary modifications accordingly.

Part G. TIME SCHEDULE

82. Time schedules for compliance with conditions are identified in Conditions 84 – 87, and described in Table 2 (all Dischargers) and Table 3 (Tier 2 and Tier 3 Dischargers). Milestones are identified in Table 4. Dischargers must comply with Order Conditions by dates specified in Tables 2 and 3 in accordance with the MRP. The Water Board will consider the following information in determining the extent to which the Discharger is effectively controlling individual waste discharges and compliance with this Order:
- a) compliance with the time schedules;
 - b) effectiveness of management practice implementation;

- c) effectiveness of treatment or control measures (including cooperative water quality improvement efforts, and local and regional treatment strategies);
- d) results of individual discharge monitoring (Tier 3);
- e) results of surface receiving water monitoring downstream of the point where the individual discharge enters the receiving water body;
- f) other information obtained by Water Board staff during inspections at operations or farms/ranches, or submitted in response to Executive Officer orders;

83. The Executive Officer may require additional monitoring and reporting as authorized by Water Code section 13267 in cases where Dischargers fail to demonstrate adequate progress towards compliance as indicated by milestones and compliance with other Conditions of the Order.
84. **By October 1, 2014**, Tier 3 Dischargers must effectively control individual waste discharges of pesticides and toxic substances to waters of the State and of the United States.
85. **By October 1, 2015**, Tier 3 Dischargers must effectively control individual waste discharges of sediment and turbidity to surface waters of the State or of the United States.
86. **By October 1, 2016**, Tier 3 Dischargers must effectively control individual waste discharges of nutrients to surface waters of the State or of the United States.
87. **By October 1, 2016**, Tier 3 Dischargers must effectively control individual waste discharges of nitrate to groundwater.
88. This Order becomes effective on March 15, 2012 and expires on March 14, 2017, unless rescinded or renewed by the Central Coast Water Board.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order and Attachments adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 15, 2012.



Roger W. Briggs
Executive Officer

Table 1. 2010 Clean Water Act Section 303(d) List of Impaired Waterbodies Impaired for Toxicity, Pesticides, Nutrients, Temperature, Turbidity, or Sediment

Waterbody Name	Impairment(s)¹
Alisal Creek (Monterey Co.) ³	Toxicity, Nutrients
Aptos Creek ²	Sediment
Arana Gulch ³	Pesticides
Arroyo Paredon ³	Toxicity, Pesticides, Nutrients
Beach Road Ditch ²	Nutrients, Turbidity
Bean Creek ²	Sediment
Bear Creek (Santa Cruz Co.) ²	Sediment
Bell Creek (Santa Barbara Co.) ³	Toxicity, Nutrients
Blanco Drain ^{2,3}	Pesticides, Nutrients, Turbidity
Blosser Channel	Toxicity, Nutrients
Boulder Creek ²	Sediment
Bradley Canyon Creek ^{2,3}	Toxicity, Nutrients, Turbidity
Bradley Channel ³	Toxicity, Pesticides, Nutrients
Branciforte Creek ^{2,3}	Pesticides, Sediment
Carbonera Creek ²	Nutrients, Sediment
Carnadero Creek	Nutrients, Turbidity
Carneros Creek (Monterey Co.) ²	Nutrients, Turbidity
Carpinteria Creek ³	Pesticides
Carpinteria Marsh (El Estero Marsh)	Nutrients
Casmalia Canyon Creek ²	Sediment
Chorro Creek ²	Nutrients, Sediment
Chualar Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Corralitos Creek ²	Turbidity
Elkhorn Slough ^{2,3}	Pesticides, Sediment
Esperanza Creek	Nutrients
Espinosa Lake ³	Pesticides
Espinosa Slough ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Fall Creek ²	Sediment
Franklin Creek (Santa Barbara Co.) ³	Pesticides, Nutrients
Furlong Creek ^{2,3}	Pesticides, Nutrients, Turbidity
Gabilan Creek ^{2,3}	Toxicity, Nutrients, Turbidity
Glen Annie Canyon ³	Toxicity, Nutrients

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Greene Valley Creek (Santa Barbara Co.) ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Kings Creek ²	Sediment
Little Oso Flaco Creek ³	Toxicity, Nutrients
Llagas Creek (below Chesbro Reservoir) ^{2,3}	Pesticides, Nutrients, Sediment, Turbidity
Lompico Creek ²	Nutrients, Sediment
Los Berros Creek	Nutrients
Los Carneros Creek	Nutrients
Los Osos Creek ²	Nutrients, Sediment
Love Creek ²	Sediment
Main Street Canal ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
McGowan Ditch	Nutrients
Merrit Ditch ^{2,3}	Toxicity, Nutrients, Turbidity
Millers Canal ^{2,3}	Pesticides, Turbidity, Temperature
Mission Creek (Santa Barbara Co.) ³	Toxicity
Monterey Harbor ³	Toxicity
Moro Cojo Slough ^{2,3}	Pesticides, Nutrients, Sediment
Morro Bay ²	Sediment
Moss Landing Harbor ^{2,3}	Toxicity, Pesticides, Sediment
Mountain Charlie Gulch ²	Sediment
Natividad Creek ^{2,3}	Toxicity, Nutrients, Turbidity, Temperature
Newell Creek (Upper) ²	Sediment
Nipomo Creek ³	Toxicity, Nutrients
North Main Street Channel	Nutrients
Old Salinas River Estuary ³	Pesticides, Nutrients
Old Salinas River ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Orcutt Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Oso Flaco Creek ³	Toxicity, Nutrients
Oso Flaco Lake ³	Pesticides, Nutrients
Pacheco Creek ²	Turbidity
Pacific Ocean (Point Ano Nuevo to Soquel Point) ³	Pesticides
Pajaro River ^{2,3}	Pesticides, Nutrients, Sediment, Turbidity
Prefumo Creek ²	Nutrients, Turbidity
Quail Creek ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity, Temperature
Rider Creek ²	Sediment
Rincon Creek ^{2,3}	Toxicity, Turbidity
Rodeo Creek Gulch ²	Turbidity

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Salinas Reclamation Canal ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Salinas River (lower, estuary to near Gonzales Rd crossing, watersheds 30910 and 30920) ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Salinas River (middle, near Gonzales Rd crossing to confluence with Nacimiento River) ^{2,3}	Toxicity, Pesticides, Turbidity, Temperature
Salinas River Lagoon (North) ³	Pesticides, Nutrients
Salinas River Refuge Lagoon (South) ²	Turbidity
Salsipuedes Creek (Santa Cruz Co.) ²	Turbidity
San Antonio Creek (below Rancho del las Flores Bridge at Hwy 135) ³	Pesticides, Nutrients
San Benito River ^{2,3}	Toxicity, Sediment
San Juan Creek (San Benito Co.) ^{2,3}	Toxicity, Nutrients, Turbidity
San Lorenzo River ^{2,3}	Pesticides, Nutrients, Sediment
San Luis Obispo Creek (below Osos St.) ³	Pesticides, Nutrients
San Simeon Creek	Nutrients
San Vicente Creek (Santa Cruz Co.) ²	Sediment
Santa Maria River ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Santa Rita Creek (Monterey Co.) ²	Nutrients, Turbidity
Santa Ynez River (below city of Lompoc to Ocean) ²	Nutrients, Sediment, Temperature
Santa Ynez River (Cachuma Lake to below city of Lompoc)	Sediment, Temperature
Schwan Lake	Nutrients
Shingle Mill Creek ²	Nutrients, Sediment
Shuman Canyon Creek ²	Sediment
Soda Lake	Nutrients
Soquel Creek ²	Turbidity
Soquel Lagoon ²	Sediment
Tembladero Slough ^{2,3}	Toxicity, Pesticides, Nutrients, Turbidity
Tequisquita Slough ²	Turbidity
Uvas Creek (below Uvas Reservoir) ²	Turbidity
Valencia Creek ²	Sediment
Warden Creek	Nutrients
Watsonville Creek	Nutrients
Watsonville Slough ^{2,3}	Pesticides, Turbidity
Zayante Creek ^{2,3}	Pesticides, Sediment

¹Dischargers with farms/ranches located within 1000 feet of a surface waterbody listed for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired Waterbodies are included as Tier 2 or Tier 3;

²Tier 2 and Tier 3 Dischargers with farms/ranches adjacent to or containing a waterbody identified on the 2010 List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment must conduct photo monitoring, and Tier 3 Dischargers must also implement a Water Quality Buffer Plan.

³Dischargers who apply chemicals known to cause toxicity to surface water to a farm/ranch that discharges to a waterbody on the 2010 303(d) List of Impaired Waterbodies for toxicity or pesticides must meet conditions in this Order for Tier 3.

Table 2. Time Schedule for Compliance with Conditions for All Dischargers (Tier 1, Tier 2, and Tier 3)

CONDITIONS	COMPLIANCE DATE ¹
Submit Notice of Intent (NOI)	Within 60 days of adoption of Order or Within 60 days acquiring ownership/ control, and prior to any discharge or commencement of activities that may cause discharge.
Submit Update to NOI	Within 60 days, upon adoption of Order and upon change of control or ownership
Submit Notice of Termination	Immediately, when applicable
Submit Monitoring Reports per MRP	Per date in MRP
Implement, and update as necessary, management practices to achieve compliance with this Order.	Ongoing
Protect existing aquatic habitat to prevent discharge of waste	Immediately
Submit surface receiving water quality monitoring annual report	Within one year, and annually thereafter by January 1
Develop/update and implement Farm Plan	October 1, 2012
Install and maintain adequate backflow prevention devices.	October 1, 2012
Submit groundwater monitoring results and information	October 1, 2013
Properly destroy abandoned groundwater wells.	October 1, 2015

Table 3. Additional Time Schedule for Compliance with Conditions Tier 2 and Tier 3 Dischargers

CONDITIONS	COMPLIANCE DATE
<i>Tier 2 and Tier 3:</i>	
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1.
Submit photo documentation of riparian or wetland area habitat (if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity, or sediment)	October 1, 2012, and every four years thereafter by October 1.
Calculate Nitrate Loading Risk level and report in electronic Annual Compliance Form	October 1, 2012, and annually thereafter by October 1.
Submit total nitrogen applied in electronic Annual Compliance Form (if discharge has High Nitrate Loading Risk)	October 1, 2014, and annually thereafter by October 1.
<i>Only Tier 3:</i>	
Initiate individual surface water discharge monitoring	October 1, 2013
Determine Crop Nitrogen Uptake (if discharge has High Nitrate Loading Risk)	October 1, 2013
Submit individual surface water discharge monitoring data	March 15, 2014, October 1, 2014 and annually thereafter by October 1
Submit INMP elements in electronic Annual Compliance Form (if discharge has High Nitrate Loading Risk), including Nitrogen Balance Ratio	October 1, 2015, and annually thereafter by October 1
Submit progress towards Nitrogen Balance Ratio target equal to one (1) for crops in annual rotation (e.g., cool season vegetables) or alternative, (if discharge has High Nitrate Loading Risk)	October 1, 2015
Submit progress towards Nitrogen Balance Ratio target equal to 1.2 for annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) or alternative, (if discharge has High Nitrate Loading Risk)	
Submit Water Quality Buffer Plan or alternative (if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity, or sediment)	October 1, 2016
Submit INMP Effectiveness Report (if discharge has High Nitrate Loading Risk)	October 1, 2016

Table 4. Time Schedule for Milestones

MILESTONES¹	DATE
<i>Tier 1, Tier 2 and Tier 3:</i>	
<p>Measurable progress towards water quality standards in waters of the State or of the United States¹, or</p> <p>Water quality standards met in waters of the State or of the United States.</p>	<p>Ongoing</p> <p>October 1, 2016</p>
<i>Only Tier 3:</i>	
<p><u>Pesticide and Toxic Substances Waste Discharges to Surface Water</u></p> <p>- One of two individual surface water discharge monitoring samples is not toxic</p> <p>- Two of two individual surface water discharge monitoring samples are not toxic</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>
<p><u>Sediment and Turbidity Waste Discharges to Surface Water</u></p> <p>- Four individual surface water discharge monitoring samples are collected and analyzed for turbidity.</p> <p>- 75% reduction in turbidity or sediment load in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for turbidity or sediment in individual surface water discharge)</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>
<p><u>Nutrient Waste Discharges to Surface Water</u></p> <p>- Four individual surface water discharge monitoring samples are collected and analyzed</p> <p>- 50% load reduction in nutrients in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for nutrients in individual discharge)</p>	<p>October 1, 2014</p> <p>October 1, 2015</p>

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<p>- 75% load reduction in nutrients in individual surface water discharge relative to October 1, 2012 load (or meet water quality standards for nutrients in individual surface water discharge)</p>	<p>October 1, 2016</p>
<p><u>Nitrate Waste Discharges to Groundwater</u></p> <p>- Achieve annual reduction in nitrogen loading to groundwater based on Irrigation and Nutrient Management Plan effectiveness and load evaluation</p>	<p>October 1, 2016 and annually thereafter</p>
<p>- Achieve Nitrogen Balance Ratio equal to one (1) for crops in annual rotation (e.g., cool season vegetables) or alternative, (if discharge has High Nitrate Loading Risk)</p>	<p>October 1, 2015</p>
<p>- Achieve Nitrogen Balance Ratio equal to 1.2 for annual crops occupying the ground for the entire year (e.g., strawberries or raspberries) or alternative, (if discharge has High Nitrate Loading Risk)</p>	

¹ Indicators of progress towards milestones includes, but is not limited to data and information related to a) management practice implementation and effectiveness, b) treatment or control measures, c) individual discharge monitoring results, d) receiving water monitoring results, and e) related reporting.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**ORDER No. R3-2012-0011
ATTACHMENT A**

**ADDITIONAL FINDINGS, APPLICABLE WATER QUALITY CONTROL PLANS AND
DEFINITIONS
FOR
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS**

Order No. R3-2012-0011 (Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands) requires Dischargers to comply with applicable state plans and policies and applicable state and federal water quality standards and to prevent nuisance. Water quality standards are set forth in state and federal plans, policies, and regulations. The California Regional Water Quality Control Board Central Coast Region's (Central Coast Water Board) Water Quality Control Plan contains specific water quality objectives, beneficial uses, and implementation plans that are applicable to discharges of waste and/or waterbodies that receive discharges of waste from irrigated lands. The State Water Resources Control Board (State Water Board) has adopted plans and policies that may be applicable to discharges of waste and/or surface waterbodies or groundwater that receive discharges of waste from irrigated lands. The United States Environmental Protection Agency (USEPA) has adopted the *National Toxics Rule* and the *California Toxics Rule*, which constitute water quality criteria that apply to waters of the United States.

The specific waste constituents required to be monitored and the applicable water quality standards that protect identified beneficial uses for the receiving water are set forth in Monitoring and Reporting Program (MRP) Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03.

This Attachment A lists additional findings (Part A), relevant plans, policies, regulations (Part B), and definitions of terms (Part C) used in Order No. R3-2012-0011.

PART A. ADDITIONAL FINDINGS

The California Regional Water Quality Control Board, Central Coast Region additionally finds that:

1. The Central Coast Water Board is the principal state agency in the Central Coast Region with primary responsibility for the coordination and control of water quality. (Cal. Wat. Code § 13001, Legislative Intent) The purpose of this Order is to focus on the highest water quality priorities and maximize water quality protection to ensure the long-term reliability and availability of water resources of sufficient supply and quality for all present and future beneficial uses, including drinking water and aquatic life. Given the magnitude and severity of water quality impairment and impacts to beneficial uses caused by irrigated agriculture and the significant cost to the public, the Central Coast Water Board finds that it is reasonable and necessary to require specific actions to protect water quality.
2. The Central Coast Water Board recognizes that Dischargers may not achieve immediate compliance with all requirements. Thus, this Order provides reasonable schedules for Dischargers to reach full compliance over many years by implementing management practices and monitoring and reporting programs that demonstrate and verify measurable progress annually. This Order includes specific dates to achieve compliance with this Order and milestones that will reduce pollutant loading or impacts to surface water and groundwater in the short term (e.g., a few years) and achieve water quality standards in surface water and groundwater in the longer term (e.g., decades); some compliance dates extend beyond the term of this Order. The focus of this Order is non-tile drain discharges, although Tier 3 tile drain discharges on individual farms/ranches must be monitored. Dischargers with tile drains must also describe management practices used or proposed to be used to attain water quality standards or minimize exceedances in receiving waters while making progress to attain water quality standards. The Executive Officer will evaluate any proposed longer timeframes to address tile-drain discharges.
3. According to California Water Code Section 13263(g), the discharge of waste to waters of the State is a privilege, not a right. It is the responsibility of dischargers of waste from irrigated lands to comply with the Water Code by seeking waste discharge requirements (WDRs) or by complying with a waiver of WDRs. This Order waiving the requirement to obtain WDRs provides a mechanism for dischargers of waste from irrigated lands to meet their responsibility to comply with the Water Code and to prevent degradation of waters of the State, prevent nuisance, and to protect the beneficial uses. Dischargers are responsible for the quality of surface waters and ground waters that have received discharges of waste from their irrigated lands.

4. In the Central Coast Region, nearly all agricultural, municipal, industrial, and domestic water supply comes from groundwater. Groundwater supplies approximately 90 percent of the drinking water on the Central Coast. Currently, more than 700 municipal public supply wells in the Central Coast Region provide drinking water to the public. In addition, based on 1990 census data, there are more than 40,000 permitted private wells in the Region, most providing domestic drinking water to rural households and communities from shallow sources. The number of private domestic wells has likely significantly increased in the past 20 years due to population growth.
5. In the Salinas, Pajaro, and Santa Maria groundwater basins, agriculture accounts for approximately 80 to 90 percent of groundwater pumping (MCWRA, 2007; PVWMA, 2002; Luhdorff and Scalmanini Consulting Engineers. April 2009).
6. The Central Coast Region supports some of the most significant biodiversity of any temperate region in the world and is home to the last remaining population of the California sea otter, three sub-species of threatened or endangered steelhead (*Oncorhynchus mykiss*) and one sub-species of endangered coho salmon (*Oncorhynchus kisutch*). The endangered marsh sandwort (*Arenaria paludicola*), Gambel's watercress (*Nasturtium rorippa gambelii*), California least tern (*Sterna antillarum browni*), and threatened red-legged frog (*Rana aurora*) are present in the region.
7. Several watersheds drain into Monterey Bay National Marine Sanctuary, one of the largest marine sanctuaries in the world. Elkhorn Slough is one of the largest remaining tidal wetlands in the United States and one of the National Oceanic and Atmospheric Administration (NOAA) designated National Estuarine Research Reserves. The southern portion includes the Morro Bay National Estuary and its extensive salt marsh habitat.
8. The two endangered plants, marsh sandwort and Gambel's watercress, are critically imperiled and their survival depends upon the health of the Oso Flaco watershed. The last remaining known population of marsh sandwort and one of the last two remaining known populations of Gambel's watercress occur in Oso Flaco Lake (United States Department of the Interior Fish and Wildlife Service, 2007).
9. The Central Coast of California is one of the most productive and profitable agricultural regions in the nation, reflecting a gross production value of more than six billion dollars in 2008 and contributing to more than 14 percent of California's agricultural economy. The region produces many high value specialty crops including lettuce, strawberries, raspberries, artichokes, asparagus, broccoli, carrots, cauliflower, celery, fresh herbs, mushrooms, onions, peas, spinach, wine

grapes, tree fruit and nuts. An adequate water supply of sufficient quality is critical to supporting the agricultural industry on the Central Coast.

LEGAL AND REGULATORY CONSIDERATIONS

10. This Attachment A to Order No. R3-2012-0011 identifies applicable plans and policies adopted by the State Water Board and the Central Coast Water Board that contain regulatory requirements that apply to the discharge of waste from irrigated lands. This Attachment A also provides definitions of terms for purposes of this Order.
11. The Water Code grants authority to the State Water Board with respect to State water rights and water quality regulations and policy, and establishes nine Regional Water Boards with authority to regulate discharges of waste that could affect the quality of waters of the State and to adopt water quality regulations and policy.
12. As further described in the Order, discharges from irrigated lands affect the quality of the waters of the State depending on the quantity of the waste discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, implementation of management practices and other site-specific factors. Discharges from irrigated lands have impaired and will continue to impair the quality of the waters of the State within the Central Coast Region if such discharges are not controlled.
13. Water Code Section 13267(b)(1) authorizes the Central Coast Water Board to require dischargers to submit technical reports necessary to evaluate Discharger compliance with the terms and conditions of this Order and to assure protection of waters of the State. The Order, this Attachment A, and the records of the Water Board provide the evidence demonstrating that discharges of waste from irrigated lands have degraded and/or polluted the waters of the state. Persons subject to this Order discharge waste from irrigated lands that impacts the quality of the waters of the state. Therefore it is reasonable to require such persons to prepare and submit technical reports.
14. Water Code Section 13269 provides that the Central Coast Water Board may waive the requirement in Water Code section 13260(a) to obtain WDRs. Water Code section 13269 further provides that any such waiver of WDRs shall be conditional, must include monitoring requirements unless waived, may not exceed five years in duration, and may be terminated at any time by the Central Coast Water Board or Executive Officer.

15. Water Code Section 13269(a)(4)(A) authorizes the Central Coast Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Board. California Code of Regulations, Title 23, Division 3, Chapter 9, Article 1, Section 2200.3 sets forth the applicable fees. The Order requires each Discharger to pay an annual fee to the State Water Board in compliance with the fee schedule.
16. The Water Quality Control Plan for the Central Coast Basin (Basin Plan) designates beneficial uses, establishes water quality objectives, contains programs of implementation needed to achieve water quality objectives, and references the plans and policies adopted by the State Water Board. The water quality objectives are required to protect the beneficial uses of waters of the State identified in this Attachment A.
17. The Order is consistent with the Basin Plan because it requires Dischargers to comply with applicable water quality standards, as defined in this Attachment A, and requires terms and conditions, including implementation of management practices. The Order also requires monitoring and reporting as defined in MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03 to determine the effects of discharges of waste from irrigated lands on water quality, verify the adequacy and effectiveness of this Order's terms and conditions, and to evaluate individual Discharger's compliance with this Order.
18. Water Code Section 13246 requires boards, in carrying out activities that affect water quality to comply with State Water Board policy for water quality control. This Order requires compliance with applicable State Water Board policies for water quality control.
19. This Order is consistent with the requirements of the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy) adopted by the State Water Board in May 2004. The NPS Policy requires, among other key elements, that an NPS control implementation program's ultimate purpose shall be explicitly stated and that the implementation program must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable anti-degradation requirements. The NPS Policy improves the State's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy provides a bridge between the State Water Board's January 2000 *NPS Program Plan* and its 2010 *Water Quality Enforcement Policy*. The NPS Policy's five key elements are:

- a. Key Element #1 - Addresses NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses
 - b. Key Element #2 - Includes an implementation program with descriptions of the Management Practices (MPs) and other program elements and the process to be used to ensure and verify proper MP implementation
 - c. Key Element #3 - Includes a specific time schedule and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements
 - d. Key Element #4 - Contains monitoring and reporting requirements that allow the Water Board, dischargers, and the public to determine that the program is achieving its stated purpose(s) and/or whether additional or different MPs or other actions are required
 - e. Key Element #5 - Clearly discusses the potential consequences for failure to achieve the NPS control implementation program's stated purposes
20. Consistent with the NPS Policy, management practice implementation assessment may, in some cases, be used to measure nonpoint source control progress. However, management practice implementation never may be a substitute for meeting water quality requirements.
21. This Order is consistent with provisions of State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Regional boards, in regulating the discharge of waste, must maintain high quality waters of the State until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in the Regional Board's policies. The Order will result in improved water quality throughout the region. Dischargers must comply with all applicable provisions of the Basin Plan, including water quality objectives, and implement best management practices to prevent pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State. The conditions of this waiver will protect high quality waters and restore waters that have already experienced some degradation.
22. This Order is consistent with State Water Board Resolution 68-16. This Order requires Dischargers to 1) comply with the terms and conditions of the Order and meet applicable water quality standards in the waters of the State; 2) develop and implement management practices, treatment or control measures, or change farming practices, when discharges are causing or contributing to exceedances of applicable water quality standards; 3) conduct activities in a manner to prevent nuisance; and 4) conduct activities required by MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03, and revisions thereto.

RATIONALE FOR THIS ORDER

23. On April 15, 1983, the Central Coast Water Board approved a policy waiving WDRs for 26 categories of discharges, including irrigation return flows and non-NPDES stormwater runoff. Pursuant to Water Code Section 13269, these waivers terminated on January 1, 2003.
24. On July 9, 2004, the Central Coast Water Board adopted Resolution No. R3-2004-0117 establishing the 2004 Agricultural Order.
25. Dischargers enrolled in the 2004 Agricultural Order established the Cooperative Monitoring Program (CMP) in compliance with monitoring requirements. The CMP collected and analyzed data for 15 to 20 parameters from 50 sites in multiple watersheds and identified severe surface water quality impairments resulting from agricultural land uses and discharges. CMP did not attempt to identify the individual farm operations that are causing the surface water quality impairments. The lack of discharge monitoring and reporting, the lack of verification of on-farm water quality improvements, and the lack of public transparency regarding on-farm discharges, are critical limitations of the 2004 Agricultural Order, especially given the scale and severity of the surface water and groundwater impacts and the resulting costs to society. The Order addresses these limitations.
26. The Central Coast Water Board extended the 2004 Agricultural Order multiple times. The 2004 Agricultural Order expires on September 30, 2012.
27. The Central Coast Water Board reviewed all available data, including information collected in compliance with the 2004 Agricultural Order, and determined that discharges of waste from irrigated lands continue to result in degradation and pollution of surface water and groundwater, and impairment of beneficial uses, including drinking water and aquatic habitat, and determined that additional conditions are necessary to ensure protection of water quality and to measure the effectiveness of implementation of the Order.
28. It is appropriate to adopt a waiver of WDRs for this category of discharges because, as a group, the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced agricultural surface runoff, reduced chemical use, holding times, cover crops, etc.).
29. It is appropriate to regulate discharges of waste from irrigated lands under a conditional waiver rather than individual WDRs in order to simplify and streamline the regulatory process. Water Board staff estimate that there are more than 3000 individual owners and/or operators of irrigated lands who discharge waste from

irrigated lands; therefore, it is not an efficient use of resources to adopt individual WDRs for all Dischargers within a reasonable time.

30. This Order is in the public interest because:
- a. The Order was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law;
 - b. The Order requires compliance with water quality standards;
 - c. The Order includes conditions that are intended to eliminate, reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the State;
 - d. The Order contains more specific and more stringent conditions for protection of water quality compared to the 2004 Agricultural Order;
 - e. The Order contains conditions that are similar to the conditions of municipal stormwater NPDES permits, including evaluation and implementation of management practices to meet applicable water quality standards and a more specific MRP;
 - f. The Order focuses on the highest priority water quality issues and most severely impaired waters;
 - g. The Order provides for an efficient and effective use of Central Coast Water Board resources, given the magnitude of the discharges and number of persons who discharge waste from irrigated lands;
 - h. The Order provides reasonable flexibility for the Dischargers who seek coverage under this Order by providing them with a reasonable time schedule and options for complying with the Water Code.
31. This Order waives the requirement for Dischargers to obtain WDRs for discharges of waste from irrigated lands if the Dischargers are in compliance with the Order. This Order is conditional, may be terminated at any time, does not permit any illegal activity, does not preclude the need for permits that may be required by other State or local government agencies, and does not preclude the Central Coast Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
32. The Central Coast Water Board may consider issuing individual WDRs to some Dischargers because of their actual or potential contribution to water quality impairments, history of violations, or other factors.

IMPACTS TO WATER QUALITY FROM AGRICULTURAL DISCHARGES

Impacts to Groundwater – Drinking Water and Human Health

33. Nitrate pollution of drinking water supplies is a critical problem throughout the Central Coast Region. Studies indicate that fertilizer from irrigated agriculture is

the primary source of nitrate pollution of drinking water wells and that significant loading of nitrate continues as a result of agricultural fertilizer practices (Carle, S.F., et al., June 2006).

34. Groundwater pollution from nitrate severely impacts public drinking water supplies in the Central Coast Region. A Department of Water Resources (DWR, 2003) survey of groundwater quality data collected between 1994 and 2000 from 711 public supply wells in the Central Coast Region found that 17 percent of the wells (121 wells) detected a constituent at concentrations above one or more California Department of Public Health (CDPH) drinking water standards or primary maximum contaminant levels (MCLs). Nitrate caused the most frequent MCL exceedances (45 mg/L nitrate as nitrate or 10 mg/L nitrate as nitrogen), with approximately 9 percent of the wells (64 wells) exceeding the drinking water standard for nitrate. According to data reported by the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment Program (GAMA) GeoTracker website (<http://www.waterboards.ca.gov/gama/>), recent impacts to public supply wells are greatest in portions of the Salinas Valley (up to 20 percent of wells exceeding MCLs) and Santa Maria (approximately 17 percent) groundwater basins. In the Gilroy-Hollister Groundwater Basin, 12.5 percent of the public supply wells exceed MCLs (data obtained using the GeoTracker DPH Public Supply Well Search Tool for nitrate for wells located in the Gilroy-Hollister groundwater basin. The well data includes Department of Public Health data for well sampling information ranging from 2006 until 2009). CDPH identified over half of the drinking water supply wells as vulnerable to discharges from agricultural-related activities in that basin. This information is readily tracked and evaluated because data are collected on a regular frequency, made publicly available, and public drinking water supplies are regulated by CDPH as required by California law.
35. Groundwater pollution from nitrate severely impacts shallow domestic wells in the Central Coast Region resulting in unsafe drinking water in rural communities. Domestic wells (wells supplying one to several households) are typically drilled in relatively shallow groundwater, and as a result exhibit higher nitrate concentrations than deeper public supply wells. Water quality monitoring of domestic wells is not generally required and water quality information is not readily available; however, based on the available data, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds or thousands. Private domestic well water quality is not regulated and rural residents are likely drinking water from these impaired sources without treatment and without knowing the quality of their drinking water.
36. In the northern Salinas Valley, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard. In other portions of the Salinas Valley, up to approximately 50 percent of the wells surveyed had

concentrations above the nitrate drinking water standard, with average concentrations nearly double the drinking water standard and the highest concentration of nitrate approximately nine times the drinking water standard (Monterey County Water Resources Agency [MCWRA], 1995). Nitrate exceedances in the Gilroy-Hollister and Pajaro groundwater basins reflect similar severe impairment, as reported by local water agencies/districts for those basins (SCVWD, 2001; SWRCB, 2005; San Benito County Water District, 2007; Kennedy/Jenks Consultants, 2008).

37. Local county and water district reports indicate that in the Pajaro River watershed, the highest recent nitrate concentration (over 650 mg/L nitrate, more than 14 times the drinking water standard) occurred in shallow wells in the eastern San Juan subbasin under intense agricultural production. High values of nitrate concentration in groundwater (greater than 500 mg/L nitrate) have also been reported in the Llagas subbasin and the lower Pajaro coastal aquifer.
38. The costs of groundwater pollution and impacts to beneficial uses caused by irrigated agriculture are transferred to the public. Public drinking water systems expend millions of dollars in treatment and replacement costs and private well owners must invest in expensive treatment options or find new sources. Rural communities, those least able to buy alternative water sources, have few options to replace the contaminated water in their homes. This Order addresses groundwater pollution to ensure protection of beneficial uses and public health.
39. Excessive concentrations of nitrate or nitrite in drinking water are hazardous to human health, especially for infants and pregnant women. The United States Environmental Protection Agency (USEPA) established a nitrate drinking water standard of 45 mg/L nitrate as nitrate (10 mg/L nitrate as nitrogen). While acute health effects from excessive nitrate levels in drinking water are primarily limited to infants (methemoglobinemia or "blue baby syndrome"), research evidence suggests there may be adverse health effects (i.e., increased risk of non-Hodgkin's, diabetes, Parkinson's disease, alzheimers, endocrine disruption, cancer of the organs) among adults as a result of long-term consumption exposure to nitrate (Sohn, E., 2009; Pelley, J., 2003; Weyer, P., et. al., 2001, Ward, M.H., et. al., 1996).
40. Nitrogen compounds are known to cause cancer. University of Iowa research found that up to 20 percent of ingested nitrate is transformed in the body to nitrite, which can then undergo transformation in the stomach, colon, and bladder to form N-nitroso compounds that are known to cause cancer in a variety of organs in more than 40 animal species, including primates (Weyer, P., et. al., 2001).
41. In many cases, whole communities that rely on groundwater for drinking water are threatened due to nitrate pollution, including the community of San Jerardo and

other rural communities in the Salinas Valley. Local agencies and consumers have reported impacts to human health resulting from nitrate contaminated groundwater likely due to agricultural land uses, and spent significant financial resources to ensure proper drinking water treatment and reliable sources of safe drinking water for the long-term (CCRWQCB, 2009).

42. Current strategies for addressing nitrate in groundwater to achieve levels protective of human health typically include avoidance (abandoning impacted wells or re-drilling to a deeper zone), groundwater treatment to remove nitrate (i.e., dilution using blending, ion exchange, reverse osmosis, biological denitrification, and distillation), or developing additional water supplies (i.e., percolation ponds, surface water pipelines, reservoirs) to dilute nitrate-impacted sources (Lewandowski, A.M., May 2008; Washington State Department of Health, 2005).
43. The costs to treat and clean up existing nitrate pollution to achieve levels that are protective of human health are very expensive to water users (e.g., farmers, municipalities, domestic well users). Research indicates that the cost to remove nitrate from groundwater can range from hundreds of thousands to millions of dollars annually for individual municipal or domestic wells (Burge and Halden, 1999; Lewandowski, May 2008). Wellhead treatment on a region-wide scale is estimated to cost billions of dollars. Similarly, the cost to actively clean up nitrate in groundwater on a region wide scale would also cost billions of dollars, and would be logistically difficult. If the nitrate loading due to agricultural activities is not significantly reduced, these costs are likely to increase significantly.
44. Many public water supply systems are required to provide well-head treatment or blending of drinking water sources, at significant cost, to treat nitrate before delivery to the drinking water consumer due to elevated concentrations of nitrate in groundwater. The community of San Jerardo (rural housing cooperative of primarily low-income farmworker families with approximately 250 residents) initially installed well-head treatment to treat groundwater contaminated with nitrate and other chemicals at significant cost, with on-going monthly treatment costs of approximately \$17,000. Monterey County public health officials determined that the community of San Jerardo requires a new drinking water well to ensure safe drinking water quality protective of public health at an approximate cost of more than \$4 million. The City of Morro Bay uses drinking water supplies from Morro and Chorro groundwater basins. Study results indicate that agricultural activities in these areas, predominantly over-application of fertilizer, have impacted drinking water supplies resulting in nitrate concentrations more than four times the drinking water standard (Cleath and Associates, 2007). The City of Morro Bay must blend or provide well-head treatment to keep nitrate concentrations at levels safe for drinking water at significant cost (City of Morro Bay, 2006). The City of Santa Maria public supply wells are also impacted by nitrate (in some areas nearly twice

the drinking water standard) and must also blend sources to provide safe drinking water (City of Santa Maria, 2008).

Impacts to Groundwater – Nitrate and Salts

45. Groundwater pollution due to salts is also one of the most significant and critical problems in the Central Coast Region. Agricultural activities are a significant cause of salt pollution (Monterey County Flood Control and Water Conservation District, 1990). Salt increases in irrigated agricultural coastal basins are primarily due to the following:
 - a. Seawater intrusion within the coastal basins (e.g., Salinas and Pajaro groundwater basins) caused primarily by excessive agricultural pumping (MCWRA, 2007).
 - b. Agricultural pumping/recycling of groundwater that concentrates salts in the aquifers.
 - c. Agricultural leaching of salts from the root zone.
 - d. The importation of salts into the basin from agricultural soil amendments and domestic/municipal wastewater discharges.
46. Based on the high proportion of groundwater extractions, agricultural pumping of groundwater contributes to saltwater intrusion into the Salinas and Pajaro groundwater basins, which is causing increasing portions of the groundwater basins to be unusable for agriculture and municipal supply (MCWRA, 2008 and Pajaro Valley Water Resource Agency, 2002).
47. Agricultural activities contribute significant loading of nitrates into groundwater from the following sources (Monterey County Flood Control and Water Conservation District, 1988):
 - a. Intensive fertilizer applications on permeable soils.
 - b. Liquid fertilizer hookups on well pump discharge lines lacking backflow prevention devices.
 - c. Groundwater wells that are screened through multiple aquifers, thereby acting as conduits for pollution transport into deeper groundwater.
 - d. Spills and/or uncontrolled wash water or runoff from fertilizer handling and storage operations.
48. Agricultural waste discharges contribute to pollution of groundwater basins most vulnerable to waste migration, including major portions of the Santa Maria, Salinas, and Gilroy-Hollister groundwater basins. However, any groundwater basin, including those that are confined (pressured), are susceptible to downward waste migration through improperly constructed, operated (e.g., fertigation or chemigation without backflow prevention), or abandoned wells. Additionally, land with

permeable soils and shallow groundwater are susceptible to downward waste migration. Such areas of groundwater vulnerability often overlap with important recharge areas that serve to replenish drinking water supplies.

49. Agricultural discharges of fertilizer are the main source of nitrate pollution to shallow groundwater based on nitrate loading studies conducted in the Llagas subbasin and the lower Salinas groundwater basin (Carle, S.F., et al., June 2006). In 2007, the California Department of Food and Agriculture (CDFA) reported that approximately 56 million pounds of nitrogen were purchased as fertilizer in Monterey County. A 1990 Monterey County study of nitrate sources leaching to soil and potentially groundwater in Santa Cruz and Monterey Counties indicated that irrigated agriculture contributes approximately 78 percent of the nitrate loading to groundwater in these areas (Monterey County Flood Control and Water Conservation District, November 1990).
50. A groundwater study in the Llagas subbasin indicates that nitrate pollution in groundwater is elevated in the shallow aquifer because it is highly vulnerable due to high recharge rates and rapid transport, and that the dominant source of nitrate is synthetic fertilizers. Groundwater age data in relation to nitrate concentration indicate that the rate of nitrate loading to the shallow aquifer is not yet decreasing in the areas sampled. In areas east of Gilroy, groundwater nitrate concentrations more than double the drinking water standard correspond to younger groundwater ages (less than seven years old and in some cases less than two years old), indicating that the nitrate pollution is due to recent nitrate loading and not legacy farming practices (Moran et al., 2005).
51. The University of California Center for Water Resources (WRC) developed the Nitrate Groundwater Pollution Hazard Index (Nitrate Hazard Index) in 1995. The Nitrate Hazard Index identifies agricultural fields with the highest vulnerability for nitrate pollution to groundwater, based on soil, crop, and irrigation practices. Based on the Nitrate Hazard Index, the following crop types present the greatest risk for nitrate loading to groundwater: Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Spinach, Strawberry, Pepper, and Parsley.

Impacts to Groundwater – Pesticides

52. The Department of Pesticide Regulation (DPR) has identified two Groundwater Protection Areas that are vulnerable to pesticide contamination in San Luis Obispo County (south of Arroyo Grande, west of Nipomo Mesa, and north of the Santa Maria River) and Monterey County (Salinas area).
53. Based on a 2007 DPR report, pesticide detections in groundwater are rare in the Central Coast region. Of 313 groundwater wells sampled in the Central Coast

region, six wells (1.9%) had pesticide detections in less than two samples (considered unverified detections).

54. A review of DPR data collected from 1984 – 2009 indicates that the three pesticides/pesticide degradates with the highest detection frequency in groundwater were chlorthal-dimethyl and degradates (total), TPA (2,3,5,6-tetrachloroterephthalic acid) and carbon disulfide. Compounds reported by DPR above a preliminary health goal (PHG) or drinking water standard include (by county): ethylene dibromide (2002), atrazine (1993), and dinoseb (1987) Monterey; heptachlor (1989), ethylene dibromide (1989) Santa Barbara; benzene (various dates 1994-2007), 1,2,4-trichlorobenzene (1991) Santa Cruz; ethylene dibromide (1994, 2008, 2009) San Luis Obispo; and 1,1,2,2-tetrachloroethane (1998) Santa Clara.
55. Results from pesticide analyses conducted as part of the Groundwater Ambient Monitoring and Assessment Program (GAMA) studies in the Central Coast region (Kulongoski, 2007; Mathany 2010) indicate a significant presence of pesticides in groundwater. GAMA achieved ultra-low detection levels of between 0.004 and 0.12 micrograms per liter (generally less than .01 micrograms per liter). Out of 54 wells sampled in groundwater basins in the south coast range study unit (bounded by the Santa Lucia and San Luis Ranges, and San Raphael Mountains to the north and east, and the Santa Ynez mountains to the south), 28 percent of the wells had 11 pesticides or pesticide degradates detected in groundwater samples, with the three most abundant detections being deethylatrazine (18.5 percent), atrazine (9.3 percent), and simazine (5.6 percent). Twenty-eight percent of 97 wells sampled in the Monterey Bay and Salinas Valley Basins had pesticide detections, including 18 percent for simazine, 11 percent for deethylatrazine, and 5 percent for atrazine. None of the pesticides detected as part of the GAMA program exceeded any drinking water standard or health-based threshold value.

Impacts to Surface Water

56. The 2010 Clean Water Act Section 303(d) List of Impaired Waterbodies for the Central Coast Region (2010 List of Impaired Waterbodies) identified surface water impairments for approximately 700 waterbodies related to a variety of pollutants (e.g. salts, nutrients, pesticides/toxicity, and sediment/turbidity). Sixty percent of the surface water listings identified agriculture as one of the potential sources of water quality impairment.
57. The impact from agricultural discharges on surface water quality is or has been monitored by various monitoring programs, including:
 - a. The Central Coast Water Board's Ambient Monitoring Program: Over the past 10 years, the Central Coast Ambient Monitoring Program (CCAMP) has

- collected and analyzed water quality data to address 25 conventional water quality parameters from 185 sites across the Central Coast Region to assess surface water quality. To support analysis of conventional water quality data CCAMP has collected bioassessment data from 100 of the 185 sites, water toxicity data from 134 of the 185 sites, and sediment toxicity from 57 of the 185 sites. CCAMP data show widespread toxicity and pollution in agricultural areas.
- b. Cooperative Monitoring Program (CMP): Over the last five years, the CMP has focused on assessing agricultural water quality for the 2004 Agricultural Order, and collected and analyzed data for 15 to 20 parameters from 50 sites in multiple watersheds. CMP data show widespread toxicity and pollution in agricultural areas.
58. Data from CCAMP and CMP indicate that surface waterbodies are severely impacted in the lower Salinas and Santa Maria watersheds due to the intensive agricultural activity in these areas, and water quality in these areas are the most severely impaired in the Central Coast Region.

Impacts to Surface Water – Nutrients

59. Nitrate pollution in surface water is widespread in the Central Coast Region, with 46 waterbodies listed as impaired for this pollutant on the 2010 List of Impaired Waterbodies List. Seventy percent of these nitrate listings occur in the three major agricultural watersheds: Salinas area (16 waterbodies), Pajaro River (5 waterbodies) and Santa Maria River (12 waterbodies). Other significant nitrate listings fall in small drainages in areas of intensive agriculture or greenhouse activity along the south coast, including Arroyo Paredon, Franklin Creek, Bell Creek, Los Carneros and Glen Annie creeks (CCRWQCB, 2009a)
60. The California Department of Public Health (CDPH) drinking water standard is 10 mg/L nitrate as N. The drinking water standard is not intended to protect aquatic life and Water Board staff estimates that 1 mg/L nitrate is necessary to protect aquatic life beneficial uses from biostimulation based on an evaluation of CCAMP data (CCRWQCB, 2009b). Water Board staff used this criteria to evaluate surface water quality impairment to aquatic life beneficial uses in the 2010 Impaired Waterbodies List.
61. In a broadly scaled analysis of land uses, nitrate pollution is associated with row crop agriculture. In addition, discharge from even a single agricultural operation can result in adjacent creek concentrations exceeding the drinking water standard and the much lower limits necessary to protect aquatic life. Many heavily urbanized creeks show only slight impacts from nitrate, with most urban impact associated with wastewater discharges. (CCAMP, 2010a).

62. Agricultural discharges result in significant nitrate pollution in the major agricultural areas of the Central Coast Region (CCAMP, 2010a). More than sixty percent of all sites from CCAMP and CMP combined datasets have average nitrate concentrations that exceed the drinking water standard and limits necessary to protect aquatic life (CCAMP, 2010b). Ten percent of all sites have average nitrate concentrations that exceed the drinking water standard by five-fold or more. Some of the most seriously polluted waterbodies include the following:
- a. Tembladero Slough system (including Old Salinas River, Alisal Creek, Alisal Slough, Espinosa Slough, Gabilan Creek and Natividad Creek),
 - b. Pajaro River (including Llagas Creek, San Juan Creek, and Furlong Creek),
 - c. Lower Salinas River (including Quail Creek, Chualar Creek and Blanco Drain),
 - d. Lower Santa Maria River (including Orcutt-Soloman Creek, Green Valley Creek, and Bradley Channel),
 - e. Oso Flaco watershed (including Oso Flaco Lake, Oso Flaco Creek, and Little Oso Flaco Creek).
63. Dry season flows decreased over the last five years in some agricultural areas that have large amounts of tailwater runoff. Detailed flow analysis by the CMP showed that 18 of 27 sites in the lower Salinas and Santa Maria watersheds had statistically significant decreases in dry season flow over the first five years of the program. Some sites that show increasing concentrations of nitrate have coincident declining trends in flow, possibly due to reductions in tailwater (CCWQP, 2009a). CCAMP monitoring has detected declining flows at other sites elsewhere in the Region through the end of 2009 (CCAMP, 2010a), likely because of drought.
64. Some statistically significant changes in nitrate concentration are evident in CCAMP and CMP data. Several drainages are improving in water quality in the Santa Barbara area (such as Bell Creek, which supports agricultural activities) and on Pacheco Creek in the Pajaro watershed. However, in some of the most polluted waters (Old Salinas River, Orcutt Creek, Santa Maria River mouth), nitrate concentrations are getting worse (CCAMP, 2010a). In the lower Salinas and Santa Maria watersheds, flow volumes are declining at some sites (CCWQP, 2009a; CCAMP, 2010a).
65. Nitrate concentrations in Oso Flaco Lake exceed the levels that support aquatic life beneficial uses, threatening remaining populations of two endangered plants, marsh sandwort and Gambel's watercress. In 25 water samples taken from Oso Flaco Lake in 2000-2001 and 2007, levels of nitrate/nitrite (as N) averaged 30.5 mg/L with a minimum of 22.0 mg/L and a maximum of 37.1 mg/L (CCAMP, 2010a). Biostimulation in Oso Flaco Lake has caused the rapid and extreme growth of

common wetland species, which are now crowding out sensitive species that have not become similarly vigorous (United States Department of the Interior Fish and Wildlife Service, 2010).

66. Agricultural discharges result in un-ionized ammonia concentrations at levels that are toxic to salmonids at some sites in areas dominated by agricultural activity (USEPA, 1999). The waterbodies where these sites are located are on the 2010 List of Impaired Waterbodies due to un-ionized ammonia, particularly in the lower Salinas and Santa Maria river areas (CCRWQCB, 2009).

Impacts to Surface Water – Toxicity and Pesticides

67. The Basin Plan general objective for toxicity states the following: “All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in human, plant, animal or aquatic life.” The Basin Plan general objective for pesticides states the following: “No individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life.”
68. Based on CCAMP, CMP, and other monitoring data, multiple pesticides and herbicides have been detected in Central Coast surface waterbodies (identified below). The Basin Plan general objective for pesticides states that no individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses, and no increase in pesticide concentrations shall be found in bottom sediments or aquatic life. Many currently applied pesticides have not been tested for, and staff is only recently aware of data showing several relatively new fungicides (azoxystrobin, pyraclostrobin and boscalid) in fish tissue and sediment of lagoons in the Central Coast Region.¹ This is a violation of the Basin Plan general objective for pesticides. Additional monitoring for individual pesticides is needed to identify changes in pesticide loading and to identify concentrations of toxic and/or bioaccumulating substances not previously identified.

2,4-D	esfenvalerate	oryzalin
Alachlor	ethalfluralin	oxadiazon
Aldicarb	ethoprop	oxamyl
Atrazine	fenamiphos	oxyfluorfen

¹ “Watershed-scale Evaluation of Agricultural BMP Effectiveness in Protecting Critical Coastal Habitats: Final Report on the Status of Three Central California Estuaries” (Anderson et al, 2010).
<http://www.ccamp.org/ccamp/documents/EstuariesFinalReport022311.pdf>.

ATTACHMENT A.
 ORDER NO. R3-2012-0011
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

azinphos-methyl		
Azoxystrobin	fenoxycarb	paraquat dichloride
Benefin	fenpropathrin	pendimethalin
bentazon, sodium salt	fipronil	permethrin
Bifenthrin		
Boscalid	glyphosate	phorate
Bromacil	hexazinone	phosmet
bromoxynil octanoate	hydramethylnon	prodiamine
butylate	imidacloprid	prometon
Carbaryl	lambda cyhalothrin	prometryn
Carbofuran	linuron	propanil
Chlorpyrifos	malathion	propargite
chlorthal-dimethyl	MCPA	propiconazole
cycloate	MCPA, dimethylamine salt	propoxur
Cyfluthrin	metalaxyl	propyzamide
		Pyriproxyfen
Cypermethrin	methidathion	pyraclostrobin
DDVP	methiocarb	S.S.S-tributyl phosphorotrithioate
Deltamethrin	methomyl	siduron
Diazinon	methyl isothiocyanate	simazine
Dicamba	methyl parathion	tebuthiuron
Dicofol	metolachlor	terbuthylazine
Dimethoate	metribuzin	tetrachlorvinphos
Disulfoton	molinate	thiobencarb
Diuron	naled	triallate
Endosulfan	napropamide	triclopyr
EPTC	norflurazon	trifluralin

69. Multiple studies, including some using Toxicity Identification Evaluations (TIEs), have shown that organophosphate pesticides and pyrethroid pesticides in Central Coast waters are likely causing toxicity to fish and invertebrate test organisms (CCAMP, 2010a, CCWQP, 2008a; CCWQP, 2009; CCWQP, 2010a; CCWQP, 2010d (in draft); Hunt et al., 2003, Anderson, et al. 2003; Anderson et al., 2006b. This is a violation of the Basin Plan general objective for toxicity.
70. Agricultural use rates of pesticides in the Central Coast Region and associated toxicity is among the highest in the State. In a statewide study of four agricultural areas conducted by the Department of Pesticide Regulation (DPR), the Salinas study area had the highest percent of surface water sites with pyrethroid pesticides detected (85 percent), the highest percent of sites that exceeded levels expected

to be toxic and lethal to aquatic life (42 percent), and the highest rate (by three-fold) of active ingredients applied (113 lbs/acre) (Starner, et al. 2006).

71. Agriculture-related toxicity studies conducted on the Central Coast since 1999 indicated that toxicity resulting from agricultural waste discharges of pesticides has caused declining aquatic insect and macroinvertebrate populations in Central Coast streams (Anderson et al., 2003; Anderson et al., 2006a; Anderson et al., 2006b; Anderson et al., 2010). This is a violation of the Basin Plan general objective for toxicity.
72. The breakdown products of organophosphate pesticides are more toxic to amphibians than are the products themselves (Sparling and Fellers, 2007).
73. The lower Salinas and Santa Maria areas have more overall water column invertebrate toxicity than other parts of the Central Coast Region, with much of the toxicity explained by elevated diazinon and chlorpyrifos concentrations (CCAMP, 2010a, CCWQP, 2008a; CCWQP, 2009; Hunt et al., 2003, Anderson, et al. 2003; Anderson et al., 2006a). Some agricultural drains have shown toxicity nearly every time the drains are sampled (CCAMP, 2010a).
74. Fish and sand crabs from the Salinas, Pajaro, and Santa Maria estuaries had detectable levels of currently applied fungicides, herbicides, and legacy pesticides like DDT based on a recently completed study of these central coast lagoons Anderson et al. (2010). Multiple samples from the Santa Maria Estuary, the most impacted of the three estuaries, also contained chlorpyrifos, diazinon, and malathion (organophosphate pesticides) and bifenthrin and cyfluthrin (pyrethroid pesticides). Department of Public Health human consumption guideline levels for these pesticides in fish tissue are not available. This is the first study in this Region documenting these currently applied pesticides in fish tissue. The Basin Plan requires that “there shall be no increase in pesticide concentrations found in bottom sediments or **aquatic life** (emphasis added)”.
75. The National Oceanic Atmospheric Administration National Marine Fisheries Service (NMFS) issued a Biological Opinion that concluded that US EPA’s registration of pesticides containing chlorpyrifos, diazinon, and malathion is likely to jeopardize the continued existence of 27 endangered and threatened Pacific salmonids and is likely to destroy or adversely modify designated critical habitat for 25 threatened and endangered salmonids because of adverse effects on salmonid prey and water quality in freshwater rearing, spawning, migration, and foraging areas (NMFS, 2008)
76. Three court-ordered injunctions impose limitations on pesticide use (including chlorpyrifos, diazinon, and malathion) within certain proximity of waterbodies to protect endangered species (DPR, 2010).

77. Creek bottom sediments are most consistently toxic in the lower Salinas and Santa Maria watersheds, areas dominated by intensive agricultural activity. Seventy percent of sites sampled for sediment in the Central Coast region have been toxic at least once (although sites selected for sediment toxicity sampling typically represent higher risk areas) (CCAMP, 2010a).
78. A CMP follow-up study on sediment toxicity (CCWQP, 2010d, in draft) showed pyrethroid pesticides to be the most prevalent and severe source of toxicity to sediments. Santa Maria area sites averaged 7.5 toxic units (TUs) from pyrethroid pesticides and 1.3 TUs from chlorpyrifos. One TU is sufficient to kill 50% of the test organisms in a toxicity test). All Santa Maria area sites were toxic to test organisms. Second highest pesticide levels were found in Salinas tributaries and the Salinas Reclamation canal, averaging 5.4 TUs pyrethroids and 0.8 TUs chlorpyrifos. Organochlorine pesticides were present, but not at levels sufficient to cause toxicity.
79. Peer-reviewed research has also shown pyrethroid pesticides are a major source of sediment toxicity in agricultural areas of the Central Coast Region (Ng et al., 2008; Anderson et al., 2006a, Phillips et al., 2006; Starner et al., 2006).
80. Agricultural sources of metals are particulate emissions, irrigation water, pesticides, biosolids, animal manure, and fertilizer applied directly to the soil (Chang et al, 2004). Metals, including arsenic, boron, cadmium, copper, lead, nickel, and zinc are common active ingredients in many pesticides (Fishel, 2008; Nesheim, 2002; Holmgren, 1998; Reigert and Roberts, 1999). Metals can be present in subsurface drainage discharge and may be associated with sediment in tailwater discharge. Some phosphate fertilizers contain cadmium, which can lead to an increase in the concentration of cadmium in soil. Past studies have found soils containing high concentrations of cadmium and lead in major vegetable production areas of the Salinas Valley (Chang et al, 2004; Page et al, 1987; USEPA, 1978; Jelinek and Braude, 1978).
81. The Basin Plan contains the following general objective for Phenols, 0.1 mg/L or 100 µg/L. Phenols are components or breakdown products of a number of pesticide formulations, including 2,4 D, MCPA, carbaryl, propoxur, carbofuran, and fenthion (Crespin, et al., 2001, Agrawal, et al., 1999). Phenolic compounds can cause odor and taste problems in fish tissue, some are directly toxic to aquatic life, and some are gaining increasing notice as endocrine disruptors (e.g., bisphenol A and nonylphenol). The original water quality standards were developed in response to concerns about odor and taste and direct toxicity.
82. One phenolic compound of known concern in Central Coast waters is nonylphenol. Agricultural sources of nonylphenol and the related nonylphenol

ethoxylates include pesticide products as “inert” ingredients and as adjuvants added by the pesticide user. Adjuvant ingredients are not reported in California’s Pesticide Use Database. Adjuvants enhance a chemical’s effect. Nonylphenol and related compounds are used as surfactants to make the pesticide product more potent and effective (Cserhati, 1995). Nonylphenol and its ethoxylates are acutely toxic to a wide variety of animals, including aquatic invertebrates and fish. In some cases, the nonylphenol is more toxic to aquatic species than the pesticide itself (National Research Council of Canada, 1982). Concern exists about these adverse effects of nonylphenol and its ethoxylates increases because these compounds also bioaccumulate in algae, mussels, shrimp, fish, and birds (Ahel et al, 1993; Ekelund (1990).

83. The San Luis Obispo Science and Ecosystem Alliance (SLOSEA) at California Polytechnic State University has found nonylphenol in elevated concentrations in fish tissue and has linked the occurrence to gonadal abnormalities and liver damage in fish in Morro Bay and other Central Coast locations. The Basin Plan standard of 100 µg/L for phenols is relatively protective for direct toxicity of nonylphenol to rainbow trout, which have an LC50 (lethal concentration impacting 50% of test organisms) of 194 µg/L. However, this limit is not protective for endocrine disruption purposes, which for rainbow trout is estimated at an EC50 (estrogenic concentration impacting 50% of test organisms) of 14.14 µg/L (Lech, 1996). Regardless of the limitations of the Basin Plan standard, it is important to assess this chemical in areas that are heavily influenced by agricultural activity.

Impacts to Surface Water – Turbidity and Temperature

84. Turbidity is a cloudy condition in water due to suspended silt or organic matter. Waters that exceed 25 nephelometric turbidity units (NTUs) can reduce feeding ability in trout (Sigler et al., 1984). Elevated turbidity during the dry season is an important measure of discharge across bare soil, and thus can serve as an indicator of systems with heavy irrigation runoff to surface waters.
85. The Basin Plan requires that “Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses” (CCRWQCB, 1994).
86. Most CCAMP sites outside of agricultural areas have a median turbidity level less than 5 NTUs (CCAMP, 2010a). Many sampling sites that include significant agricultural discharge have turbidity levels that exceed 100 NTUs as a median value (CCAMP, 2010a).
87. Agricultural discharges cause and contribute to sustained turbidity throughout the dry season at many sampling sites dominated by agricultural activities. Resulting turbidity greatly exceeds levels that impact the ability of salmonids to feed. Many

of these sites are located in the lower Santa Maria and Salinas-Tembladero watersheds. The CMP detected some increasing trends in turbidity on the main stem of the Salinas River (CCRWQCB, 2009a; CCAMP, 2010a; CCWQP, 2009a).

88. Agricultural discharges and vegetation removal along riparian areas cause and contribute to water temperatures that exceed levels that are necessary to support salmonids at some sites in areas dominated by agricultural activity. Several of these sites are in major river corridors that provide rearing and/or migration habitat for salmonids. A good example of this is Orcutt Creek (CCAMP, 2010a), where upstream shaded areas are cooler than downstream exposed areas, in spite of lower upstream flows. Tailwater discharge and removal of riparian vegetation in downstream areas cause temperatures to rise above levels safe for trout. Several locations impacted by temperature are in major river corridors that provide rearing and/or migration habitat for salmonids. These include the Salinas, Santa Maria, and Santa Ynez rivers (CCAMP, 2010a).
89. Biological sampling shows that benthic biota are impaired in the lower Salinas and Santa Maria watersheds, and also shows that several measures of habitat quality, such as in-stream substrate and canopy cover, are poor compared to the upper watersheds and to other high quality streams in the Central Coast Region (CCWQP, 2009b; CCWQP, 2009c, CCWQP, 2009d; CCWQP, 2009e; CCAMP, 2010b)
90. Agricultural land use practices, such as removal of vegetation and stream channelization, and discharges from agricultural fields, can cause the deposition of fine sediment and sand over stream bottom substrate (Waters, 1995). This problem is especially prevalent in areas dominated by agricultural activity (lower Salinas and Santa Maria rivers) (CCWQP, 2009b; CCWQP, 2009c, CCWQP, 2009d; CCWQP, 2009e; CCAMP, 2010b). This deposition of fine sediment and sand in streams causes major degradation of aquatic life beneficial uses by eliminating pools and by clogging gravel where fish eggs, larvae, and benthic invertebrates that serve as a food source typically live (CCAMP, 2010b; Waters, 1995). Effective erosion control and sediment control management practices include but are not limited to cover crops, filter strips, and furrow alignment to reduce runoff quantity and velocity, hold fine particles in place, and increase filtration to minimize the impacts to water quality (USEPA, 1991).
91. Orchards, vineyards, and row crops have the greatest erosion rates in irrigated agriculture, especially those that are managed with bare soil between tree or vine rows (ANR, 2006). A vegetative filter strip offers one way to control erosion rates and discharge of sediment rather than letting it be carried off site in drainage water. A vegetative filter strip is an area of vegetation that is planted intentionally to help remove sediment and other pollutants from runoff water (Dillaha et al., 1989) Vegetative filter strips intercept surface water runoff and trap as much as 75 to 100

percent of the water's sediment. They capture nutrients in runoff, both through plant uptake through adsorption to soil particles. They promote degradation and transformation of pollutants into less-toxic forms, and they remove over 60% of certain pathogens from the runoff. (ANR, 2006).

Impacts to the Marine Environment

92. The marine environment in the Central Coast Region is impacted by runoff from irrigated agriculture and other sources. Legacy pesticides have impacted the marine environment and are still found in sediment and tissue at levels of concern today (CCLEAN, 2007; Miller et al., 2007; Dugan, 2005, BPTCP, 1998). Currently applied pesticides are persistent in the aquatic environment, but initial testing has not found them in offshore areas of Monterey Bay (CCAMP, 2010b).
93. Two Marine Protected Areas (MPAs), Elkhorn Slough and Moro Cojo Slough, are heavily impacted by agricultural chemicals and activities in the vicinity. The Elkhorn Slough and Moro Cojo Slough MPAs are at very high to extremely high risk for additional degradation of beneficial uses. Other MPAs that are relatively near shore in agricultural areas are at medium risk for degradation of beneficial uses; these include the South Santa Ynez River MPA, and the two Monterey Bay MPAs. Other MPAs that are not near agricultural areas are at medium to low risk from agricultural discharges (CCAMP, 2010b).
94. Nitrate loading from the Pajaro and Salinas Rivers to Monterey Bay has been found to be a potential driver of plankton blooms during certain times of year. Research shows a clear onshore to offshore gradient in nitrate load influence from rivers, and also shows overall increasing trends in loading from rivers, whereas nitrate loading from upwelling shows no trends (Lane, 2009; Lane et al., in review). Using infrared remote sensing, Monterey Bay Aquarium Research Institute researchers have documented bloom initiation immediately following "first flush" events just offshore Moss Landing and Pajaro River discharges, that then evolved into very large red tides that killed many sea birds (Ryan, 2009; Jessup et al., 2009). These bloom initiation events were documented in 2007 and 2008.

Impacts to Aquatic Habitat and Riparian and Wetland Areas

95. Riparian and wetland areas play an important role in protecting several of the beneficial uses designated in the Basin Plan. Agricultural activities have degraded, and threaten to degrade, these beneficial uses related to aquatic habitat, which include, but are not limited to:
 - a. Ground Water Recharge;
 - b. Fresh Water Replenishment;
 - c. Warm Fresh Water Habitat;

- d. Cold Fresh Water Habitat;
 - e. Inland Saline Water Habitat;
 - f. Estuarine Habitat;
 - g. Marine Habitat;
 - h. Wildlife Habitat;
 - i. Preservation of Biological Habitats of Special Significance;
 - j. Rare, Threatened or Endangered Species;
 - k. Migration of Aquatic Organisms;
 - l. Spawning, Reproduction and/or Early Development;
 - m. Areas of Special Biological Significance;
96. The Basin Plan contains requirements to protect aquatic habitat, including, but not limited to, Chapter 2, Section II Water Quality Objectives to Protect Beneficial Uses, and Chapter 5, Page V-13, V.G. Erosion and Sedimentation: A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip shall be thirty feet, wherever possible.
97. Riparian and wetland areas play an important role in achieving several water quality objectives established to protect specific beneficial uses. These include, but are not limited to, those water quality objectives related to natural receiving water temperature, dissolved oxygen, suspended sediment load, settleable material concentrations, chemical constituents, and turbidity.
98. The 2004 Agricultural Order required protection of beneficial uses including aquatic and wildlife habitat. This Order includes that requirement to achieve protection of aquatic life beneficial uses and to address water quality degradation that has occurred, in part, as a result of encroachment by agricultural land uses on riparian and wetland areas.
99. In particular, seasonal and daily water temperatures are strongly influenced by the amount of solar radiation reaching the stream surface, which is influenced by riparian vegetation (Naiman, 1992; Pierce's Disease/Riparian Habitat Workgroup (PDRHW), 2000.). Removal of vegetative canopy along surface waters threatens maintenance of temperature water quality objectives, which in turn negatively affects dissolved oxygen related water quality objectives, which in turn negatively affects the food web (PDRHW, 2000).
100. Riparian and wetland areas function to retain and recycle nutrients (National Research Council (NRC), 2002; Fisher and Acreman, 2004), thereby reducing nutrient loading directly to surface water or groundwater. Riparian and wetland areas trap and filter sediment and other wastes contained in agricultural runoff

(NRC, 2002; Flosi et al., 1998; PDRHW, 2000; Palone and Todd, 1998), and reduce turbidity (USEPA, 2009). Riparian and wetland areas temper physical hydrologic functions, protecting aquatic habitat by dissipating stream energy and temporarily allowing the storage of floodwaters (Palone and Todd, 1998), and by maintaining surface water flow during dry periods (California Department of Water Resources, 2003). Riparian and wetland areas regulate water temperature and dissolved oxygen, which must be maintained within healthy ranges to protect aquatic life (PDRHW, 2000). In the absence of human alteration, riparian areas stabilize banks and supply woody debris (NRC 2002), having a positive influence on channel complexity and in-stream habitat features for fish and other aquatic organisms (California Department of Fish and Game 2003).

101. Riparian areas are critical to the quality of in-stream habitat. Riparian vegetation provides woody debris, shade, food, nutrients and habitat important for fish, amphibians and aquatic insects (California Department of Fish and Game 2003). Riparian areas help to sustain broadly based food webs that help support a diverse assemblage of wildlife (NRC, 2002). More than 225 species of birds, mammals, reptiles, and amphibians depend on California's riparian habitats (Riparian Habitat Joint Venture, 2004).
102. Riparian vegetation provides important temperature regulation for instream resources. In shaded corridors of the Central Coast region, temperatures typically stay under 20 degrees Celsius or 68 degrees F (within optimum temperature ranges for salmonids), but can rapidly increase above 20 degrees Celsius when vegetation is removed. Orcutt Creek in the lower Santa Maria watershed is an example where upstream shaded areas remain cooler than downstream exposed areas, in spite of lower upstream flows (CCAMP, 2010a).
103. Land management and conservation agencies describe three vegetated zones within a riparian buffer that can provide water quality protection (NRCS, 2006; Welsch, 1991, Tjaden and Weber). These zones are described below:
 - a. Zone 1 – The goal for this zone is to control temperature and turbidity discharges by establishing a mix of trees and shrubs that provide shade and streambank stability. A mix of native woody species that vary from large tree species as they mature to understory trees and shrubs will provide canopy cover and shading next to the water.
 - b. Zone 2 – The goal for this zone is to establish a mix of trees and shrubs that will absorb and treat waterborne nutrients and other pollutants and allow water to infiltrate into the soil.
 - c. Zone 3 – The goal for this zone is to act as a transitional zone between cropland and zones 1 and 2, serving to slow flows, disperse flows out into more diffuse, sheet flow, and promote sediment deposition. The use of stiff multi-stemmed grasses and forbs are preferred and will help disperse concentrated flows.

104. CCAMP and CMP bioassessment data show that streams in areas of heavy agricultural use are typically in poor condition with respect to benthic community health and that habitat in these areas is often poorly shaded, lacking woody vegetation, and heavily dominated by fine sediment. Heavily sedimented stream bottoms can result from the immediate discharge of sediment from nearby fields, the loss of stable, vegetated stream bank habitat, the channelization of streams and consequent loss of floodplain, and from upstream sources.
105. Up to approximately 43 percent of the federally threatened and endangered species rely directly or indirectly on wetlands for their survival (United States Environmental Protection Agency, 2008). Of all the states, California has the greatest number of at-risk animal species (15) and, by far, the greatest number of at-risk plant species (104) occurring within isolated wetlands (Comer et al., 2005).
106. California has lost an estimated 91 percent of its historic wetland acreage, the highest loss rate of any state. Similarly, California has lost between 85 and 98 percent of its historic riparian areas (State Water Resources Control Board, 2008). Landowners and operators of agricultural operations historically removed riparian and wetland areas to plant cultivated crops (Braatne et al., 1996; Riparian Habitat Joint Venture, 2004).
107. The California Wetlands Conservation Policy (Executive Order W-59-93), also known as "the No Net Loss Policy," adopted by Governor Wilson in 1993, established the State's intent to develop and adopt a policy framework and strategy to protect California's unique wetland ecosystems. One of the goals of this policy is to ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.
108. Real and/or perceived incompatible demands between food safety and environmental protection are a major issue in the Central Coast Region. Technical Assistance Providers have reported that growers have removed vegetated management practices intended to protect water quality (in some cases, after receiving substantial public funds to install vegetated management practices).
109. According to a spring 2007 survey by the Resource Conservation District of Monterey County (RCDMC), 19 percent of 181 respondents said that their buyers or auditors had suggested they remove non-crop vegetation from their ranches to prevent pollution from pathogens such as the O157:H7 bacteria. In response to pressures by auditors and/or buyers, approximately 15 percent of all growers surveyed indicated that they had removed or discontinued use of previously adopted management practices used for water quality protection. Grassed waterways, filter or buffer strips, and trees or shrubs were among the management

practices removed (RCDMC, 2007). According to a follow-up spring 2009 survey by RCDMC, growers are being told by their auditors and/or buyers that wetland or riparian plants are a risk to food safety (RCDMC, 2009). To assist in the co-management of water quality protection and food safety, the RCDMC has developed a handbook of agricultural conservation practices, photos, and descriptions with food safety considerations (RCDMC, 2009).

110. The Food Safety Modernization Act (FSMA) was signed into law on January 4, 2011 giving the U.S Food and Drug Administration (FDA) a mandate to pursue a farm to table system that is based on science and addresses food safety hazards. The law requires FDA to apply sound science to any requirements that might impact wildlife and wildlife habitat on and near farms, and take into consideration conservation and environmental practice standards and policies.
111. Riparian vegetation and vegetated buffer zones are critically important to prevent the transport of sediment and bacteria, which may include the downstream transport of O157:H7 bacteria. Tate et al. (2006) tested vegetated buffers on cattle grazing lands and found that they are a very effective way to reduce inputs of waterborne E. coli into surface waters. Data indicates that the major source of O157:H7 bacteria are cattle, not wildlife (RCDMC, 2006). In many agricultural areas of the Central Coast Region, cattle operations are located upstream of irrigated agricultural fields. Therefore, the removal of riparian and wetland vegetation and their buffer zones increases the transport of pathogens such as O157:H7 and the risk of food contamination. The removal of riparian and wetland vegetation for food safety purposes is not warranted, is not supported by the literature, and may increase the risk of food contamination.
112. Agriculture near surface waterbodies can lead to removal or reduction of riparian vegetation and the impairment of its ecological functions (ANR, 2007). Once riparian vegetation is removed, it no longer serves to shade water, provide food for aquatic organisms, maintain stream banks, provide a source of large woody debris, or slow or filter runoff to streams. The result is degraded water quality and fish habitat (ANR, 2007). For these reasons, maintenance of riparian vegetation is a critical element of any type of land use (ANR, 2007).
113. Buffer strips are areas of vegetation left beside a stream or lake to protect against land use impacts (ANR, 2007). Whether or not harvesting is permitted within the buffer strip, well-designed and managed buffers can contribute significantly to the maintenance of aquatic and riparian habitat and the control of pollution. Riparian buffer strips protect aquatic and riparian plants and animals from upland sources of pollution by trapping or filtering sediments, nutrients, and chemicals from forestry, agricultural and residential activities. (ANR, 2007).

114. Vegetated riparian areas provide greater environmental value than unvegetated floodplains or cropped fields. Riparian forests provide as much as 40 times the water storage of a cropped field and 15 times that of grass turf (Palone and Todd, 1998). Agricultural floodplains are approximately 80 to 150 percent more erodible than riparian forest floodplains (Micheli et al., 2004) and riparian forest floodplains serve a valuable function by trapping sediment from agricultural fields (National Resource Council, 2002; Flosi and others, 1998; PDRHW 2000; Palone and Todd 1998).
115. Riparian and wetland areas are an effective tool in improving agricultural land management. Wide riparian areas act as buffers to debris that may wash onto fields during floods, thereby offsetting damage to agricultural fields and improving water quality (Flosi et al., 1998; PDRHW, 2000).
116. Exotic plant species exclude native riparian and wetland vegetation by out-competing native species for habitat. Additionally, exotic plants do not support the same diversity of wildlife native to riparian forests, often use large amounts of water, and can exist as monocultural stands of grass. Grass habitat is very different from the complex habitat structure provided by a diversity of riparian trees and shrubs, and results in habitat changes that affect the aquatic based food web (California Department of Fish and Game, 2003).

MANAGEMENT PRACTICE IMPLEMENTATION

117. Commercial agriculture is an intensive use of land. Relatively sophisticated agronomic and engineering approaches are available and necessary to minimize the discharge of waste from irrigated lands, including sediment, nutrients, and pesticides that impact water quality and beneficial uses of waters of the State. Traditionally, conservation practices available to Dischargers were developed for irrigation efficiency or for erosion control, and not necessarily for water quality protection. To achieve water quality protection and improvement, Dischargers are responsible for selecting and effectively implementing management strategies to resolve priority water quality problems associated with the specific operation and receiving water, utilize proper management practice design and maintenance, and implement effectiveness monitoring.
118. The Central Coast Water Board recognizes efforts to maximize water quality improvement using innovative and effective local or regional treatment strategies and it is the Central Coast Water Board's intent to provide flexibility in the implementation of this Order to encourage discharger participation in such efforts. The Central Coast Water Board will evaluate proposed local or regional treatment strategies based upon the anticipated effectiveness, time schedule for implementation, and proposed verification monitoring and reporting to measure progress towards water quality improvement and compliance with this Order.

119. The Central Coast Water Board recognizes efforts to improve recharge conditions and restore groundwater recharge function that have been lost due to urbanization and agricultural development. Managed aquifer recharge (MAR) has been successfully applied in areas of the Central Coast region, improving both water supply and water quality in the basin (Racz et al., in review). Water applied to percolation basins for MAR projects often have a high quality relative to that in underlying aquifers in many locations, despite exceedances of water quality standards. Recharging this water into the ground is important for improving and maintaining water quality in critical aquifers. In addition, considerable improvement in water quality can be achieved during percolation of surface water because of beneficial microbial and filtering processes that occur (Schmidt et al., in review). The Central Coast Water Board encourages MAR efforts, which will result in improving both water supply and water quality.
120. Dischargers are responsible for implementing management measures to achieve water quality improvement, including practices and projects at the scale of a single farm, or cooperatively among multiple farms in a watershed or sub watershed.
121. The Farm Plan is an effective tool to identify the management practices that have been or will be implemented to protect and improve water quality in compliance with this Order. Elements of the Farm Plan include irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control, and aquatic habitat protection. Farm Plans also contain a schedule for implementation of practices and an evaluation of progress in achieving water quality improvement. The development and implementation of Farm Plans was a requirement of the 2004 Agricultural Order. This Order renews the requirement to prepare the Farm Plan, and adds new conditions requiring each Discharger to verify the effective implementation of management practices focused on resolving water quality issues and for a subset of Dischargers considered a higher threat to water quality to conduct individual discharge monitoring to verify the effective implementation of management practices.
122. Dischargers can significantly reduce the potential impact from agricultural discharges by the effective implementation of management practices identified in Farm Plans focused on priority water quality issues related to the specific operation and watershed.
123. Individual on-farm water quality monitoring is critical to adaptively manage and effectively implement practices to protect water quality. The data and reporting will inform the Discharger, the Water Board, and the public regarding compliance with this Order, and increases the potential success in adapting management practices to address priority water quality issues. Dischargers participating in on-farm water quality monitoring have reported, in some cases, significant reduction or

elimination of their discharge of waste through effective and adaptive management practice implementation.

124. Agricultural discharges, especially surface irrigation runoff, have the potential to transport sediments and associated waste constituents that exceed water quality standards. Minimizing irrigation runoff is an effective way to minimize and/or eliminate agricultural discharges of waste to waters of the State.
125. Agricultural water quality research identifies the importance of minimizing the amount of water runoff coming from farms. Irrigation runoff occurs when the application rate of the irrigation system exceeds the infiltration rate of the soil due to numerous factors, including poor irrigation efficiency. The percent of applied water lost to runoff may start off low, and increase towards the end of longer irrigations, or with frequent irrigation where soil is saturated. Fields with soils susceptible to low infiltration rates may lose 5 percent to 30 percent or more of their applied water to runoff.
126. Applying fertilizer, soil amendments, or agricultural products directly through an irrigation system (fertigation) increases nitrate levels in irrigation water. Runoff from fertigations is likely to be extremely high in nitrate concentrations. Agricultural research conducted in the Pajaro Valley and Salinas Valley watersheds has identified nitrate values in agricultural tailwater and drainage ditches exceeding 100 mg/L nitrate as N in some cases (more than ten times the drinking water standard, and likely more than 100 times the level necessary to protect aquatic life) (Anderson, 2003).
127. Agricultural studies document the common over-application of fertilizers, and fertilizer and animal manure are the most dominant and widespread nitrate sources to groundwater (Harter, 2009; Kitchen, 2008; Lawrence Livermore National Lab GAMA Studies Llagas subbasin, 2005). Effective irrigation and nutrient management practices to reduce the concentration of nutrients in irrigation runoff, deep percolation, and stormwater include but are not limited to, irrigation efficiency to reduce runoff and deep percolation, nutrient budgeting to optimize fertilizer application and eliminate excessive nutrient applications, and techniques to trap nutrients between crop growing seasons and during intense periods of rainfall.
128. Agricultural studies and practices demonstrate that minimizing the production of polluted tailwater through irrigation efficiency and nutrient management practices and keeping runoff from leaving the farm is cost effective (Meals, 1994). Improving irrigation water application according to real time soil moisture data has resulted in some of the lowest concentrations of nutrients in percolating waters, confirming that irrigation efficiency is a key factor in reducing leaching of nutrients (United Water Conservation District, 2007).

129. Nitrate in water leaving subsurface drain (“tile”) systems often exceeds drinking water standards and contributes to low-oxygen in marine environments. Denitrification, including the use of wood-chip bioreactor treatment systems, is an effective method of removing nitrate from soil water before it enters subsurface drains (Jaynes, et al., 2006; Starrett, 2009).
130. Agricultural land uses can disrupt the natural vegetation-soil cycles and biota diversity, keeping the soil surface unprotected and vulnerable to erosive forces (wind and rain), which increases the amount of sediments dispersed and transported from agricultural lands into surface water (USEPA, 2003).
131. Agricultural mechanization and tillage of soil and land for bed preparation, crop maintenance and pest control, can destroy the soil structure and degrade the land, which increases the amount of sediment and associated waste constituents discharged into surface water (Fawcett, 2005).
132. Managing uncropped areas, minimizing and protecting bare soil and heavy use areas and unpaved road from concentrated flows of water, and implementing practices to detain or filter sediment and runoff before it leaves agricultural operations are effective ways to reduce soil erosion and capture sediment before it enters waterways, where it can cause water quality impairments downstream (ANR Publications 8124 and 8071).
133. Stormwater runoff from irrigated lands often results in significant erosion and the discharge of sediment, nutrients, and pesticides. Effective erosion control and sediment control management practices include but are not limited to cover crops, filter strips, and furrow alignment to reduce runoff quantity and velocity, hold fine particles in place, and increase filtration to minimize the impacts to water quality (USEPA, 1991). Crops grown using impervious plastic can be particularly problematic as they often result in significantly increased irrigation runoff volumes and velocities in agricultural furrows and ditches that may drain to waters of the State.
134. Education and technical assistance is an important tool in advancing the implementation of new effective management practices that protect and enhance water quality.
135. There are many technical resources available to the agricultural industry to assist farmers in pollution prevention and addressing water quality problems associated with irrigated agriculture. The United States Department of Agriculture - Natural Resources Conservation Service (NRCS), Resource Conservation Districts (RCD), and University of California Cooperative Extension (UCCE) provide non-regulatory technical services and research to promote conservation and address natural resource problems. There are also many non-profit agricultural and commodity-

specific organizations and initiatives that promote sustainable agriculture, and provide education and technical support. Private consulting companies and individual professionals working in the field of environmental and engineering sciences, investigations, site remediation and corrective actions, treatment system design, sampling, and reporting are available to assist the agricultural industry in water quality improvement and achieving compliance with this Order.

136. The State and Regional Water Boards have made over \$600 Million of public grant funds available to address agricultural water quality issues from approximately 2000 – 2011. These funds came from Bond Propositions 13, 40, 50, and 84, and addressed a myriad of water quality projects, watershed protection, and nonpoint source pollution control throughout California. In addition, the State Water Board, in coordination with USEPA, also allocates approximately \$4.5 Million per year in 319(h) program funding to address nonpoint source pollution. The amount of Water Board public grant funds recently awarded in the Central Coast Region for agricultural related projects is more than \$55 Million.

AGRICULTURAL REGULATORY PROGRAM IMPLEMENTATION

137. The Central Coast Water Board is maximizing regulatory effectiveness by identifying and prioritizing actions that address the most significant agricultural water quality problems in the Central Coast Region, including nitrate in groundwater from discharge related to excess fertilizer application, the discharge of waste in agricultural tailwater, surface water toxicity resulting from pesticides, surface water nutrients from fertilizer, increasing salinity, sediment discharge, and degradation of aquatic habitat.
138. The Central Coast Water Board is addressing priority agricultural water quality issues, on a watershed basis in coordination with other Water Board programs and efforts, focused in the most intensive agricultural areas of the region including the Salinas, Pajaro, and Santa Maria watersheds. In addition, Central Coast Water Board staff will assess and track progress towards specific measures of water quality improvement, and adapt to the feedback the tracking provides.
139. The Central Coast Water Board will evaluate compliance of individual Dischargers with the terms and conditions of this Order based on enrollment information, threat of water quality impairment, content of technical reports (including Annual Compliance Document, Farm Plan, Irrigation and Nutrient Management Plan, and Water Quality Buffer Plan), prioritized inspections, and water quality monitoring data. Failure to comply with enrollment requirements may result in enforcement action for individual landowners and operators. In addition to the determination of noncompliance and water quality impairment, the Central Coast Water Board will enforce the conditions of this Order in a manner similar to enforcement of WDRs

and consistent with the State Water Board's Enforcement Policy, focusing on the highest priority water quality issues and most severely impaired waters.

140. The Central Coast Water Board will consider the history of compliance and violations and progress made toward compliance and water quality improvement demonstrated by individual Dischargers when determining potential enforcement actions. In some cases, the Central Coast Water Board may terminate coverage under this Order and require the Discharger to submit a ROWD and comply with the Water Code pursuant to individual WDRs.

PART B. RELEVANT PLANS, POLICIES, AND REGULATIONS

Water Quality Control Plan

The *Water Quality Control Plan for the Central Coast Region* (Basin Plan) was adopted by the Central Coast Water Board in 1975 and is periodically revised. Tables 1A and 1B include a summary of Narrative and Numeric Water Quality Objectives. The Basin Plan is available by contacting the Central Coast Water Board at (805) 549-3147 or by visiting the Central Coast Water Board's website at: http://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/

Other Relevant Plans, Policies, and Regulations

State Water Resources Control Board, Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, October 1968.

State Water Resources Control Board, *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California*, June 1972.

State Water Resources Control Board, Resolution No. 74-43, *Water Quality Control Policy for the Enclosed Bays and Estuaries of California*, May 1974.

State Water Resources Control Board, Resolution No. 88-63, *Sources of Drinking Water Policy*, May 1988. Amended February 1, 2006.

State Water Resources Control Board, *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program*, May 2004.

State Water Resources Control Board, Resolution No. 2004-0063, *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*, December 13, 2004.

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State Water Resources Control Board, *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)*, February 2005

“State Water Resources Control Board, Resolution No. 2008-0070, *Water Quality Control Plan for Enclosed Bays and Estuaries - Part 1 Sediment Quality*, August 25, 2009.

State Water Resources Control Board, *Water Quality Control Plan for Ocean Waters of California (CA Ocean Plan)*, September 2009.

State Water Resources Control Board, Resolution No. 2009-0011, *Recycled Water Policy*, May 20, 2010.

State Water Resources Control Board, *Water Quality Enforcement Policy*, May 20, 2010.

US EPA, *National Toxics Rule*, 40 CFR 131.36, 57 FR 60848, December 1992.

US EPA, *California Toxics Rule*, 40 CFR 131.38, 65 FR 31682, May 2000.

Table 1A. Narrative and Numeric Water Quality Objectives for Surface Water.

<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p style="text-align: center;">BENEFICIAL USE</p>
TOXICITY	
<p>Toxicity <i>(BPGO, III-4)</i></p> <p><i>Narrative Objective:</i> All waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life.</p> <p><i>Indicators of Narrative Objective:</i> Chemical concentrations in excess of toxic levels for aquatic life including but not limited to the following: Chlorpyrifos 0.025 ug/L Diazinon 0.14 ug/L</p> <p><i>(Source: Sipmann and Finlayson 2000)</i></p>	<p>All Surface Waters</p>
TOXICANTS	
Nutrients	
<p>Ammonia, Total (N) <i>(BPSO, Table 3.3)</i></p> <p>>30 mg/L NH₄-N</p>	<p>AGR</p>
<p>Ammonia, Un-ionized <i>(BPGO, III-4)</i></p> <p>0.025 mg/L NH₃ as N</p>	<p>All Surface Waters</p>
<p>Nitrate <i>(a. BPSO, Table 3-2 b. BPSO, Table 3-3)</i></p> <p>a. 10 mg/L NO₃-N b. >30 mg/L NO₃-N</p>	<p>a. MUN b. AGR</p>
Organics	
<p>Chemical Constituents <i>(BPSO, III-5 and Table 3-2)</i></p> <p>Waters shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Article 4, Chapter 15,</p>	<p>MUN</p>

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<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p style="text-align: center;">BENEFICIAL USE</p>
<p>Section 64435, Tables 2 and 3 as listed in Table 3-2.</p>	
<p>Chemical Constituents <i>(BPSO, III-5 and Table 3-3)</i></p> <p>Waters shall not contain concentrations of chemical constituents in amounts which adversely affect the agricultural beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3.</p> <p>In addition, waters used for irrigation and livestock watering shall not exceed concentrations for those chemicals listed in Table 3-4</p>	<p>AGR</p>
<p>Chemical Constituents <i>(BPSO, III-10, Table 3-5, Table 3-6)</i></p> <p>Waters shall not contain concentrations of chemical constituents known to be deleterious to fish or wildlife in excess of the limits listed in Table 3-5 or Table 3-6.</p>	<p>COLD, WARM, MAR</p>
<p>Oil and Grease <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Organic Chemicals <i>(BPSO, III-5 and Table 3-1)</i></p> <p>All inland surface waters, enclosed bays, and estuaries shall not contain concentrations of organic chemicals in excess of the limiting concentrations set forth in California Code of Regulations, Title 22, Chapter 15, Article 5.5, Section 64444.5, Table 5 and listed in Table 3-1.</p>	<p>MUN</p>
<p>Other Organics <i>(BPGO, III-3)</i></p> <p>Phenol <i>(BPSO, III-5)</i></p> <p>Waters shall not contain organic substances in concentrations greater than the following:</p>	<p>All Surface Waters</p>

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SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")	BENEFICIAL USE
Methylene Blue Activated Substances < 0.2 mg/L Phenols < 0.1 mg/L Phenol (MUN) ≤ 1.0 µg/L PCBs < 0.3 µg/L Phthalate Esters < 0.002 µg/L	
Metals	
Chromium <i>(BOSP, III-12)</i> ≤ 0.01 mg/L	SHELL
Cadmium <i>(BPGO, III-11)</i> ≤ 0.03 mg/L in hard water or ≤ 0.004 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO ₃).	COLD, WARM
Chromium <i>(BPGO, III-11)</i> ≤ 0.05 mg/L	COLD, WARM
Copper <i>(BPGO, III-11)</i> ≤ 0.03 mg/L in hard water or ≤ 0.01 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO ₃).	COLD, WARM
Lead <i>(BPGO, III-11)</i> ≤ 0.03 mg/L	COLD, WARM
Mercury <i>(BPGO, III-11)</i> ≤ 0.0002 mg/L	COLD, WARM
Nickel <i>(BPGO, III-11)</i> ≤ 0.4 mg/L in hard water or	COLD, WARM

<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled “narrative”)</p>	<p style="text-align: center;">BENEFICIAL USE</p>
<p>≤0.1 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	
<p>Zinc <i>(BPGO, III-11)</i></p> <p>≤ 0.2 mg/L in hard water or ≤0.004 mg/L in soft water (Hard water is defined as water exceeding 100 mg/L CaCO₃).</p>	<p>COLD, WARM</p>
CONVENTIONALS	
<p>Biostimulatory Substances <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.</p> <p><i>Indicators of Narrative Objective:</i> Indicators of biostimulation include chlorophyll-a, dissolved oxygen, phosphorous, and nitrate.</p> <p><i>(Source: Central Coast Water Board. April 2009. Central Coast Ambient Monitoring Program Technical Paper: Interpreting Narrative Objectives for Biostimulatory Substances Using the Technical Approach for Developing California Nutrient Numeric Endpoints)</i></p>	<p>All Surface Waters</p>
<p>Boron <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 0.2 – 0.5 mg/L.</p>	<p>Specific Surface Waters</p>
<p>Chloride <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 150-1400 mg/L.</p>	<p>Specific Surface Waters</p>
<p>Color <i>(BPGO, III-3)</i></p> <p>Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is</p>	<p>All Surface Waters</p>

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<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p style="text-align: center;">BENEFICIAL USE</p>
greater.	
<p>Conductivity <i>(BPSO, III-8, Table 3-3)</i></p> <p>>3.0 mmho/cm</p>	AGR
<p>Dissolved Oxygen (DO) <i>(BPGO, III-2)</i></p> <p>Mean annual DO \geq 7.0 mg/L Minimum DO \geq 5.0 mg/L</p>	All Ocean Waters
<p>Dissolved Oxygen <i>(BPGO, III-4)</i></p> <p>For waters not mentioned by a specific beneficial use: DO \geq 5.0 mg/L DO Median values \geq 85 percent saturation</p>	All Surface Waters
<p>Dissolved Oxygen <i>(BPSO, III-10)</i></p> <p>DO \geq 7.0 mg/L</p>	COLD, SPWN
<p>Dissolved Oxygen <i>(BPSO, III-10)</i></p> <p>DO \geq 5.0 mg/L</p>	WARM
<p>Floating Material <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.</p>	All Surface Waters
<p>pH <i>(BPSO, III-10)</i></p> <p>The pH value shall not be depressed below 7.0 nor above 8.5.</p> <p>Changes in normal ambient pH levels shall not exceed 0.5 in fresh waters.</p>	COLD, WARM,
<p>pH <i>(BPSO, III-10)</i></p>	MAR

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<p>The pH value shall not be depressed below 7.0 or raised above 8.5². Changes in normal ambient pH levels shall not exceed 0.2 units.</p>	
<p>pH <i>(BPSO, III-5)</i></p> <p>The pH value shall not be depressed below 6.5 nor above 8.3.</p>	<p>MUN, REC-1, REC-2, AGR</p>
<p>Settleable Material <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.</p>	<p>All Surface Waters</p>
<p>Sediment <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Sodium <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 20-250 mg/L.</p>	
<p>Sulfate <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 10-700 mg/L.</p>	
<p>Suspended Material <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Taste and Odor <i>(BPGO, III-3)</i></p>	<p>All Surface Waters</p>

<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled “narrative”)</p>	<p style="text-align: center;">BENEFICIAL USE</p>
<p><i>Narrative Criteria:</i> Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.</p>	
<p>Temperature <i>(BPGO, III-3)</i></p> <p><i>Narrative Criteria:</i> Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.</p>	<p>All Surface Waters</p>
<p>Temperature <i>(BPGO, III-4)</i></p> <p><i>Narrative Objective:</i> Natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.</p> <p><i>a) Indicators of Narrative Objective for COLD Habitat:</i></p> <p>Coho December - April 48-54 °F 7-DAM³ 56-58 °F 1-DAM</p> <p>May – November 57-63 °F 7-DAM 68-70 °F 1-DAM</p> <p>Steelhead December - April 55-57 °F 7-DAM 56-58 °F 1-DAM</p> <p>May – November 56-63 °F 7-DAM 70-73 °F 1-DAM</p> <p><i>(Source: Hicks 2000)</i></p> <p><i>b) Indicators of Narrative Objective for WARM Habitat:</i></p> <p>Stickleback Upper optimal limit = 75 °F (This temperature is also the low end of the upper</p>	<p>All Surface Waters</p> <p>a) COLD</p> <p>b) WARM</p>

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<p style="text-align: center;">SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled "narrative")</p>	<p style="text-align: center;">BENEFICIAL USE</p>
<p>lethal limit for steelhead) <i>(Source: Moyle 1976)</i></p> <p>Note: 7-DAM refers to the rolling arithmetic average of seven consecutive daily maximum temperatures. 1-DAM refers to the highest daily maximum temperature.</p>	
<p>Temperature <i>(BPSO, III-10)</i></p> <p>At no time or place shall the temperature be increased by more than 5°F above natural receiving water temperature.</p>	<p>COLD, WARM</p>
<p>Total Dissolved Solids (TDS) <i>(BPSO, III-13)</i></p> <p>Waterbody specific. Median values, shown in Table 3-7 for surface waters. Sub-Basins Objectives range from 10-250 mg/L.</p>	
<p>Turbidity <i>(BPGO, III-3)</i></p> <p><i>Narrative Objective:</i> Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.</p> <p><i>Indicators of Narrative Objective:</i> Turbidity greater than 25 NTU's causes reduction in juvenile salmonid growth due to interference with their ability to find food.</p> <p><i>(Source: Central Coast Water Board. April 2009. Clean Water Act Sections 305(b) and 303(d) Integrated Report for the Central Coast Region; Sigler et al. 1984. Effects of chronic turbidity on density and growth of steelheads and coho salmon. Transactions of the American Fisheries Society 113:142-150)</i></p>	<p>All Surface Waters</p>
<p>PATHOGEN INDICATORS</p>	
<p>Fecal Coliform <i>(BOSP, III-5)</i></p> <p>Log mean 200 MPN/100mL. Max 400 MPN/100mL.</p>	<p>REC-1</p>
<p>Fecal Coliform <i>(BOSP, III-10)</i></p>	<p>REC-2</p>

SURFACE WATER QUALITY OBJECTIVE <i>(Source of WQO-Page in Basin Plan)</i> (Objectives are numeric unless labeled “narrative”)	BENEFICIAL USE
Log mean 2000 MPN/100mL. Max 4000 MPN/100mL.	
<i>E. coli</i> (USEPA) Max 235 MPN/100 mL	REC-1
Total Coliform (BOSP, III-12) Median \leq 70/100 MPN/100mL Max 230 MPN/100 mL	SHELL

Table 1B. Narrative and Numeric Water Quality Objectives for Groundwater.

GROUNDWATER QUALITY OBJECTIVE <i>(Source of WQO-Page in BP)</i> (Objectives are numeric unless labeled “narrative”)	BENEFICIAL USE
TOXICANTS	
Chemical Constituents (BPSO, III-14) Groundwaters shall not contain concentrations of chemical constituents in excess of federal or state drinking water standards.	MUN
Chemical Constituents (BPSO, III-14 and Tables 3-3 and 3-4) Groundwaters shall not contain concentrations of chemical constituents in amounts that adversely affect such beneficial use. Interpretation of adverse effect shall be as derived from the University of California Agricultural Extension Service guidelines provided in Table 3-3. In addition, water used for irrigation and livestock watering shall not exceed the concentrations for those chemicals listed in Table 3-4.	AGR
Total Nitrogen (BPSO, III-15 and Table 3-8) Groundwater Basin Objectives for Median values range from	Specific Groundwater Basins

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GROUNDWATER QUALITY OBJECTIVE <i>(Source of WQO-Page in BP)</i> (Objectives are numeric unless labeled "narrative")	BENEFICIAL USE
1-10 mg/L as N.	
CONVENTIONALS	
Total Dissolved Solids (TDS) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 100-1500 mg/L TDS.	Specific Groundwater Basins
Chloride (Cl) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 20-430 mg/L Cl.	Specific Groundwater Basins
Sulfate (SO₄) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 10-1025 mg/L SO ₄ .	Specific Groundwater Basins
Boron (B) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 0.1-2.8 mg/L B.	Specific Groundwater Basins
Sodium (Na) <i>(BPSO, III-15)</i> Groundwater Basin Objectives for median values range from 10-730 mg/L.	Specific Groundwater Basins

Acronyms:

BP = Basin Plan or Water Quality Control Plan for the Central Coast Region
 BPGO = Basin Plan General Objective
 BPSO = Basin Plan Specific Objective related to a designated beneficial use
 TMDL = Specific Objective related to an adopted Total Maximum Daily Load
 WDR = Waste Discharge Requirements
 SB = State Board established guideline
 USEPA = US Environmental Protection Agency
 CCAMP = Central Coast Ambient Monitoring Program
 SWAMP = Surface Water Ambient Monitoring Program

MCL = Maximum Contaminant Level, California drinking water standards set forth in California Code of Regulations, Title 22.

NTU = Nephelometric Turbidity Unit

mg/L = milligram/Liter

MPN = Most Probable Number

PART C. DEFINITIONS

The following definitions apply to Order No. R3-2012-0011 and MRP Order No. R3-2012-0011-01, MRP Order No. R3-2012-0011-02, and MRP Order No. R3-2012-0011-03 as related to discharges of waste from irrigated lands. The terms are arranged in alphabetical order. All other terms not explicitly defined for the purposes of this Order and Monitoring and Reporting Program shall have the same definitions as prescribed by California Water Code Division 7 or are explained within the Order or the MRP documents.

1. Anti-degradation. The State Water Board established a policy to maintain high quality waters of the State - Resolution 68-16 "*Statement of Policy with Respect to Maintaining High Quality Waters in California*." Resolution 68-16 requires existing high quality water to be maintained until it has been demonstrated that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of water, and will not result in water quality less than that prescribed in the policies. Regional Water Boards are required to ensure compliance with Resolution 68-16. The Central Coast Water Board must require discharges to be subject to *best practicable treatment or control* of the discharge necessary to avoid pollution or nuisance and to maintain the highest water quality consistent with maximum benefit to the people of the State. Resolution 68-16 has been approved by the USEPA to be consistent with the federal anti-degradation policy.
2. Aquatic Habitat. The physical, chemical, and biological components and functions of streams and lakes, including riparian areas and wetlands and their buffer zones.
3. Aquifer. A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. (see also uppermost aquifer).
4. Back flow Prevention. Back flow prevention devices are installed at the well or pump to prevent contamination of groundwater or surface water when fertilizers, pesticides, fumigants, or other chemicals are applied through an irrigation system. Back flow prevention devices used to comply with this Order must be those approved by USEPA, DPR, CDPH, or the local public health or water agency.

5. Basin Plan. The Basin Plan is the Central Coast's Region Water Quality Control Plan. The Basin Plan describes how the quality of the surface and groundwater in the Central Coast Region should be managed to provide the highest water quality reasonably possible. The Basin Plan includes beneficial uses, water quality objectives, and a program of implementation.
6. Beneficial Uses. The Basin Plan establishes the beneficial uses to be protected in the Central Coast Region. Beneficial uses for surface water and groundwater are divided into twenty-four standard categories identified below. The following beneficial uses have been identified in waterbodies within the Region:
 - agricultural supply (AGR)
 - aquaculture (AQUA)
 - areas of special biological significance (ASBS)
 - cold freshwater habitat (COLD)
 - commercial and sportfishing (COMM)
 - estuarine habitat (EST)
 - freshwater replenishment (FRESH)
 - groundwater recharge (GWR)
 - hydropower generation (POW)
 - industrial process supply (PRO)
 - industrial service supply (IND)
 - inland saline water habitat (SAL)
 - marine habitat (MAR)
 - municipal and domestic supply (MUN)
 - migration of aquatic organisms (MIGR)
 - navigation (NAV)
 - non-contact recreation (REC2)
 - preservation of biological habitats of special significance (BIOL)
 - rare, threatened or endangered species (RARE)
 - shellfish harvesting (SHELL)
 - spawning, reproduction, and development (SPWN)
 - warm freshwater habitat (WARM)
 - water contact recreation (REC1)
 - wildlife habitat (WILD)
7. Chemigation. The application of pesticides, fertilizers, fumigants or other chemicals through an irrigation system.
8. Commercial. Irrigated lands producing commercial crops are those operations that have one or more of the following characteristics:
 - a. The landowner or operator holds a current Operator Identification Number/Permit Number for pesticide use reporting;
 - b. The crop is sold, including but not limited to (1) an industry cooperative, (2) harvest crew/company, or (3) a direct marketing location, such as Certified Farmers Markets;.
 - c. The federal Department of Treasury Internal Revenue Service form 1040 Schedule F Profit or Loss from Farming is used to file federal taxes.
9. Concentration. The relative amount of a substance mixed with another substance. An example is 5 parts per million (ppm) of nitrogen in water or 5 mg/L.

10. Crop Types with High Potential to Discharge Nitrogen to Groundwater. Based on the Groundwater Pollution Nitrate Hazard Index developed by the University of California Division of Agriculture and Natural Resources (UCANR), the following crop types present the greatest risk for nitrogen loading to groundwater: beet, broccoli, cabbage, cauliflower, celery, Chinese cabbage (napa), collard, endive, kale, leek, lettuce (leaf and head), mustard, onion (dry and green), spinach, strawberry, pepper (fruiting), and parsley.
11. Discharge. A release of a waste to waters of the State, either directly to surface waters or through percolation to groundwater. Wastes from irrigated agriculture include but are not limited to earthen materials (soil, silt, sand, clay, and rock), inorganic materials (metals, plastics, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.) and organic materials such as pesticides.
12. Discharger. The owner and operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater. See also Responsible Party.
13. Discharges of Waste from Irrigated Lands. Surface water and groundwater discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, runoff resulting from frost control, and/or operational spills containing waste.
14. Ephemeral Stream. A channel that holds water during and immediately after rain events.
15. Erosion. The wearing away of land surface by wind or water, intensified by land-clearing practices related to farming, residential or industrial development, road building, or logging.
16. Erosion and Sediment Control Practices. Practices used to prevent and reduce the amount of soil and sediment entering surface water in order to protect or improve water quality.
17. Environmental Justice. Providing equal and fair access to a healthy environment for communities of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies; and proactive efforts to take into account existing

environmental injustices and to protect from new or additional environmental hazards and inequitable environmental burdens;

18. Exceedance. A reading using a field instrument or a detection by a California State-certified analytical laboratory where the detected result is above an applicable water quality standard for the parameter or constituent. For toxicity tests, an exceedance is a result that is statistically lower than the control sample test result.
19. Farm or Ranch. For the purposes of this Order, a tract of land where commercial crops are produced or normally would have been produced. Individual farms/ranches typically have a similar farm/ranch manager, operator or landowner(s) and are categorized by farm size, primary output(s), and/or geographic location.
20. Farm Water Quality Management Plan (Farm Plan). The Farm Plan is a document that contains, at a minimum, identification of management practices that are being or will be implemented to protect and improve water quality by addressing irrigation management, pesticide management, nutrient management, salinity management, sediment and erosion control, and aquatic habitat protection. Farm Plans also contain a schedule for the effective implementation of management practices and verification monitoring to determine compliance with the requirements of this Order (schedules, milestones, effluent limits, etc.). Consistent with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands adopted by the Board in July 2004 (Order No. R3-2004-0117), this Order requires Dischargers to develop and implement a Farm Plan focused on the priority water quality issues associated with a specific operation and the priority water quality issues associated with a specific watershed or subwatershed.
21. Fertigation. The application of fertilizers through an irrigation system.
22. Freshwater Habitat. Uses of water that support cold or warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
23. Groundwater. The supply of water found beneath the earth's surface, usually in aquifers, which supply wells and springs.
24. Groundwater Protection Practices. Management practices designed to reduce or eliminate transport of nitrogen, pesticides, and other waste constituents into groundwater.
25. Integrated Pest Management Program (IPM). A pest management strategy that focuses on long-term prevention or suppression of pest problems through a

combination of techniques such as encouraging biological control, use of resistant varieties, or adoption of alternative cultivating, pruning, or fertilizing practices or modification of habitat to make it incompatible with pest development. Pesticides are used only when careful field monitoring indicates they are needed according to pre-established guidelines or treatment thresholds.

26. Intermittent Stream. A stream that holds water during wet portions of the year.
27. Irrigated Lands. For the purpose of this Order, irrigated lands include lands where water is applied for the purpose of producing commercial crops and include, but are not limited to, land planted to row, vineyard, field and tree crops as well as commercial nurseries, nursery stock production and greenhouse operations with soil floors, that do not have point-source type discharges, and are not currently operating under individual Waste Discharge Requirements (WDRs). Lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops, must also obtain coverage under this Order.
28. Irrigation. Applying water to land areas to supply the water and nutrient needs of plants.
29. Irrigation Management Practices. Management practices designed to improve irrigation efficiency and reduce the amount of irrigation return flow or tailwater, and associated degradation or pollution of surface and groundwater caused by discharges of waste associated with irrigated lands.
30. Irrigation Runoff or Return Flow. Surface and subsurface water that leaves the field following application of irrigation water. See also, Tailwater.
31. Irrigation System Distribution Uniformity. Irrigation System Distribution Uniformity is a measure of how uniformly irrigation water is applied to the cropping area, expressed as a percentage. A nonuniform distribution can deprive portions of the crop of sufficient irrigation water, and can result in the excessive irrigation leading to water-logging, plant injury, salinization, irrigation runoff and transport of chemicals to surface water and groundwater.
32. Landowner. An individual or entity who has legal ownership of a parcel(s) of land. For the purposes of this Order, the landowner is responsible for ensuring compliance with this Order and for any discharge of waste occurring on or from the property.
33. Limited Resource Farmer. A Limited Resource Farmer is defined by the U.S. Dept. of Agriculture (USDA) as:

- a. A person with direct or indirect gross farm sales not more than the current indexed value (determined by USDA) in each of the previous 2 years, and
- b. A person who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years.

The USDA's Limited Resource Farmer "Self Determination Tool" is available at:
<http://www.lrftool.sc.egov.usda.gov/DeterminationTool.aspx?fyYear=2012>

34. Load. The concentration or mass of a substance discharged over a given amount of time, for example 10 mg/day or 5 Kg/day, respectively.
35. Monitoring. Sampling and analysis of receiving water quality conditions, discharge water quality, aquatic habitat conditions, effectiveness of management practices, and other factors that may affect water quality conditions to determine compliance with this Order or other regulatory requirements. Monitoring includes but is not limited to: surface water or groundwater sampling, on-farm water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in in-stream water quality or discharges from sites, inspections of operations, management practice implementation and effectiveness monitoring, maintenance of on-site records and management practice reporting.
36. Nitrate Hazard Index. In 1995, the University of California Center for Water Resources (WRC) developed the Nitrate Groundwater Pollution Hazard Index (Nitrate Hazard Index) (Wu, 2005). The purpose of the Nitrate Hazard Index is to identify agricultural fields with the highest vulnerability for nitrate pollution to groundwater, based on soil, crop, and irrigation practices. The hazard index number can range from 1 through 80 with the hazard increasing with increasing hazard index number. The WRC states that an index number greater than 20 indicates greater risk for nitrate pollution to groundwater and should receive careful attention.

http://ucanr.org/sites/wrc/Programs/Water_Quality/Nitrate_Groundwater_Pollution_Hazard_Index/
37. Nitrate Loading Risk Factor. A measure of the relative risk of loading nitrate to groundwater based on the following criteria a) Nitrate Hazard Index Rating by Crop Type, b) Irrigation System Type, and c) Irrigation Water Nitrate Concentration.
38. Non-point Source Pollution (NPS). Diffuse pollution sources that are generally not subject to NPDES permitting. The wastes are generally carried off the land by runoff. Common non-point sources are activities associated with agriculture, timber harvest, certain mining, dams, and saltwater intrusion.

39. Non-Point Source Management Measures. To combat NPS pollution, the State Water Board NPS Program adopted management measures as goals for the reduction of polluted runoff generated from five major categories, including agriculture. Management measures address the following components for agriculture: Erosion and sediment control; facility wastewater and runoff from confined animal facilities; nutrient management; pesticide management; irrigation water management; grazing management, and groundwater protection.
40. Non-Point Source Management Practices. Methods or practices selected by entities managing land and water to achieve the most effective, practical means of preventing or reducing pollution from diffuse sources, such as wastes carried off the landscape via urban runoff, excessive hill, slope or streambed and bank erosion, etc. Management Practices include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures. Management Practices can be applied before, during, and after pollution-causing activities to prevent, reduce, or eliminate the introduction of wastes into receiving waters.
41. Nutrient. Any substance assimilated by living things that promotes growth.
42. Nutrient Management Practices. Management practices designed to reduce the nutrient loss from agricultural lands, which occur through edge-of-field runoff or leaching from the root zone.
43. Operator. Person responsible for or otherwise directing farming operations in decisions that may result in a discharge of waste to surface water or groundwater, including, but not limited to, a farm/ranch manager, lessee or sub-lessee. The operator is responsible for ensuring compliance with this Order and for any discharge of waste occurring on or from the operation.
44. Operation. A distinct farming business, generally characterized by the form of business organization, such as a sole proprietorship, partnership, corporation, and/or cooperative. A farming operation may be associated with one to many individual farms/ranches.
45. Operational Spill. Irrigation water that is diverted from a source such as an irrigation well or river, but is discharged without being delivered to or used on an individual field.
46. Perennial Stream. A stream that holds water throughout the year.
47. Pesticide Management Practices. Management practices designed to reduce or eliminate pesticide runoff into surface water and groundwater.

48. Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which wastes are or may be discharged.
49. Pollutant. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
50. Public Water System. A system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following: (1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system; (2) Any collection or pretreatment storage facilities not under, the control of the operator that are used primarily in connection, with the system; (3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.
51. Quality of the Water. The “chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use” as defined in the California Water Code Sec. 13050(g).
52. Receiving Waters. Surface waters or groundwater that receive or have the potential to receive discharges of waste from irrigated lands.
53. Requirements of Applicable Water Quality Control Plans. Water quality objectives, prohibitions, Total Maximum Daily Load (TMDL) Implementation Plans, or other requirements contained in the Basin Plan, as adopted by the Central Coast Water Board and approved according to applicable law.
54. Responsible Party. The owner and operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach waters of the State and affect the quality of any surface water or groundwater. See also Discharger.
55. Riparian Area. Vegetation affected by the surface water or groundwater of adjacent perennial or intermittent streams, lakes or other waterbodies. Vegetation species are distinctly different from adjacent areas or are similar to adjacent areas

but exhibit more vigorous or robust growth forms indicative of increased soil moisture. Riparian areas may also include floodplains. Floodplains are critical areas for retaining floodwaters, allowing for sediment deposition and the natural movement of riparian areas, as well as space for colonization of new riparian and wetland vegetation necessary due to natural meandering. (Dall et. al. 1997, p.3)

56. Source of Drinking Water. Any water designated as municipal or domestic supply (MUN) in a Regional Water Board Basin Plan and/or as defined in SWRCB Resolution No. 88-63.
57. Stormwater. Stormwater runoff, snow melt runoff, and surface runoff and drainage, as defined in 40 CFR 122.26(b)(13).
58. Subsurface Drainage. Water generated by installing drainage systems to lower the water table below irrigated lands. The drainage can be generated by subsurface drainage systems, deep open drainage ditches or drainage wells.
59. Surface Runoff. Precipitation, snow melt, or irrigation water in excess of what can infiltrate the soil surface and be stored in small surface depressions; a major transporter of non-point source wastes in rivers, streams, and lakes.
60. Tailwater. Runoff of irrigation water from the lower end of an irrigated field. See also, Irrigation Runoff or Return Flow.
61. Tile Drains. Subsurface drainage which removes excess water from the soil profile, usually through a network of perforated tile tubes installed 2 to 4 feet below the soil surface. This lowers the water table to the depth of the tile over the course of several days. Drain tiles allow excess water to leave the field. Once the water table has been lowered to the elevation of the tiles, no more water flows through the tiles. The Central Coast Water Board anticipates evaluating longer timeframes necessary to address tile-drain discharges, for inclusion in a subsequent Agricultural Order.
62. Total Maximum Daily Load (TMDL). The condition of an impaired surface waterbody (on the List of Impaired Waterbodies) that limits the amount of pollution that can enter the waterbody without adversely affecting its beneficial uses, usually expressed as a concentration (e.g., mg/L) or mass (e.g., kg); TMDLs are proportionally allocated among dischargers to the impaired surface waterbody.
63. Total Nitrogen Applied. Total nitrogen applied includes nitrogen in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water; Reported in units of nitrogen per crop, per acre for each farm/ranch or nitrate loading risk unit;

64. Uppermost Aquifer. The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer.
65. Waste. “Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal” as defined in the California Water Code Sec. 13050(d). “Waste” includes irrigation return flows and drainage water from agricultural operations containing materials not present prior to use. Waste from irrigated agriculture includes *earthen materials* (such as soil, silt, sand, clay, rock), *inorganic materials* (such as metals, salts, boron, selenium, potassium, nitrogen, phosphorus), and *organic materials* such as pesticides.
66. Water Quality Buffer. A water quality protection zone surrounding perennial or intermittent channels, including adjacent wetlands (as defined by the Clean Water Act), with riparian vegetation and/or riparian functions that support beneficial uses and protect water quality.
67. Water Quality Control. The “regulation of any activity or factor which may affect the quality of the waters of the State and includes the prevention and correction of water pollution and nuisance” as defined in the California Water Code Sec. 13050(i).
68. Water Quality Criteria. Levels of water quality required under Sec. 303(c) of the Clean Water Act that are expected to render a body of water suitable for its designated uses. Criteria are based on specific levels of pollutants that would make the water harmful if used for drinking, swimming, farming, fish production, or industrial processes. The *California Toxics Rule* adopted by USEPA in April 2000, sets numeric Water Quality Criteria for non-ocean waters of California for a number of pollutants. See also, Water Quality Objectives.
69. Water Quality Objectives. “Limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specified area,” as defined in Sec. 13050(h) of the California Water Code. Water Quality Objectives may be either numerical or narrative and serve as Water Quality Criteria for purposes of Section 303 of the Clean Water Act. Specific Water Quality Objectives relevant to this Order are identified in this Appendix A in Tables 1A and 1B.
70. Water Quality Standard. Provisions of State or Federal law that consist of the beneficial designated uses or uses of a waterbody, the numeric and narrative

water quality criteria that are necessary to protect the use or uses of that particular waterbody, and an anti-degradation statement. Water quality standards includes water quality objectives in the Central Coast Water Board's Basin Plan, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by USEPA, and/or water quality objectives in other applicable State Water Board plans and policies. For groundwater with the beneficial use of municipal or domestic water supply, the applicable drinking water standards are those established by the United States Environmental Protection Agency (USEPA) or California Department of Public Health (CDPH), whichever is more stringent. Under Sec. 303 of the Clean Water Act, each State is required to adopt water quality standards.

71. Waters of the State. "Any surface water or groundwater, including saline waters, within the boundaries of the State" as defined in the California Water Code Sec. 13050(e), including all waters within the boundaries of the State, whether private or public, in natural or artificial channels, and waters in an irrigation system.
72. Wetland. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (40 CFR 230.3(t)).
73. Wildlife Habitat. Uses of water that support terrestrial or wetland ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats or wetlands, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.

EXHIBIT “B”

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER NO. R3-2012-0011-01**

TIER 1

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-01 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 1 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 1:

Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
Part 2: Groundwater Monitoring and Reporting;

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements

based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 1 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 4.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g., the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.
3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain

discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;
 - g. Monitoring schedule, including description and frequencies of monitoring events;
 - h. Description of data analysis methods;
6. The QAPP must include receiving water and site-specific information, project organization and responsibilities, and quality assurance components of the MRP. The QAPP must also include the laboratory and field requirements to be used for analyses and data evaluation. The QAPP must contain adequate detail for project and Water Board staff to identify and assess the technical and quality objectives, measurement and data acquisition methods, and limitations of the data generated under the surface receiving water quality monitoring. All sampling and laboratory methodologies and QAPP content must be consistent with U.S. EPA

methods, State Water Board's Surface Water Ambient Monitoring Program (SWAMP) protocols and the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). Following U.S. EPA guidelines¹ and SWAMP templates², the receiving water quality monitoring QAPP must include the following minimum required components:

- a. Project Management. This component addresses basic project management, including the project history and objectives, roles and responsibilities of the participants, and other aspects.
 - b. Data Generation and Acquisition. This component addresses all aspects of project design and implementation. Implementation of these elements ensures that appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, and quality control activities are employed and are properly documented. Quality control requirements are applicable to all the constituents sampled as part of the MRP, as described in the appropriate method.
 - c. Assessment and Oversight. This component addresses the activities for assessing the effectiveness of the implementation of the project and associated QA and QC activities. The purpose of the assessment is to provide project oversight that will ensure that the QA Project Plan is implemented as prescribed.
 - d. Data Validation and Usability. This component addresses the quality assurance activities that occur after the data collection, laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.
7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
 8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring

¹ USEPA. 2001 (2006) USEPA Requirements for Quality Assurance Project Plans (QA/R-5) Office of Environmental Information, Washington, D.C. USEPA QA/R-5

² http://waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa

parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual dischargers. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link: <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of Dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring

data must be compared to existing numeric and narrative water quality objectives.

13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing of the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality

monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report electronically, in a format specified by the Executive Officer, including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;
 - o. Electronic data submitted in a SWAMP/CCAMP comparable format;
 - p. Sampling and analytical methods used;
 - q. Copy of chain-of-custody forms;
 - r. Field data sheets, signed laboratory reports, laboratory raw data;
 - s. Associated laboratory and field quality control samples results;
 - t. Summary of Quality Assurance Evaluation results;
 - u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
 - v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
 - w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A. and Part 2.B. apply to Tier 1 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 4.

A. Individual Groundwater Monitoring

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Dischargers must conduct two rounds of monitoring groundwater wells over a period of one year, one sample collected during spring (March/April) and one collected during fall (September/October). The first round of monitoring must be completed by October 2012. These two rounds of monitoring must be repeated every 5 years. As an alternative to groundwater monitoring requirements, where existing groundwater data is available, Dischargers may submit the following for Executive Officer approval:
 - a. Existing groundwater quality data for individual farms/ranches that meet the following criteria: 1) at least one groundwater well for an individual farm/ranch, 2) a minimum of two samples collected for each well within the last five years, and 3) samples analyzed for nitrate using U.S. EPA approved analytical methods.
 - b. Reference or citation of local groundwater quality monitoring study that includes data collected within the last 5 years and documents that local groundwater quality in the uppermost aquifer does not exceed drinking water standards.
4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In

cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.

5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link : <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs, must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal. Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the

individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

1. **By October 1, 2013**, Dischargers must submit groundwater monitoring results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

PART 3. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer. A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment”.

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

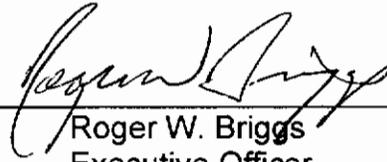
1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.

MRP NO. R3-2012-0011-01 (TIER 1)
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-12-



Roger W. Briggs
Executive Officer

March 15, 2012

Date

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River (above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ³	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
<u>WATER COLUMN SAMPLING</u>		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea – <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term
Carbaryl	0.05	"

MRP NO. R3-2012-0011-01 (TIER 1)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO ₃)	1	"
Total Organic Carbon (ug/L)	0.6	"

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCCA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;

NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Sampling Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		µS/cm
Total Dissolved Solids	10		mg/L
Total Alkalinity as CaCO ₃		EPA Method 310.1 or 310.2	
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0	General Anions EPA Method 300 or EPA Method 353.2	
Chloride	0.1		
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater monitoring and laboratory analysis.

³The MRP allows analysis of “nitrate plus nitrite” to represent nitrate concentrations. The “nitrate plus nitrite” analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃.

⁴Dischargers may use alternative analytical methods approved by EPA.

bgs – below ground surface; RL – Reporting Limit; µS/cm – micro siemens per centimeter

Table 4. Tier 1 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (<i>individually or through cooperative monitoring program</i>)	Within three months
Initiate surface receiving water quality monitoring (<i>individually or through cooperative monitoring program</i>)	Within six months
Submit surface receiving water quality monitoring data (<i>individually or through cooperative monitoring program</i>)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (<i>individually or through cooperative monitoring program</i>)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
Submit groundwater monitoring results	October 1, 2013

¹Dates are relative to adoption of this Order, unless otherwise specified.

EXHIBIT “C”

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER NO. R3-2012-0011-02**

TIER 2

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-02 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 2 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 2:

- Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
- Part 2: Groundwater Monitoring and Reporting;
Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting
(*required for subset of Tier 2 Dischargers if farm/ranch has high nitrate loading risk to groundwater*);
- Part 3: Annual Compliance Form;
- Part 4: Photo Monitoring
(*required for subset of Tier 2 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of the individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 2 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 5.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g. the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.

3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;
 - g. Monitoring schedule, including description and frequencies of monitoring events;
 - h. Description of data analysis methods;

6. The QAPP must include receiving water and site-specific information, project organization and responsibilities, and quality assurance components of the MRP. The QAPP must also include the laboratory and field requirements to be used for analyses and data evaluation. The QAPP must contain adequate detail for project and Water Board staff to identify and assess the technical and quality objectives, measurement and data acquisition methods, and limitations of the data generated under the surface receiving water quality monitoring. All sampling and laboratory methodologies and QAPP content must be consistent with U.S. EPA methods, State Water Board's Surface Water Ambient Monitoring Program (SWAMP) protocols and the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP). Following U.S. EPA guidelines¹ and SWAMP templates², the receiving water quality monitoring QAPP must include the following minimum required components:
- a. Project Management. This component addresses basic project management, including the project history and objectives, roles and responsibilities of the participants, and other aspects.
 - b. Data Generation and Acquisition. This component addresses all aspects of project design and implementation. Implementation of these elements ensures that appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, and quality control activities are employed and are properly documented. Quality control requirements are applicable to all the constituents sampled as part of the MRP, as described in the appropriate method.
 - c. Assessment and Oversight. This component addresses the activities for assessing the effectiveness of the implementation of the project and associated QA and QC activities. The purpose of the assessment is to provide project oversight that will ensure that the QA Project Plan is implemented as prescribed.
 - d. Data Validation and Usability. This component addresses the quality assurance activities that occur after the data collection, laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.

¹ USEPA. 2001 (2006) USEPA Requirements for Quality Assurance Project Plans (QA/R-5) Office of Environmental Information, Washington, D.C. USEPA QA/R-5

² http://waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa

7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual discharges. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods

and reporting limits indicated. Certified laboratories can be found at the web link: <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring data must be compared to existing numeric and narrative water quality objectives.
13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report, electronically, in a format specified by the Executive Officer including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;
 - o. Laboratory data submitted electronically in a SWAMP/CCAMP comparable format;
 - p. Sampling and analytical methods used;

- q. Copy of chain-of-custody forms;
- r. Field data sheets, signed laboratory reports, laboratory raw data;
- s. Associated laboratory and field quality control samples results;
- t. Summary of Quality Assurance Evaluation results;
- u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
- w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A., Part 2.B., and Part 2.C. apply to Tier 2 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 5.

A. Individual Groundwater Sampling

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Dischargers must conduct two rounds of monitoring groundwater wells over a period of one year, one sample collected during spring (March/April) and one collected during fall (September/October). The first round of monitoring must be completed by October 2012. These two rounds of sampling must be repeated every 5 years. As an alternative to groundwater monitoring requirements, where existing groundwater data is available, Dischargers may submit the following for Executive Officer approval:
 - a. Existing groundwater quality data for individual farms/ranches that meet the following criteria: 1) at least one groundwater well for an individual farm/ranch, 2) a minimum of two samples collected for

- each well within the last five years, and 3) samples analyzed for nitrate using U.S. EPA approved analytical methods.
- b. Reference or citation of local groundwater quality monitoring study that includes data collected within the last 5 years and documents that local groundwater quality in the uppermost aquifer does not exceed drinking water standards.
4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.
 5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link below:
<http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
 6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters

listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal. Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

- 1. By October 1, 2013**, Dischargers must submit groundwater sampling results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

C. Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting

1. Tier 2 Dischargers must calculate the nitrate loading risk factor for each ranch/farm included in their operations. The nitrate loading risk factor is a measure of the relative risk of loading nitrate to groundwater. Tier 2 Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the highest risk activity existing at each ranch/farm. For example, if a Discharger uses both sprinkler and drip irrigation on the same crop, they must use the irrigation type "sprinkler" in the nitrate loading risk calculation. To calculate nitrate loading risk, Tier 2 Dischargers must use the criteria and methodology described in Table 4 of this MRP, or use the Nitrate Groundwater Pollution Hazard Index developed by University of California Division of Agriculture and Natural Resources (UCANR).
2. Tier 2 Dischargers may choose to subdivide the ranch/farm into "nitrate loading risk units," based on the variability of ranch/farm conditions for the purposes of complying with this Order. A nitrate loading risk unit is a subdivided unit of the ranch/farm with different farming conditions (irrigation system type, crop type, nitrate concentration in the irrigation water, etc.). The nitrate loading risk unit may be the total ranch, a number of blocks, or an individual block. If a Discharger chooses to subdivide the ranch/farm into individual nitrate loading risk units, the Discharger must maintain individual record keeping, and conduct monitoring and reporting for each nitrate loading risk unit.
3. Tier 2 Dischargers who choose to evaluate nitrate loading risk using the Table 4 criteria and methodology must calculate the ranch/farm or nitrate loading risk unit's nitrate loading risk level (low, moderate, or high), as described in Table 4. Dischargers must report Nitrate Loading Risk factors and level in the electronic Annual Compliance Form.
 - a. LOW - Nitrate loading risk is less than 10;
 - b. MODERATE – Nitrate loading risk is between 10 and 15;
 - c. HIGH – Nitrate loading risk is more than 15;
4. Tier 2 Dischargers who choose to evaluate nitrate loading risk using the Nitrate Groundwater Pollution Hazard Index must characterize the soil type for the individual farm(s), including any variability in soil type, and utilize the index tool at the Internet link below. Soil types may vary across individual fields, and this variability must be accounted for when using the Nitrate Groundwater Pollution Hazard Index. If the soil type is unknown or if the soil type is not included in the UCANR Nitrate Groundwater Pollution Hazard Index tool, Dischargers must use the Table 4 criteria and methodology described above. Dischargers must provide documentation of input to the index for crop type, soil type, irrigation type, and deep rip. A

resulting Nitrate Groundwater Pollution Hazard Index number greater than or equal to 20 indicates a High Nitrate Loading Risk.

http://ucanr.org/sites/wrc/Programs/Water_Quality/Nitrate_Groundwater_Pollution_Hazard_Index/"

5. Tier 2 Dischargers with individual farms/ranches or nitrate loading risk units that have a HIGH nitrate loading risk must report total nitrogen applied per crop, per acre, per year to each farm/ranch or nitrate loading risk unit in the electronic Annual Compliance Form. Total nitrogen must be reported in units of nitrogen, for any product, form or concentration including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;
 - a. As an alternative to reporting total nitrogen, Tier 2 Dischargers with high nitrate loading risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.

PART 3. ANNUAL COMPLIANCE FORM

Tier 2 Dischargers must submit annual compliance information, electronically, in a format specified by the Executive Officer. The purpose of the electronic Annual Compliance Form is to provide information to the Central Coast Water Board to assist in the evaluation of threat to water quality from individual agricultural discharges of waste and measure progress towards water quality improvement and verify compliance with the Order and MRP. Time schedules are shown in Table 5.

A. Annual Compliance Form

1. **By October 1, 2012 and updated annually thereafter by October 1**, Tier 2 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer. The electronic Annual Compliance Form includes, but is not limited to the following minimum requirements³:
 - a. Signed transmittal letter;

³ Items reported in the Annual Compliance Document are due by October 1, 2012 and annually thereafter, unless otherwise specified.

- b. Verification that any change in general operation or farm/ranch information (e.g., crop type, irrigation type, discharge type) is reported on update to Notice of Intent (NOI);
- c. Verification of compliance with monitoring requirements, including any cooperative monitoring fees;
- d. Verification of completed Farm Plan and date of last update;
- e. Information regarding type and characteristics of discharge (e.g., number of discharge points, estimated flow/volume, number of tailwater days);
- f. Identification of any direct agricultural discharges to a stream, lake, estuary, bay, or ocean;
- g. Identification of specific farm water quality management practices completed, in progress, and planned to address water quality impacts caused by discharges of waste including irrigation management, pesticide management, nutrient management, salinity management, stormwater management, and sediment and erosion control to achieve compliance with this Order;
- h. Nitrate concentration of irrigation water;
- i. Identification of the application of any fertilizers, pesticides, fumigants or other chemicals through an irrigation system (e.g. fertigation or chemigation) and proof of proper backflow prevention devices;
- j. Description of method and location of chemical applications relative to surface water;
- k. Nitrate Loading Risk factors in Table 4 or Nitrate Groundwater Pollution Hazard Index input and Nitrate Loading Risk level;
- l. Proof of approved California Department of Fish and Game (CDFG) Streambed Alteration Agreement, as required by CDFG for any work proposed within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State;

Tier 2 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:

- m. Photo monitoring to document condition of streams, riparian, and wetland area habitat and the presence of bare soil within the riparian habitat area that is vulnerable to erosion;

Tier 2 Dischargers with farms/ranches that have High Nitrate Loading Risk:

- n. Total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas,

manure, extracts, nitrogen present in the soil, and nitrate in irrigation water⁴;

PART 4. PHOTO MONITORING AND REPORTING REQUIREMENTS

Photo monitoring and reporting requirements identified in Part 4.A. apply to Tier 2 Dischargers that have farms/ranches that contain or are adjacent to a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment (see Order Table 1). Time schedules are shown in Table 5.

A. Photo Monitoring and Reporting

1. **By October 1, 2012**, Tier 2 Dischargers that have farms/ranches that contain or are adjacent to a waterbody *impaired for temperature, turbidity or sediment* must conduct photo monitoring to do the following:
 - a. Document the existing condition of perennial, intermittent or ephemeral streams (wet or dry), riparian or wetland area habitat; Photo monitoring of existing conditions must be repeated every four years and submitted with the electronic Annual Compliance Form.
2. Tier 2 Dischargers must conduct photo monitoring consistent with protocol established by the Executive Officer. Dischargers must include date of photo, photo location and point of reference in the photo. Photos must be accompanied by explanations and descriptions of the management practices demonstrated in the photos to meet the Basin Plan requirements specified below and must include estimated widths of riparian areas from top of bank.

Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, must be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip must be thirty feet, wherever possible....”*

⁴ Due by October 1, 2014 and annually thereafter by October 1.

PART 5. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer. A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.



Roger W. Briggs
Executive Officer

March 15, 2012

Date

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ³	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
<u>WATER COLUMN SAMPLING</u>		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea – <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term

MRP NO. R3-2012-0011-02 (TIER 2)
 CONDITIONAL WAIVER OF
 WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbaryl	0.05	"
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO ₃)	1	"
Total Organic Carbon (ug/L)	0.6	"

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCPA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;

NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Monitoring Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		μS/cm
Total Dissolved Solids	10		mg/L
Total Alkalinity as CaCO ₃	1	EPA Method 310.1 or 310.2	
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0	General Anions EPA Method 300 or EPA Method 353.2	
Chloride	0.1		
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater sampling and laboratory analysis. ³The MRP allows analysis of “nitrate plus nitrite” to represent nitrate concentrations. The “nitrate plus nitrite” analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃. ⁴Dischargers may use alternative analytical methods approved by EPA.
 bgs – below ground surface; RL – Reporting Limit; μS/cm – micro siemens per centimeter

Table 4. Nitrate Loading Risk Factor Criteria and Risk Level Calculation

<p>A. Crop Type Nitrate Hazard Index Rating</p> <p>1 - Bean, Grapes, Olive.</p> <p>2 - Apple, Avocado, Barley, Blackberry, Blueberry, Carrot, Chicory, Citrus, Lemon Oat, Orange, Peach, Pear, Pistachio, Raspberry, Walnut, Wheat.</p> <p>3 - Artichoke, Bean, Brussel Sprout, Corn, Cucumber, Daikon, Peas, Radish, Squash, Summer, Tomato, Turnip, Squash, Rutabaga, Pumpkin, Potato.</p> <p>4 – Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Parsley, Pepper, Spinach, Strawberry.</p> <p>(Based on UC Riverside Nitrate Hazard Index)</p>
<p>B. Irrigation System Type Rating</p> <p>1 - Micro-irrigation year round (drip and micro-sprinklers) and no pre-irrigation;</p> <p>2 - Sprinklers used for pre-irrigation only and then micro-irrigation;</p> <p>3 - Sprinklers used for germination or at any time during growing season;</p> <p>4 - Surface irrigation systems (furrow or flood) at any, and/or in combination with any other irrigation system type;</p>

(Based on UC Riverside Nitrate Hazard Index, Adapted for the Central Coast Region)

C. Irrigation Water Nitrate Concentration Rating

- 1 – Nitrate concentration 0 to 45 mg/liter Nitrate NO₃
- 2 - Nitrate concentration 46 to 60 mg/liter Nitrate NO₃
- 3 - Nitrate concentration 61 to 100 mg/liter Nitrate NO₃
- 4 - Nitrate concentration > 100 mg/l Nitrate NO₃

D. Nitrate Loading Risk Level Calculation = A x B x C

- LOW - Nitrate loading risk is less than 10;
- MODERATE – Nitrate loading risk is between 10 and 15;
- HIGH – Nitrate loading risk is more than 15;

Note: Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the criteria associated with the highest risk activity existing at each ranch/farm. For example, the ranch/farm is assigned the highest risk factor, based on the single highest risk crop in the rotation, on one block under furrow irrigation, or on one well with high nitrate concentration. As an alternative to the nitrate loading risk level calculation described in Table 4, Dischargers may use the Groundwater Pollution Nitrate Hazard Index developed by UCANR, where a resulting Nitrate Hazard Index score equal or greater or equal to 20 indicates a HIGH nitrate loading risk to groundwater.

Table 5. Tier 2 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (individually or through cooperative monitoring program)	Within three months
Initiate surface receiving water quality monitoring (individually or through cooperative monitoring program)	Within six months
Submit surface receiving water quality monitoring data (individually or through cooperative monitoring program)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (individually or through cooperative monitoring program)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
<i>Tier 2 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:</i> Conduct photo monitoring of riparian or wetland area habitat	October 1, 2012, and every four years thereafter by October 1
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1
Submit groundwater monitoring results	October 1, 2013
<i>Tier 2 Dischargers with farms/ranches that have High Nitrate Loading Risk:</i> Report total nitrogen applied per acre to each	October 1, 2014, and annually thereafter by October 1.

MRP NO. R3-2012-0011-02 (TIER 2)
CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

farm/ranch or nitrate loading risk unit, in electronic Annual Compliance Form	
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¹ Dates are relative to adoption of this Order or enrollment date for Dischargers enrolled after the adoption of this Order, unless otherwise specified.

EXHIBIT “D”

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**MONITORING AND REPORTING PROGRAM
ORDER NO. R3-2012-0011-03**

TIER 3

**DISCHARGERS ENROLLED UNDER
THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED LANDS**

This Monitoring and Reporting Program Order No. R3-2012-0011-03 (MRP) is issued pursuant to California Water Code (Water Code) section 13267 and 13269, which authorize the California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board) to require preparation and submittal of technical and monitoring reports. Water Code section 13269 requires a waiver of waste discharge requirements to include as a condition, the performance of monitoring and the public availability of monitoring results. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Order) includes criteria and requirements for three tiers. This MRP sets forth monitoring and reporting requirements for **Tier 3 Dischargers** enrolled under the Order. A summary of the requirements is shown below.

SUMMARY OF MONITORING AND REPORTING REQUIREMENTS FOR TIER 3:

- Part 1: Surface Receiving Water Monitoring and Reporting (*cooperative or individual*);
- Part 2: Groundwater Monitoring and Reporting;
Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting
(*required for subset of Tier 3 Dischargers if farm/ranch has high nitrate loading risk to groundwater*);
- Part 3: Annual Compliance Form;
- Part 4: Photo Monitoring (*required for subset of Tier 3 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);
- Part 5: Individual Surface Water Discharge Monitoring and Reporting;
- Part 6: Irrigation and Nutrient Management Plan (*required for subset of Tier 3 Dischargers if farm/ranch has High Nitrate Loading Risk*);
- Part 7: Water Quality Buffer Plan (*required for subset of Tier 3 Dischargers if farm/ranch contains or is adjacent to a waterbody impaired for temperature, turbidity or sediment*);

Pursuant to Water Code section 13269(a)(2), monitoring requirements must be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. The monitoring and reports required by this MRP are to evaluate effects of

discharges of waste from irrigated agricultural operations and individual farms/ranches on waters of the state and to determine compliance with the Order.

MONITORING AND REPORTING BASED ON TIERS

The Order and MRP includes criteria and requirements for three tiers, based upon those characteristics of the individual farms/ranches at the operation that present the highest level of waste discharge or greatest risk to water quality. Dischargers must meet conditions of the Order and MRP for the appropriate tier that applies to their land and/or the individual farm/ranch. Within a tier, Dischargers comply with requirements based on the specific level of discharge and threat to water quality from individual farms/ranches. The lowest tier, Tier 1, applies to dischargers who discharge the lowest level of waste (amount or concentration) or pose the lowest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. The highest tier, Tier 3, applies to dischargers who discharge the highest level of waste or pose the greatest potential to cause or contribute to an exceedance of water quality standards in waters of the State or of the United States. Tier 2 applies to dischargers whose discharge has a moderate threat to water quality. Water quality is defined in terms of Regional, State, or Federal numeric or narrative water quality standards. Per the Order, Dischargers may submit a request to the Executive Officer to approve transfer to a lower tier.

PART 1. SURFACE RECEIVING WATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for surface receiving water identified in Part 1.A. and Part 1.B. apply to Tier 3 Dischargers. Surface receiving water refers to water flowing in creeks and other surface waters of the State. Surface receiving water monitoring may be conducted through a **cooperative monitoring program**, or Dischargers may choose to conduct surface receiving water monitoring and reporting individually. Key monitoring and reporting requirements for surface receiving water are shown in Tables 1 and 2. Time schedules are shown in Table 6.

A. Surface Receiving Water Quality Monitoring

1. Dischargers must elect a surface receiving water monitoring option (cooperative monitoring program or individual receiving water monitoring) to comply with surface receiving water quality monitoring requirements, and identify the option selected on the Notice of Intent (NOI).
2. Dischargers are encouraged to choose participation in a cooperative monitoring program (e.g., the existing Cooperative Monitoring Program or a similar program) to comply with receiving water quality monitoring

requirements. Dischargers not participating in a cooperative monitoring program must conduct surface receiving water quality monitoring individually that achieves the same purpose.

3. Dischargers (individually or as part of a cooperative monitoring program) must conduct surface receiving water quality monitoring to a) assess the impacts of their waste discharges from irrigated lands to receiving water, b) assess the status of receiving water quality and beneficial use protection in impaired waterbodies dominated by irrigated agricultural activity, c) evaluate status, short term patterns and long term trends (five to ten years or more) in receiving water quality, d) evaluate water quality impacts resulting from agricultural discharges (including but not limited to tile drain discharges), e) evaluate stormwater quality, f) evaluate condition of existing perennial, intermittent, or ephemeral streams or riparian or wetland area habitat, including degradation resulting from erosion or agricultural discharges of waste, and g) assist in the identification of specific sources of water quality problems.

Surface Receiving Water Quality Sampling and Analysis Plan

4. **Within three months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must submit a surface receiving water quality Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP). Dischargers (or a third party cooperative monitoring program) must develop the Sampling and Analysis Plan to describe how the proposed monitoring will achieve the objectives of the MRP and evaluate compliance with the Order. The Sampling and Analysis Plan may propose alternative monitoring site locations, adjusted monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water. The Executive Officer must approve the Sampling and Analysis Plan and QAPP.
5. The Sampling and Analysis Plan must include the following minimum required components:
 - a. Monitoring strategy to achieve objectives of the Order and MRP;
 - b. Map of monitoring sites with GIS coordinates;
 - c. Identification of known water quality impairments and impaired waterbodies per the 2010 Clean Water Act 303(d) List of Impaired Waterbodies (List of Impaired Waterbodies);
 - d. Identification of beneficial uses and applicable water quality standards;
 - e. Identification of applicable Total Maximum Daily Loads;
 - f. Monitoring parameters;

laboratory analysis and data generation phase of the project is completed. Implementation of these elements ensures that the data conform to the specified criteria, thus achieving the MRP objectives.

7. The Central Coast Water Board may conduct an audit of contracted laboratories at any time in order to evaluate compliance with the QAPP.
8. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may also revise the Sampling and Analysis Plan, including adding, removing, or changing monitoring site locations, changing monitoring parameters, and other changes as necessary to assess the impacts of waste discharges from irrigated lands to receiving water.

Surface Receiving Water Quality Monitoring Sites

9. The Sampling and Analysis Plan must, at a minimum, include monitoring sites to evaluate waterbodies identified in Table 1, unless otherwise approved by the Executive Officer. The Sampling and Analysis Plan must include sites to evaluate receiving water quality impacts most directly resulting from areas of agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long term monitoring sites included in related monitoring programs (e.g. CCAMP and the existing CMP). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual discharges. Any modifications must consider sampling consistency for purposes of trend evaluation.

Surface Receiving Water Quality Monitoring Parameters

10. The Sampling and Analysis Plan must, at a minimum, include the following types of monitoring and evaluation parameters listed below and identified in Table 2:
 - a. Flow Monitoring;
 - b. Water Quality (physical parameters, metals, nutrients, pesticides);
 - c. Toxicity (water and sediment);
 - d. Assessment of Benthic Invertebrates;
11. All analyses must be conducted at a laboratory certified for such analyses by the State Department of Public Health (CDPH) or at laboratories approved by the Executive Officer. Unless otherwise noted, all sampling,

sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, U.S. EPA, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link: <http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>

12. Water quality and flow monitoring is used to assess the sources, concentrations, and loads of waste discharges from individual farms/ranches and groups of Dischargers to surface waters, to evaluate impacts to water quality and beneficial uses, and to evaluate the short term patterns and long term trends in receiving water quality. Monitoring data must be compared to existing numeric and narrative water quality objectives.
13. Toxicity testing is to evaluate water quality relative to the narrative toxicity objective. Water column toxicity analyses must be conducted on 100% (undiluted) sample. At sites where persistent unresolved toxicity is found, the Executive Officer may require concurrent toxicity and chemical analyses and a Toxicity Identification Evaluation (TIE) to identify the individual discharges causing the toxicity.

Surface Receiving Water Quality Monitoring Frequency and Schedule

14. The Sampling and Analysis Plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody. Table 2 includes minimum monitoring frequency and parameter lists. Agricultural parameters that are less common may be monitored less frequently. Modifications to the receiving water quality monitoring parameters, frequency, and schedule may be submitted for Executive Officer consideration and approval. At a minimum, the Sampling and Analysis Plan schedule must consist of monthly monitoring of common agricultural parameters in major agricultural areas, including two major storm events during the wet season (October 1 – April 30).
15. Storm event monitoring must be conducted within 18 hours of storm events, preferably including the first flush run-off event that results in significant increase in stream flow. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period.
16. **Within six months** of adoption of the Order, Dischargers (individually or as part of a cooperative monitoring program) must initiate receiving water

quality monitoring per the Sampling and Analysis Plan and QAPP approved by the Executive Officer.

B. Surface Receiving Water Quality Reporting

Surface Receiving Water Quality Data Submittal

1. **Within nine months** of adoption of this Order and quarterly thereafter (by January 1, April 1, July 1, and October 1), Dischargers (individually or as part of a cooperative monitoring program) must submit water quality monitoring data to the Central Coast Water Board electronically, in a format specified by the Executive Officer and compatible with SWAMP/CCAMP electronic submittal guidelines.

Surface Receiving Water Quality Monitoring Annual Report

2. **Within one year** of adoption of this Order and annually thereafter by January 1, Dischargers (individually or as part of a cooperative monitoring program) must submit an Annual Report, electronically, in a format specified by the Executive Officer including the following minimum elements:
 - a. Signed Transmittal Letter;
 - b. Title Page;
 - c. Table of Contents;
 - d. Executive Summary;
 - e. Summary of Exceedance Reports submitted during the reporting period;
 - f. Monitoring objectives and design;
 - g. Monitoring site descriptions and rainfall records for the time period covered;
 - h. Location of monitoring sites and map(s);
 - i. Tabulated results of all analyses arranged in tabular form so that the required information is readily discernible;
 - j. Summary of water quality data for any sites monitored as part of related monitoring programs, and used to evaluate receiving water as described in the Sampling and Analysis Plan.
 - k. Discussion of data to clearly illustrate compliance with the Order and water quality standards;
 - l. Discussion of short term patterns and long term trends in receiving water quality and beneficial use protection;
 - m. Evaluation of pesticide and toxicity analyses results, and recommendation of candidate sites for Toxicity Identification Evaluations (TIEs);
 - n. Identification of the location of any agricultural discharges observed discharging directly to surface receiving water;

- o. Laboratory data submitted electronically in a SWAMP/CCAMP comparable format;
- p. Sampling and analytical methods used;
- q. Copy of chain-of-custody forms;
- r. Field data sheets, signed laboratory reports, laboratory raw data;
- s. Associated laboratory and field quality control samples results;
- t. Summary of Quality Assurance Evaluation results;
- u. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- v. Electronic or hard copies of photos obtained from all monitoring sites, clearly labeled with site ID and date;
- w. Conclusions;

PART 2. GROUNDWATER MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for groundwater identified in Part 2.A., Part 2.B., and Part 2.C. apply to Tier 3 Dischargers. Key monitoring and reporting requirements for groundwater are shown in Table 3. Time schedules are shown in Table 6.

A. Individual Groundwater Monitoring

1. **Within one year** of adoption of the Order, Dischargers must sample private domestic drinking water and agricultural groundwater wells on their farm/ranch to evaluate groundwater conditions in agricultural areas, identify areas at greatest risk for nitrogen loading and exceedance of drinking water standards, and identify priority areas for follow up actions.
2. Dischargers must sample at least one groundwater well for each farm/ranch on their operation. For farms/ranches with multiple groundwater wells, Dischargers must sample the primary irrigation well and all wells that are used or may be used for drinking water purposes. Groundwater monitoring parameters must include depth to groundwater (required if well construction provides for groundwater depth measurement) and well screen interval depths (if available), general chemical parameters, and general cations and anions listed in Table 3.
3. Tier 3 Dischargers must initially conduct two rounds of monitoring of groundwater wells during the first year, one sample collected during spring (March/April) and one collected during fall (September/October), and once annually thereafter. The first round of monitoring must be completed by October 2012. The annual monitoring must be conducted during the quarter when nitrate concentration was at its maximum, based on quarterly groundwater monitoring.

4. Groundwater samples must be collected by a qualified third-party (e.g., consultant, technician, person conducting cooperative monitoring) using proper sampling methods, chain-of-custody, and quality assurance/quality control protocols. Groundwater samples must be collected at or near the well head before the pressure tank and prior to any well head treatment. In cases where this is not possible, the water sample must be collected from a sampling point as close to the pressure tank as possible, or from a cold-water spigot located before any filters or water treatment systems.
5. Laboratory analyses for groundwater samples must be conducted by a State certified laboratory according to U.S. EPA approved methods; unless otherwise noted, all monitoring, sample preservation, and analyses must be performed in accordance with the latest edition of *Test Methods for Evaluating Solid Waste*, SW-846, United States Environmental Protection Agency, and analyzed as specified herein by the above analytical methods and reporting limits indicated. Certified laboratories can be found at the web link below:
<http://www.cdph.ca.gov/certlic/labs/Documents/ELAPLablist.xls>
6. In lieu of conducting individual groundwater monitoring, Dischargers may participate in a cooperative groundwater monitoring effort to help minimize costs and to develop an effective groundwater monitoring program. Qualifying cooperative groundwater monitoring and reporting programs may include, but are not limited to, regional or subregional groundwater programs developed for other purposes as long as the proposed cooperative groundwater monitoring program meets the Central Coast Water Board's general purpose of characterizing groundwater quality and ensuring the protection of drinking water sources. Proposals for cooperative groundwater monitoring efforts, including the use of other regional or subregional groundwater monitoring programs, must be approved by the Executive Officer. At a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to adequately characterize the groundwater aquifer(s) in the local area of the participating Dischargers, characterize the groundwater quality of the uppermost aquifer, and identify and evaluate groundwater used for domestic drinking water purposes. Cooperative groundwater monitoring efforts must comply with the requirements for sampling protocols and laboratory analytical methods identified in this MRP, including parameters listed in Table 3, or propose a functional equivalent that meets the same objectives and purposes as individual groundwater monitoring. The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in Part 2.B., or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal.

Dischargers electing to participate in a cooperative groundwater monitoring effort must convey this election to the Central Coast Water Board within 90 days of adoption of this Order, and the individual groundwater monitoring requirements shall not apply as long as a cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year of adoption of this Order. If no cooperative groundwater monitoring proposal for that Discharger's area is submitted within one (1) year, then the individual groundwater monitoring provisions shall apply and the Discharger shall have one (1) year to comply with the provisions identified in Part 2.

B. Individual Groundwater Reporting

- 1. By October 1, 2013 and annually thereafter by October 1,** Tier 3 Dischargers must submit groundwater monitoring results and information, electronically, in a format specified by the Executive Officer. Dischargers must include the following information:
 - a. Signed transmittal letter;
 - b. Number of groundwater wells present at each farm/ranch;
 - c. Identification of any groundwater wells abandoned or destroyed (including method destroyed) in compliance with the Order;
 - d. Owner-assigned well identification;
 - e. State identification number, if available;
 - f. Well location (latitude and longitude);
 - g. Water-use category (e.g., domestic drinking water, agricultural);
 - h. Identification of primary irrigation well;
 - i. Well construction information (e.g., total depth, screened intervals, depth to water), as available;
 - j. Use for fertigation or chemigation;
 - k. Presence and type of back flow prevention devices;
 - l. Photo-documentation of well condition and back flow prevention device;
 - m. Identification of wells sampled to comply with the Order and MRP;
 - n. Laboratory data must be compatible with the Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program, and GeoTracker electronic deliverable format (EDF).

C. Nitrate Loading Risk Factor Determination and Total Nitrogen Reporting

1. Tier 3 Dischargers must calculate the nitrate loading risk factor for each ranch/farm included in their operations. The nitrate loading risk factor is a measure of the relative risk of loading nitrate to groundwater. Tier 3 Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the highest risk activity existing at each ranch/farm.

For example, if a Discharger uses both sprinkler and drip irrigation on the same crop, they must use the irrigation type "sprinkler" in the nitrate loading risk calculation. To calculate nitrate loading risk, Tier 3 Dischargers must use the criteria and methodology described in Table 4 of this MRP, or use the Nitrate Groundwater Pollution Hazard Index developed by University of California Division of Agriculture and Natural Resources (UCANR).

2. Tier 3 Dischargers may choose to subdivide the ranch/farm into "nitrate loading risk units," based on the variability of ranch/farm conditions for the purposes of complying with this Order. A nitrate loading risk unit is a subdivided unit of the ranch/farm with different farming conditions (irrigation system type, crop type, nitrate concentration in the irrigation water, etc.). The nitrate loading risk unit may be the total ranch, a number of blocks, or an individual block. If a Discharger chooses to subdivide the ranch/farm into individual nitrate loading risk units, the Discharger must maintain individual record keeping, and conduct monitoring and reporting for each nitrate loading risk unit.
3. Tier 3 Dischargers who choose to evaluate nitrate loading risk using the Table 4 criteria and methodology must calculate the ranch/farm or nitrate loading risk unit's nitrate loading risk level (low, moderate, or high), as described in Table 4. Dischargers must report Nitrate Loading Risk factors and level in the electronic Annual Compliance Form.
 - a. LOW - Nitrate loading risk is less than 10;
 - b. MODERATE – Nitrate loading risk is between 10 and 15;
 - c. HIGH – Nitrate loading risk is more than 15;
4. Tier 3 Dischargers who choose to evaluate nitrate loading risk using the Nitrate Groundwater Pollution Hazard Index must characterize the soil type for the individual farm(s), including any variability in soil type, and utilize the index tool at the Internet link below. Soil types may vary across individual fields, and this variability must be accounted for when using the Nitrate Groundwater Pollution Hazard Index. If the soil type is unknown or if the soil type is not included in the UCANR Nitrate Groundwater Pollution Hazard Index tool, Dischargers must use the Table 4 criteria and methodology described above. Dischargers must provide documentation of input to the index for crop type, soil type, irrigation type, and deep rip. A resulting Nitrate Groundwater Pollution Hazard Index number greater than or equal to 20 indicates a High Nitrate Loading Risk.

http://ucanr.org/sites/wrc/Programs/Water_Quality/Nitrate_Groundwater_Pollution_Hazard_Index/

5. Tier 3 Dischargers with individual farms/ranches or nitrate loading risk units that have a HIGH nitrate loading risk must report total nitrogen applied per

crop, per acre, per year to each farm/ranch or nitrate loading risk unit in the electronic Annual Compliance Form. Total nitrogen must be reported in units of nitrogen, for any product, form or concentration including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;

- a. As an alternative to reporting total nitrogen, Tier 3 Dischargers with high nitrate loading risk may propose an individual discharge groundwater monitoring and reporting program (GMRP) plan for approval by the Executive Officer. The GMRP plan must evaluate waste discharge to groundwater from each ranch/farm or nitrate loading risk unit and assess if the waste discharge is of sufficient quality that it will not cause or contribute to exceedances of any nitrate water quality standards in groundwater.

PART 3. ANNUAL COMPLIANCE FORM

Tier 3 Dischargers must submit annual compliance information, electronically, in a format specified by the Executive Officer. The purpose of the electronic Annual Compliance Form is to provide information to the Central Coast Water Board to assist in the evaluation of threat to water quality from individual agricultural discharges of waste and measure progress towards water quality improvement and verify compliance with the Order and MRP. Time schedules are shown in Table 6.

A. Annual Compliance Form

1. **By October 1, 2012 and updated annually thereafter by October 1**, Tier 3 Dischargers must submit an Annual Compliance Form electronically, in a format specified by the Executive Officer. The electronic Annual Compliance Form includes, but is not limited to the following minimum requirements³:
 - a. Signed transmittal letter;
 - b. Verification that any change in general operation or farm/ranch information (e.g., crop type, irrigation type, discharge type) is reported on update to Notice of Intent (NOI);
 - c. Verification of compliance with monitoring requirements, including any cooperative monitoring fees;
 - d. Verification of completed Farm Plan and date of last update;
 - e. Information regarding type and characteristics of discharge (e.g., number of discharge points, estimated flow/volume, number of tailwater days);

³ Items reported in the Annual Compliance Form are due by October 1, 2012 and annually thereafter, unless otherwise specified.

- f. Identification of any direct agricultural discharges to a stream, lake, estuary, bay, or ocean;
- g. Identification of specific farm water quality management practices completed, in progress, and planned to address water quality impacts caused by discharges of waste including irrigation management, pesticide management, nutrient management, salinity management, stormwater management, and sediment and erosion control to achieve compliance with this Order;
- h. Nitrate concentration of irrigation water;
- i. Identification of the application of any fertilizers, pesticides, fumigants or other chemicals through an irrigation system (e.g. fertigation or chemigation) and proof of proper backflow prevention devices;
- j. Description of method and location of chemical applications relative to surface water;
- k. Nitrate Loading Risk factors in Table 4 or Nitrate Groundwater Pollution Hazard Index input and Nitrate Loading Risk level;
- l. Proof of approved California Department of Fish and Game (CDFG) Streambed Alteration Agreement, as required by CDFG for any work proposed within the bed, bank or channel of a lake or stream, including riparian areas, that has the potential to result in erosion and discharges of waste to waters of the State;

Tier 3 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:

- m. Photo monitoring to document condition of streams, riparian, and wetland area habitat and the presence of bare soil within the riparian habitat area that is vulnerable to erosion;
- n. Water Quality Buffer Plan or alternative⁴;

Tier 3 Dischargers with farms/ranches that have High Nitrate Loading Risk:

- o. Total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water⁵;
- p. Specific elements of the INMP (e.g., Proof of certification, Crop Nitrogen Uptake Values, Nitrogen Balance Ratio, Estimate of

⁴ Due by October 1, 2016

⁵ Due by October 1, 2014 and annually thereafter by October 1.

- Nitrate Loading to Groundwater, Estimate of Reduction in Nitrate Loading to Groundwater)⁶;
q. INMP Effectiveness Report⁷

PART 4. PHOTO MONITORING AND REPORTING REQUIREMENTS

Photo monitoring and reporting requirements identified in Part 4.A. apply to Tier 3 Dischargers that have farms/ranches that contain or are adjacent to a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment (see Order Table 1). Time schedules are shown in Table 6.

A. Photo Monitoring and Reporting

1. **By October 1, 2012**, Tier 3 Dischargers that have farms/ranches that contain or are adjacent to a waterbody *impaired for temperature, turbidity or sediment* must conduct photo monitoring to do the following:
 - a. Document the existing condition of perennial, intermittent or ephemeral streams (wet or dry), riparian or wetland area habitat; Photo monitoring of existing conditions must be repeated every four years and submitted with the electronic Annual Compliance Form.
2. Tier 3 Dischargers must conduct photo monitoring consistent with protocol established by the Executive Officer. Dischargers must include date of photo, photo location and point of reference in the photo. Photos must be accompanied by explanations and descriptions of the management practices demonstrated in the photos to meet the Basin Plan requirements specified in Part 7.A. and must include estimated widths of riparian areas from top of bank.

PART 5. INDIVIDUAL SURFACE WATER DISCHARGE MONITORING AND REPORTING REQUIREMENTS

Monitoring and reporting requirements for individual surface water discharge identified in Part 5.A. and Part 5.B. apply to all Tier 3 Dischargers. Key monitoring and reporting requirements for individual surface water discharge are shown in Tables 5A and 5B. Time schedules are shown in Table 6.

A. Individual Surface Water Discharge Monitoring

⁶ Due by October 1, 2015

⁷ Due by October 1, 2016

2. Tier 3 Dischargers must conduct individual surface water discharge monitoring to a) evaluate the quality of individual waste discharges, including concentration and load of waste (in kilograms per day) for appropriate parameters, b) evaluate effects of waste discharge on water quality and beneficial uses, and c) evaluate progress towards compliance with water quality improvement milestones in the Order.

Individual Sampling and Analysis Plan

3. **By March 15, 2013**, Tier 3 Dischargers must submit an individual surface water discharge Sampling and Analysis Plan and QAPP to monitor individual discharges of waste from their farm/ranch, including irrigation run-off (including tailwater discharges and discharges from tile drains, tailwater ponds and other surface water containment features unless constructed with impermeable liner), and stormwater discharges. The Sampling and Analysis Plan and QAPP must be submitted to the Executive Officer.
4. The Sampling and Analysis Plan must include the following minimum required components to monitor irrigation run-off, including tailwater discharges and discharges from tile drains, tailwater ponds and other surface water containment features, and stormwater discharges:
 - a. Number and location of discharge points (identified with latitude and longitude or on a scaled map);
 - b. Number and location of monitoring points;
 - c. Description of typical irrigation runoff patterns;
 - d. Map of discharge and monitoring points;
 - e. Sample collection methods;
 - f. Monitoring parameters;
 - g. Monitoring schedule and frequency of monitoring events;
5. The QAPP must include appropriate methods for sampling, measurement and analysis, data collection or generation, data handling, quality control activities, and documentation.
6. The Sampling and Analysis Plan and QAPP, and any proposed revisions are subject to approval by the Executive Officer. The Executive Officer may require modifications to the Sampling and Analysis Plan or Tier 3 Dischargers may propose Sampling and Analysis Plan modifications for Executive Officer approval, when modifications are justified to accomplish the objectives of the MRP.

Individual Surface Water Discharge Monitoring Points

7. Tier 3 Dischargers must select monitoring points to characterize at least 80% of the estimated irrigation run-off discharge volume from each farm/ranch at the point in time the sample is taken⁸, including tailwater discharges and discharges from tile drains. Sample must be taken when irrigation activity is causing maximal run-off. Load estimates will be generated by multiplying flow volume of discharge by concentration of contaminants. Tier 3 Dischargers must include at least one monitoring point from each farm/ranch which drains areas where chlorpyrifos or diazinon are applied, and monitoring of runoff or tailwater must be conducted within one week of chemical application. If discharge is not routinely present, Discharger may characterize typical run-off patterns in the Annual Report. See Table 4a for additional details.
8. Tier 3 Dischargers must also monitor tailwater ponds and other surface water containment features. If multiple ponds are present, sampling must cover at least 80% by volume of the containment features. See Table 4b for additional details.

Individual Surface Water Discharge Monitoring Parameters, Frequency, and Schedule

9. Tier 3 Dischargers must conduct monitoring for parameters, laboratory analytical methods, frequency and schedule described in Tables 4A and 4B. Dischargers may utilize in-field water testing instruments/equipment as a substitute for laboratory analytical methods if the method is approved by U.S. EPA, meets reporting limits (RL) and practical quantitation limits (PQL) specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.
10. **By October 1, 2013** of the adoption of the Order, Tier 3 Dischargers must initiate individual surface water discharge monitoring per the Sampling and Analysis Plan and QAPP, unless otherwise directed by the Executive Officer.

B. Individual Surface Water Discharge Reporting

Individual Surface Water Discharge Monitoring Data Submittal

1. **By March 15, 2014**, October 1, 2014, and annually thereafter by October 1, Tier 3 Dischargers must submit individual surface water discharge monitoring data to the Central Coast Water Board electronically, in a format

⁸ The requirement to select monitoring points to characterize at least 80% of the estimated irrigation run-off is for the purposes of collecting a sample that represents a majority of the volume of irrigation run-off discharged. The MRP does not specify the number or location of monitoring points to provide maximum flexibility for growers to determine how many sites are necessary and exact locations given site-specific conditions.

specified by the Executive Officer. The electronic data submittal must include the following minimum information:

- a. Electronic laboratory data submitted;
- b. Narrative description of typical irrigation runoff patterns;
- c. Location of sampling sites and map(s);
- d. Sampling and analytical methods used;
- e. Specify the method used to obtain flow at each monitoring site during each monitoring event;
- f. Photos obtained from all monitoring sites, clearly labeled with location and date;
- g. Sample chain-of-custody forms do not need to be submitted but must be made available to Central Coast Water Board staff, upon request;

PART 6. IRRIGATION AND NUTRIENT MANAGEMENT PLAN

Monitoring and reporting requirements related to the Irrigation and Nutrient Management Plan (INMP) identified in Part 6.A., 6.B., and 6.C. apply to Tier 3 Dischargers that have farms/ranches with high nitrate loading risk. Time schedules are shown in Table 6.

A. Irrigation and Nutrient Management Plan Monitoring

1. Tier 3 Dischargers with High Nitrate Loading Risk must develop and initiate implementation of an Irrigation and Nutrient Management Plan (INMP) certified by a Professional Soil Scientist, Professional Agronomist, or Crop Advisor certified by the American Society of Agronomy, or similarly qualified professional.
2. The purpose of the INMP is to budget and manage the nutrients applied to each farm/ranch or nitrate loading risk unit considering all sources of nutrients, crop requirements, soil types, climate, and local conditions in order to minimize nitrate loading to surface water and groundwater in compliance with this Order.
3. The professional certification of the INMP must indicate that the relevant expert has reviewed all necessary documentation and testing results, evaluated nutrient balance calculations (total nitrogen applied relative to typical crop nitrogen uptake and nitrogen removed at harvest), evaluated estimated nitrate loading to groundwater, evaluated progress towards nutrient management targets, and conducted field verification to ensure accuracy of reporting.

4. Tier 3 Dischargers with High Nitrate Loading Risk must include the following elements in the INMP. The INMP is not submitted to the Central Coast Water Board, with the exception of key elements identified in Part 6B:
 - a. Proof of INMP certification;
 - b. Map locating each farm/ranch or nitrate loading risk unit;
 - c. Identification of nitrate loading risk factors or input to the Groundwater Pollution Nitrate Hazard Index and overall Nitrate Loading Risk level calculation for each ranch/farm or nitrate loading risk unit;
 - d. Identification of crop nitrogen uptake values for use in nutrient balance calculations;
 - e. Record keeping of the total nitrogen applied per crop, per acre to each farm/ranch or nitrate loading risk unit (in units of nitrogen, in any product, form or concentration) including, but not limited to, organic and inorganic fertilizers, slow release products, compost, compost teas, manure, extracts, nitrogen present in the soil, and nitrate in irrigation water;
 - f. Dischargers must take a nitrogen soil sample (e.g. laboratory analysis or nitrate quick test) or use an alternative method to evaluate nitrogen content in soil, prior to planting or seeding the field or prior to the time of pre-sidedressing. The amount of nitrogen remaining in the soil must be accounted for as a source of nitrogen when budgeting, and the soil sample or alternative method results must be maintained in the INMP.
 - g. Annual balance of nitrogen applied compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);
 - h. Annual estimation of nitrogen loading to groundwater and surface water, including subsurface drainage (e.g., tile drains), from each ranch/farm or nitrate loading risk unit;
 - i. Identification of irrigation and nutrient management practices in progress (identify start date), completed (identify completion date), and planned (identify anticipated start date) to reduce nitrate loading to groundwater to achieve compliance with this Order.
 - j. Annual evaluation of reductions in nitrate loading to groundwater resulting from decreased fertilizer use and/or implementation of irrigation and nutrient management practices;
 - k. Description of methods Discharger will use to verify overall effectiveness of the INMP.

5. Tier 3 Dischargers must evaluate the effectiveness of the INMP. Irrigation and Nutrient Management Plan effectiveness monitoring must be conducted or supervised by a registered professional engineer, professional geologist, Certified Crop Advisor, or similarly qualified professional. Monitoring must

evaluate measured progress towards protecting, preserving, and restoring groundwater quality in the upper-most aquifer (or perched aquifer, whichever is first encountered), resulting from reductions in loading based on reduced fertilizer use and improved irrigation and nutrient management practices. Monitoring methods used may include, but are not limited to lysimeter monitoring, shallow groundwater or soil monitoring, or groundwater well monitoring. If the physical monitoring by itself cannot demonstrate progress towards compliance with the Order, the Discharger may need to supplement physical monitoring with contaminant transport and flow modeling.

B. Irrigation and Nutrient Management Plan Reporting

1. **By October 1, 2015 and annually thereafter**, Tier 3 Dischargers with High Nitrate Loading Risk must report the following INMP elements in the electronic Annual Compliance Form:
 - a. Identification of crop nitrogen uptake values for use in nutrient balance calculations;
 - b. Annual balance of nitrogen applied per crop compared to typical crop nitrogen uptake for each ranch/farm or nitrate loading risk unit (Nitrogen Balance ratio);
 - c. Annual estimation of nitrogen loading to groundwater and surface water, including subsurface drainage (e.g., tile drains), from each ranch/farm or nitrate loading risk unit;
 - d. Annual evaluation of reductions in nitrate loading to groundwater resulting from decreased fertilizer use and/or implementation of nutrient management practices;

2. **By October 1, 2016**, Tier 3 Dischargers that have farms/ranches with high nitrate loading risk to groundwater must submit an INMP Effectiveness Report to evaluate measured progress towards protecting, preserving, and restoring groundwater quality in the upper-most aquifer, including reductions in loading based on the implementation of irrigation and nutrient management practices. The INMP Effectiveness Report must be prepared by a state registered professional engineer, professional geologist, Certified Crop Advisor, or similarly qualified professional. Dischargers in the same groundwater basin or subbasin may choose to comply with this requirement as a group by submitting a single report that evaluates the overall effectiveness of the broad scale implementation of irrigation and nutrient management practices identified in individual INMPs to protect groundwater and achieve water quality standards for nitrate. Group efforts must use data from each farm/ranch (e.g., individual groundwater wells, lysimeters, and/or soil samples) to adequately represent groundwater quality and progress towards groundwater protection for all farms/ranches in the group. The

INMP Effectiveness Report must include the following elements and submitted with the electronic Annual Compliance Form:

- a. A description of the methodology used to evaluate and verify effectiveness of the INMP (e.g., lysimeter monitoring, shallow groundwater or soil monitoring, groundwater well monitoring, contaminant transport and flow modeling);
- b. An evaluation of how discharges of waste and any associated reductions in nitrate loading will decrease the concentration of nitrate in the upper-most aquifer, commensurate with water quality standards, within a reasonable and foreseeable time frame, and compared to milestones identified in the Order;
- c. Based on estimated nitrate loading reductions to the groundwater basin or subbasin, the estimated number of years to achieve water quality standards in receiving water;

PART 7. WATER QUALITY BUFFER PLAN

Monitoring and reporting requirements related to the Water Quality Buffer Plan identified in Part 7.A. and Part 7.B. apply to Tier 3 Dischargers that have farms/ranches that contain or are adjacent to waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity, or sediment). Time schedules are shown in Table 6.

A. Water Quality Buffer Plan;

1. **By October 1, 2016**, Tier 3 Dischargers adjacent to or containing a waterbody identified on the List of Impaired Waterbodies as impaired for temperature, turbidity or sediment must submit a Water Quality Buffer Plan to the Executive Officer that protects the listed waterbody and its associated perennial and intermittent tributaries. The purpose of the Water Quality Buffer Plan is to prevent waste discharge, comply with water quality standards (e.g., temperature, turbidity, sediment), and protect beneficial uses in compliance with this Order and the following Basin Plan requirement:

Basin Plan (Chapter 5, p. V-13, Section V.G.4 – Erosion and Sedimentation, *“A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, must be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip must be thirty feet, wherever possible....”*

2. The Water Quality Buffer Plan must include the following or the functional equivalent, to address discharges of waste and associated water quality impairments:
 - a. A minimum 30 foot buffer (as measured horizontally from the top of bank on either side of the waterway, or from the high water mark of a lake and mean high tide of an estuary);
 - b. Any necessary increases in buffer width to adequately prevent the discharge of waste that may cause or contribute to any excursion above or outside the acceptable range for any Regional, State, or Federal numeric or narrative water quality standard (e.g., temperature, turbidity);
 - c. Any buffer less than 30 feet must provide equivalent water quality protection and be justified based on an analysis of site-specific conditions and be approved by the Executive Officer;
 - d. Identification of any alternatives implemented to comply with this requirement, that are functionally equivalent to described buffer;
 - e. Schedule for implementation;
 - f. Maintenance provisions to ensure water quality protection;
 - g. Annual photo monitoring to be included in the Annual Compliance Form;

PART 8. GENERAL MONITORING AND REPORTING REQUIREMENTS

A. Submittal of Technical Reports

1. Dischargers must submit reports in a format specified by the Executive Officer (reports will be submitted electronically, unless otherwise specified by the Executive Officer). A transmittal letter must accompany each report, containing the following penalty of perjury statement signed by the Discharger or the Discharger's authorized agent:

"In compliance with Water Code §13267, I certify under penalty of perjury that this document and all attachments were prepared by me, or under my direction or supervision following a system designed to assure that qualified personnel properly gather and evaluate the information submitted. To the best of my knowledge and belief, this document and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

2. If the Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g. trade secrets or secret processes), the Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The

Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). The Central Coast Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Coast Water Board staff disagrees with the asserted exemption from public disclosure, the Central Coast Water Board staff will notify the Discharger prior to making such report or portions of such report available for public inspection. In the interest of public health and safety, the Central Coast Water Board will not make available for public inspection, the precise location of any groundwater well monitored in compliance with this Order. Consistent with the reporting of groundwater wells on GeoTracker, groundwater well location and data will only be referenced within a one-half mile radius of the actual well location.

B. Enforcement and Violations

1. Monitoring reports are required pursuant to Section 13267 of the California Water Code. Pursuant to Section 13268 of the Water Code, a violation of a request made pursuant to Section 13267 may subject you to civil liability assessment of up to \$1000 per day.

C. Executive Officer Authority

1. The Executive Officer may revise this MRP as necessary, and Dischargers must comply with the MRP as revised by the Executive Officer. Specifically, the Executive Officer may increase monitoring and reporting requirements where monitoring results, pesticide use patterns, or other indicators suggest that the increase is warranted due to an increased threat to water quality. Additionally, the Executive Officer can reduce monitoring and reporting requirements, including adjusting time schedules, where growers are coordinating efforts at watershed or subwatershed scales or where regional treatment facilities are implemented, or other indicators suggest that the reduction is warranted due to a reduced threat to water quality.



Roger W. Briggs, Executive Officer

March 15, 2012

Date

Table 1. Major Waterbodies in Agricultural Areas¹

Hydrologic SubArea	Waterbody Name	Hydrologic SubArea	Waterbody Name
30510	Pajaro River	30920	Quail Creek
30510	Salsipuedes Creek	30920	Salinas Reclamation Canal
30510	Watsonville Slough	31022	Chorro Creek
30510	Watsonville Creek ²	31023	Los Osos Creek
30510	Beach Road Ditch ²	31023	Warden Creek
30530	Carnadero Creek	31024	San Luis Obispo Creek
30530	Furlong Creek ²	31024	Prefumo Creek
30530	Llagas Creek	31031	Arroyo Grande Creek
30530	Miller's Canal	31031	Los Berros Creek
30530	San Juan Creek	31210	Bradley Canyon Creek
30530	Tesquisquita Slough	31210	Bradley Channel
30600	Moro Cojo Slough	31210	Green Valley Creek
30910	Alisal Slough	31210	Main Street Canal
30910	Blanco Drain	31210	Orcutt Solomon Creek
30910	Old Salinas River	31210	Oso Flaco Creek
30910	Salinas River (below Gonzales Rd.)	31210	Little Oso Flaco Creek
30920	Salinas River (above Gonzales Rd. and below Nacimiento R.)	31210	Santa Maria River
30910	Santa Rita Creek ²	31310	San Antonio Creek ²
30910	Tembladero Slough	31410	Santa Ynez River
30920	Alisal Creek	31531	Bell Creek
30920	Chualar Creek	31531	Glenn Annie Creek
30920	Espinosa Slough	31531	Los Carneros Creek ²
30920	Gabilan Creek	31534	Arroyo Paredon Creek
30920	Natividad Creek	31534	Franklin Creek

¹ At a minimum, sites must be included for these waterbodies in agricultural areas, unless otherwise approved by the Executive Officer. Sites may be proposed for addition or modification to better assess the impacts of waste discharges from irrigated lands to surface water. Dischargers choosing to comply with surface receiving water quality monitoring, individually (not part of a cooperative monitoring program) must only monitor sites for waterbodies receiving the discharge.

² These creeks are included because they are newly listed waterbodies on the 2010 303(d) list of Impaired Waters that are associated with areas of agricultural discharge.

Table 2. Surface Receiving Water Quality Monitoring Parameters

Parameters and Tests	RL ³	Monitoring Frequency ¹
Photo Monitoring		
Upstream and downstream photographs at monitoring location		With every monitoring event
<u>WATER COLUMN SAMPLING</u>		
Physical Parameters and General Chemistry		
Flow (field measure) (CFS) following SWAMP field SOP ⁹	.25	Monthly, including 2 stormwater events
pH (field measure)	0.1	"
Electrical Conductivity (field measure) (uS/cm)	2.5	"
Dissolved Oxygen (field measure) (mg/L)	0.1	"
Temperature (field measure) (°C)	0.1	"
Turbidity (NTU)	0.5	"
Total Dissolved Solids (mg/L)	10	"
Total Suspended Solids (mg/L)	0.5	"
Nutrients		
Total Nitrogen (mg/L)	0.5	Monthly, including 2 stormwater events
Nitrate + Nitrite (as N) (mg/L)	0.1	"
Total Ammonia (mg/L)	0.1	"
Unionized Ammonia (calculated value, mg/L)		"
Total Phosphorus (as P) (mg/L)	-	"
Soluble Orthophosphate (mg/L)	0.01	"
Water column chlorophyll a (mg/L)	0.002	"
Algae cover, Floating Mats, % coverage	-	"
Algae cover, Attached, % coverage	-	"
Water Column Toxicity Test		
Algae - <i>Selenastrum capricornutum</i> , 4 day	-	Twice in dry season, twice in wet season
Water Flea – <i>Ceriodaphnia</i> (7-day chronic)	-	"
Fathead Minnow - <i>Pimephales promelas</i> (7-day chronic)	-	"
Toxicity Identification Evaluation (TIE)	-	As directed by Executive Officer
Pesticides² (ug/L)		
Carbamates		
Aldicarb	0.05	4 times, concurrent with water toxicity monitoring, in second year of Order term

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Parameters and Tests	RL ³	Monitoring Frequency ¹
Carbaryl	0.05	"
Carbofuran	0.05	"
Methiocarb	0.05	"
Methomyl	0.05	"
Oxamyl	0.05	"
Organophosphate Pesticides		
Azinphos-methyl	0.02	"
Chlorpyrifos	0.005	"
Diazinon	0.005	"
Dichlorvos	0.01	"
Dimethoate	0.01	"
Dimeton-s	0.005	"
Disulfoton (Disyton)	0.005	"
Malathion	0.005	"
Methamidophos	0.02	"
Methidathion	0.02	"
Parathion-methyl	0.02	"
Phorate	0.01	"
Phosmet	0.02	"
Herbicides		
Atrazine	0.05	"
Cyanazine	0.20	"
Diuron	0.05	"
Glyphosate	2.0	"
Linuron	0.1	"
Paraquat dichloride	4	"
Simazine	0.05	"
Trifluralin	0.05	"
Metals (ug/L)		
Arsenic (total) ^{5,7}	0.3	4 times, concurrent with water toxicity monitoring, in second year of Order term
Boron (total) ^{6,7}	10	"
Cadmium (total & dissolved) ^{4,5,7}	0.01	"
Copper (total and dissolved) ^{4,7}	0.01	"
Lead (total and dissolved) ^{4,7}	0.01	"
Nickel (total and dissolved) ^{4,7}	0.02	"
Molybdenum (total) ⁷	1	"
Selenium (total) ⁷	0.30	"
Zinc (total and dissolved) ^{4,5,7}	0.10	"
Other (ug/L)		
Total Phenolic Compounds ⁸	10	4 times, concurrent with water toxicity monitoring, in second year of Order term
Hardness (mg/L as CaCO ₃)	1	"
Total Organic Carbon (ug/L)	0.6	"

Parameters and Tests	RL ³	Monitoring Frequency ¹
SEDIMENT SAMPLING		
Sediment Toxicity - Hyalella azteca 10-day		Annually
Benthic Invertebrate and associated Physical Habitat Assessment	SWAMP SOP	Once during the second year of Order concurrent with sediment toxicity sampling
Pyrethroid Pesticides in Sediment (ug/kg)		
Gamma-cyhalothrin	2	Once during second year of Order, concurrent with sediment toxicity sampling
Lambda-cyhalothrin	2	
Bifenthrin	2	"
Beta-cyfluthrin	2	"
Cyfluthrin	2	"
Esfenvalerate	2	"
Permethrin	2	"
Cypermethrin	2	"
Danitol	2	"
Fenvalerate	2	"
Fluvalinate	2	"
Organochlorine Pesticides in Sediment		
DCPA	10	"
Dicofol	2	"
Other Monitoring in Sediment		
Chlorpyrifos (ug/kg)	2	"
Total Organic Carbon	0.01%	"
Sulfide		"
Sediment Grain Size Analysis	1%	"

¹Monitoring is ongoing through all five years of the Order, unless otherwise specified. Monitoring frequency may be used as a guide for developing alternative Sampling and Analysis Plan.

²Pesticide list may be modified based on specific pesticide use in Central Coast Region. Analytes on this list must be reported, at a minimum.

³Reporting Limit, taken from SWAMP where applicable.

⁴Holmgren, Meyer, Cheney and Daniels. 1993. Cadmium, Lead, Zinc, Copper and Nickel in Agricultural Soils of the United States. J. of Environ. Quality 22:335-348.

⁵Sax and Lewis, ed. 1987. Hawley's Condensed Chemical Dictionary. 11th ed. New York: Van Nostrand Reinhold Co., 1987. Zinc arsenate is an insecticide.

⁶<http://www.coastalagro.com/products/labels/9%25BORON.pdf>; Boron is applied directly or as a component of fertilizers as a plant nutrient.

⁷Madramootoo, Johnston, Willardson, eds. 1997. Management of Agricultural Drainage Water Quality. International Commission on Irrigation and Drainage. U.N. FAO. SBN 92-6-104058.3.

⁸<http://cat.inist.fr/?aModele=afficheN&cpsid=14074525>; Phenols are breakdown products of herbicides and pesticides. Phenols can be directly toxic and cause endocrine disruption.

⁹See SWAMP field measures SOP, p. 17

mg/L – milligrams per liter; ug/L – micrograms per liter; ug/kg – micrograms per kilogram;

NTU – Nephelometric Turbidity Units; CFS – cubic feet per second;

Table 3. Groundwater Monitoring Parameters

Parameter	RL	Analytical Method ⁴	Units
Depth to Groundwater ¹	-	Field Measurement	feet/bgs
pH	0.1	Field or Laboratory Measurement EPA General Methods	pH Units
Specific Conductance	2.5		μS/cm
Total Dissolved Solids	10	EPA Method 310.1 or 310.2	mg/L
Total Alkalinity as CaCO ₃	1		
Calcium	0.05	General Cations ² EPA 200.7, 200.8, 200.9	
Magnesium	0.02		
Sodium	0.1		
Potassium	0.1		
Sulfate (SO ₄)	1.0	General Anions EPA Method 300 or EPA Method 353.2	
Chloride	0.1		
Nitrate + Nitrite (as N) ³ or Nitrate as NO ₃	0.1		

¹Necessary to identify relevant water bearing zone; Required when well construction allows for groundwater depth measurement. ²General chemistry parameters (major cations and anions) represent geochemistry of water bearing zone and assist in evaluating quality assurance/quality control of groundwater monitoring and laboratory analysis.

³The MRP allows analysis of “nitrate plus nitrite” to represent nitrate concentrations. The “nitrate plus nitrite” analysis allows for extended laboratory holding times and relieves the Discharger of meeting the short holding time required for nitrate. Dischargers may also analyze for Nitrate as NO₃.

⁴Dischargers may use alternative analytical methods approved by EPA.

bgs – below ground surface; RL – Reporting Limit; μS/cm – micro siemens per centimeter

Table 4. Nitrate Loading Risk Factor Criteria and Risk Level Calculation

<p>A. Crop Type Nitrate Hazard Index Rating</p> <p>1 - Bean, Grapes, Olive.</p> <p>2 - Apple, Avocado, Barley, Blackberry, Blueberry, Carrot, Chicory, Citrus, Lemon Oat, Orange, Peach, Pear, Pistachio, Raspberry, Walnut, Wheat.</p> <p>3 - Artichoke, Bean, Brussel Sprout, Corn, Cucumber, Daikon, Peas, Radish, Squash, Summer, Tomato, Turnip, Squash, Rutabaga, Pumpkin, Potato.</p> <p>4 – Beet, Broccoli, Cabbage, Cauliflower, Celery, Chinese Cabbage (Napa), Collard, Endive, Kale, Leek, Lettuce, Mustard, Onion, Parsley, Pepper, Spinach, Strawberry.</p> <p>(Based on UC Riverside Nitrate Hazard Index)</p>
<p>B. Irrigation System Type Rating</p> <p>1 - Micro-irrigation year round (drip and micro-sprinklers) and no pre-irrigation;</p> <p>2 - Sprinklers used for pre-irrigation only and then micro-irrigation;</p> <p>3 - Sprinklers used for germination or at any time during growing season;</p> <p>4 - Surface irrigation systems (furrow or flood) at any, and/or in combination with any other irrigation system type;</p> <p>(Based on UC Riverside Nitrate Hazard Index, Adapted for the Central Coast Region)</p>

C. Irrigation Water Nitrate Concentration Rating

- 1 – Nitrate concentration 0 to 45 mg/liter Nitrate NO₃
- 2 - Nitrate concentration 46 to 60 mg/liter Nitrate NO₃
- 3 - Nitrate concentration 61 to 100 mg/liter Nitrate NO₃
- 4 - Nitrate concentration > 100 mg/l Nitrate NO₃

D. Nitrate Loading Risk Level Calculation = A x B x C

- LOW - Nitrate loading risk is less than 10;
- MODERATE – Nitrate loading risk is between 10 and 15;
- HIGH – Nitrate loading risk is more than 15;

Note: Dischargers must determine the nitrate loading risk factor for each ranch/farm, based on the criteria associated with the highest risk activity existing at each ranch/farm. For example, the ranch/farm is assigned the highest risk factor, based on the single highest risk crop in the rotation, on one block under furrow irrigation, or on one well with high nitrate concentration. As an alternative to the nitrate loading risk level calculation described in Table 4, Dischargers may use the Groundwater Pollution Nitrate Hazard Index developed by UCANR, where a resulting Nitrate Hazard Index score equal or greater or equal to 20 indicates a HIGH nitrate loading risk to groundwater.

Table 5A. Individual Discharge Monitoring for Tailwater, Tile drain, and Stormwater Discharges

Parameter	Analytical Method ¹	Maximum PQL	Units	Min Monitoring Frequency
Discharge Flow or Volume	Field Measure	---	CFS	(a) (d)
Approximate Duration of Flow	Calculation	---	hours/month	
Temperature (water)	Field Measure	0.1	° Celsius	
pH	Field Measure	0.1	pH units	
Electrical Conductivity	Field Measure	100	µS/cm	
Turbidity	SM 2130B, EPA 180.1	1	NTUs	
Nitrate + Nitrite (as N)	EPA 300.1, EPA 353.2	0.1	mg/L	
Ammonia	SM 4500 NH ₃ , EPA 350.3	0.1	mg/L	
Chlorpyrifos ²	EPA 8141A, EPA 614	0.02	ug/L	
Diazinon ²				
Ceriodaphnia Toxicity (96-hr acute)	EPA-821-R-02-012	NA	% Survival	
Hyalella Toxicity in Water (10-day)	EPA-821-R-02-013	NA	% Survival	

¹ In-field water testing instruments/equipment as a substitute for laboratory analysis if the method is approved by EPA, meets RL/PQL specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.

² If chlorpyrifos or diazinon is used at the farm/ranch, otherwise does not apply. The Executive Officer may require monitoring of other pesticides based on results of downstream receiving water monitoring.

- (a) Two times per year during primary irrigation season for farms/ranches less than or equal to 500 acres, and four times per year during primary irrigation season for farms/ranches greater than 500 acres. Executive Officer may reduce sampling frequency based on water quality improvements.
- (b) Once per year during primary irrigation season for farms/ranches less than or equal to 500 acres, and two times per year during primary irrigation season for farms/ranches greater than 500 acres.
- (c) Sample must be collected within one week of chemical application, if chemical is applied on farm/ranch;
- (d) Once per year during wet season (October – March) for farms/ranches less than or equal to 500 acres, and two times per year during wet season for farms/ranches greater than 500 acres, within 18 hours of major storm events;
- CFS – Cubic feet per second; NTU – Nephelometric turbidity unit; PQL – Practical Quantitation Limit;
 NA – Not applicable

Table 5B. Individual Discharge Monitoring for Tailwater Ponds and other Surface Containment Features

Parameter	Analytical Method ¹	Maximum PQL	Units	Minimum Monitoring Frequency
Volume of Pond	Field Measure	1	Gallons	(a) (d)
Nitrate + Nitrite (as N)	EPA 300.1, EPA 353.2	50	mg/L	

¹ In-field water testing instruments/equipment as a substitute for laboratory analysis if the method is approved by EPA, meets RL/PQL specifications in the MRP, and appropriate sampling methodology and quality assurance checks can be applied to ensure that QAPP standards are met to ensure accuracy of the test.

(a) Four times per year during primary irrigation season; Executive Officer may reduce monitoring frequency based on water quality improvements.

(d) Two times per year during wet season (October – March, within 18 hours of major storm events)

Table 6. Tier 3 - Time Schedule for Key Monitoring and Reporting Requirements

REQUIREMENT	TIME SCHEDULE ¹
Submit Quality Assurance Project Plan and Sampling And Analysis Plan for Surface Receiving Water Quality Monitoring (individually or through cooperative monitoring program)	Within three months
Initiate surface receiving water quality monitoring (individually or through cooperative monitoring program)	Within six months
Submit surface receiving water quality monitoring data (individually or through cooperative monitoring program)	Within nine months, quarterly thereafter (January 1, April 1, July 1, and October 1)
Submit surface receiving water quality Annual Monitoring Report (individually or through cooperative monitoring program)	Within one year, annually thereafter by January 1
Initiate monitoring of groundwater wells	Within one year
Submit individual surface water discharge Sampling and Analysis Plan	March 15, 2013
Initiate individual surface water discharge monitoring	October 1, 2013
Submit individual surface water discharge monitoring data	March 15, 2014, October 1, 2014 and annually thereafter by October 1
Submit electronic Annual Compliance Form	October 1, 2012, and updated annually thereafter by October 1
Submit groundwater monitoring results	October 1, 2013

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 FOR DISCHARGES FROM IRRIGATED LANDS

<i>Tier 3 Dischargers with farms/ranches that contain or are adjacent to a waterbody impaired for temperature, turbidity or sediment:</i>	
Conduct photo monitoring of riparian or wetland area habitat	October 1, 2012, and every four years thereafter by October 1
Submit Water Quality Buffer Plan or alternative	October 1, 2016
<i>Tier 3 Dischargers with farms/ranches that have High Nitrate Loading Risk:</i>	
Report total nitrogen applied per acre to each farm/ranch or nitrate loading risk unit, in electronic Annual Compliance Form	October 1, 2014, and annually thereafter by October 1.
Determine Crop Nitrogen Uptake	October 1, 2013
Submit INMP elements in electronic Annual Compliance Form	October 1, 2015, and annually thereafter by October 1
Submit indication of progress towards Nitrogen Balance Ratio milestone equal to one (1) for crops in annual rotation (e.g. cool season vegetables) or alternative,	October 1, 2015
Submit indication of progress towards Nitrogen Balance Ratio milestone equal to 1.2 for annual crops occupying the ground for the entire year (e.g. strawberries or raspberries) or alternative	
Submit INMP Effectiveness Report	October 1, 2016

¹ Dates are relative to adoption of this Order, unless otherwise specified.

EXHIBIT “E”

**REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
RESOLUTION NO. R3-2012-0012**

Certification, Pursuant to the California Environmental Quality Act, of the Final Subsequent Environmental Impact Report and CEQA, Findings, and Statement of Overriding Considerations for the Adoption of a Renewal of a Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands in the Central Coast Region (Order No. R3-2012-0011)

1. The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) is the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in connection with its adoption of a waiver of waste discharge requirements for discharges of waste from irrigated lands (Order No. R3-2012-0011) (2012 Agricultural Order).
2. On July 9, 2004, the Central Coast Water Board adopted Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, waiving waste discharge requirements for discharges of waste from irrigated lands in the Central Coast Region (2004 Agricultural Order) and adopted a Negative Declaration under CEQA (2004 Negative Declaration). No person filed any legal challenge to the 2004 Agricultural Order or the 2004 Negative Declaration.
3. The Central Coast Water Board has engaged in a lengthy public process to consider renewal of the 2004 Agricultural Order. During most of 2009, the Water Board convened an Agricultural Advisory Group consisting of grower and environmental group representatives to work on updating the Order. On February 1, 2010, the Central Coast Water Board released for public review a Preliminary Staff Draft Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands (February Preliminary Staff Draft Order) and received comments and alternative proposals to the Preliminary Staff Draft Order. On May 12, 2010 and July 8, 2010, the Central Coast Water Board held public workshops to provide an opportunity for public comments and recommendations on the renewal of the 2004 Ag Order. Between February 1, 2010 and February 18, 2010, Central Coast Water Board staff held meetings with persons interested in the renewal of the 2004 Agricultural Order, including individuals and representatives of farming groups, environmental groups, and public health groups. On August 16, 2010, the Central Coast Water Board staff held a scoping meeting pursuant to CEQA to receive information about the scope of the proposal and potential environmental effects of a renewal of the 2004 Ag Order. The Central Coast Water Board also received written comments with respect to scoping and other aspects of the renewal of the 2004 Ag Order.
4. On October 14, 2010, the Central Coast Water Board sent to the Office of Planning and Research and each responsible and trustee agency a notice of preparation in compliance with CEQA Guidelines section 15082 (Cal. Code Regs., tit. 14, § 15082) stating that the Board intended to prepare a subsequent environmental impact report (SEIR) and provided those agencies with 30 days to provide comments prior to the release of the SEIR. The Central Coast Water Board received comments from California State Lands Commission (CSLC), the Native American Heritage Commission (NAHC), and the California Department of Transportation (Caltrans).
5. On October 25, 2010, the Central Coast Water Board provided public notice of the availability of a Draft SEIR and a notice of completion of the Draft SEIR to the Office of Planning and Research in compliance with CEQA Guidelines section 15087 (Cal. Code Regs., tit. 14, § 15087). The public notice was provided by noticing on the Board's website, by electronic mail to known interested persons and agencies, and by publication in a newspaper of general circulation. The State Clearinghouse also

distributed the Draft SEIR to state agencies for review. The Draft SEIR and associated documents, including the Staff Report and appendices and proposed Order No. R3-2012-0011, were made available at the time of notice of the availability of the Draft SEIR.

6. Agencies and interested persons were provided a minimum of 45 days for the submittal of comments on the Draft SEIR. The Central Coast Water Board received no comments from public agencies on the Draft SEIR. The Central Coast Water Board received 12 comment letters from interested persons commenting on the Draft SEIR and 116 comment letters from interested persons commenting on draft Order No. R3-2012-0011 and associated documents. These comments are available for public review on the Central Coast Water Board's website http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml.
7. On March 1, 2010, the Central Coast Water Board issued a Final SEIR for Order No. R3-2012-0011. The Final SEIR clarifies several issues, including clarification of mitigation measures, and makes minor clarifying edits in response to comments. On August 10, 2011, the Central Coast Water Board staff issued an Addendum to the SEIR to reflect revisions to the Draft Agricultural Order. A new SEIR was not required because the revisions to the Draft Agricultural Order have either already been evaluated in the Final SEIR or the 2004 Negative Declaration, or the revisions do not constitute substantial changes that involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects (Cal. Code Regs. tit. 14, §§ 15164, 15162).
8. The Final SEIR consists of the Draft SEIR as revised, the Responses to Comments to the Draft SEIR, and documents referenced and incorporated into the Final SEIR.
9. The Final SEIR identifies no new significant impacts as compared to the Draft SEIR.
10. The Final SEIR identifies the potential significant environmental impacts of the project and, where appropriate, identifies feasible mitigation measures to reduce impacts to a less than a significant level.
11. The Final SEIR has been completed in compliance with CEQA.
12. The Final SEIR has been presented to the Central Coast Water Board and the Central Coast Water Board has reviewed and considered the information contained in the Final SEIR prior to adopting the 2012 Agricultural Order.
13. The Central Coast Water Board has reviewed and considered the information contained in the Final SEIR, and hereby adopts and certifies the Final SEIR.
14. The CEQA Guidelines specify that the lead agency shall not prepare a subsequent environmental impact report unless it determines on the basis of substantial evidence in the light of the whole record that there would be a substantial increase in the severity of previously identified significant effects. (Cal. Code. Regs, tit. 14 §15162(a)(1).) Members of the public and public agencies had suggested that there could be an increase in the severity of previously identified significant effects compared to the 2004 Agricultural Order, so the Central Coast Water Board staff prepared the Draft SEIR to evaluate the potential effects. After review of all the evidence and comments, the Final SEIR concludes that with respect to impacts on Agricultural Resources the adoption of the 2012 Agricultural Order will not result in significant environmental effects and with respect to Biological Resources concludes that reduction in surface water flows as the result of compliance with the 2012 Agricultural Order could result in potentially significant impacts on aquatic life, but that to the extent there is an impact it would likely be short term.
15. With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in significant adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large

scale termination of agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in the Section 2.4 of the Final SEIR, the proposed 2012 Agricultural Order would impose additional conditions on approximately 100 to 300 of the approximately 3000 owners or operators currently enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub. Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may implement vegetated buffer strips, could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less than significant and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the proposed 2012 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts. Even if the effects could be more severe, they can be mitigated due to actions by dischargers.

16. With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation to comply with the 2012 Agricultural Order could result in lower flows into surface water resulting in impacts on aquatic life. Because the Central Coast Water Board may not specify the manner of compliance and the Order would not direct persons to reduce flows, the Board has insufficient information, after reviewing the entire record, including information provided by resource agencies, to determine the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Wildlife agencies suggested that reduction in toxic runoff would offset impacts due to reduced flows that could occur. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water recharging surface water. The potential exists for improved base flow conditions in the event that tailwater is allowed to percolate to groundwater, rather than being discharged to surface waterbodies where it is quickly transported downstream. The potential for improved base flow conditions also exists in the event that growers reduce groundwater pumping in an effort to reduce tailwater discharge to surface waterbodies. Consequently, reduced or elimination of tailwater does not necessarily equate to elimination of flow. Furthermore, what flow would be available will be of higher quality, and therefore have a higher potential of supporting desirable habitat, particularly native species.
17. Based on this information, the Final SEIR concludes that the environmental effects on Biological Resources associated with the 2012 Agricultural Order may actually not be significant but that due to the uncertainty associated with evaluating the available information, the Central Coast Water Board is making these written findings.
18. With respect to Biological Resources, there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels. Potential mitigation measures to prevent reduced flows or to reduce the impact of reduced flows include phasing in management practices that could result in reduced flows; reducing or eliminating conditions in the proposed 2012 Agricultural Order with respect to tile drain discharges; and use of riparian buffers that will effectively treat the water to remove pollutants, but not necessarily reduce flows. In some cases, other agencies have the ability to require or implement these mitigation measures and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the 2012 Agricultural Order, including the Department of Fish and Game, which regulates impacts on endangered species, and the United States Corps of Engineers, that regulates dredge and fill activities. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2). There are legal considerations that may make infeasible some of the

mitigation measures that could be implemented. The Central Coast Water Board may not specify the manner of compliance with its orders and as a result implementation of potential mitigation measures are not under the control or discretion of the Central Coast Water Board. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(3).

19. CEQA requires a public agency that makes findings required under section 15091(a) to require mitigation monitoring or reporting. The 2012 Agricultural Order requires reports to evaluate the effectiveness of management practices, including monitoring groundwater and surface water.
20. Pursuant to CEQA Guidelines section 15093 (Cal. Code Regs., tit. 14., § 15093), the Central Coast Water Board hereby finds that the project's benefits override and outweigh its potential unavoidable significant adverse impacts, for the reasons more fully set forth in the Staff Report and appendices thereto. Specific economic, social, and environmental benefits justify the adoption of this project despite the project's potential significant adverse environmental impacts. The Central Coast Water Board has the authority and responsibility to regulate discharges of waste associated with irrigated agriculture. Many of those discharges have caused significant widespread degradation and/or pollution of waters of the state as described in the 2012 Agricultural Order and Staff Report and associated reference materials. The 2012 Agricultural Order would result in actions to restore the quality of the waters of the state and protect the beneficial uses, including aquatic habitat. While some impacts could occur due to reduced flows from implementing actions to comply with the Order, the benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every unavoidable impact. Upon review of the environmental information generated for the 2012 Agricultural Order and in view of the entire record supporting the need for the 2012 Agricultural Order, the Central Coast Water Board determines that specific economic, legal, social, technological, environmental, and other benefits of this proposed order outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.
21. The Final SEIR reflects the Central Coast Water Board's independent judgment and analysis.

THEREFORE IT IS RESOLVED THAT:

The Central Coast Water Board certifies that the Final SEIR for the adoption of Order No. R3-2012-0011, the Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, complies with the requirements of CEQA (Pub. Resources Code § 21000 et seq.).

CERTIFICATION

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 15, 2012.

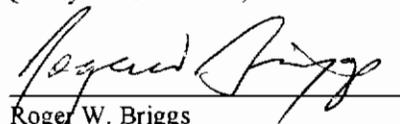

Roger W. Briggs
Executive Officer

EXHIBIT “F”

Notice of Determination

Appendix D

To: Office of Planning and Research

U.S. Mail:

P.O. Box 3044

Sacramento, CA 95812-3044

Street Address:

1400 Tenth St., Rm 113

Sacramento, CA 95814

From:

Public Agency: Central Coast Water Board

Address: 895 Aerovista Place, Suite 101

San Luis Obispo, CA 93401

Contact: Angela Schroeter

Phone: 805-542-4644

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number: 2010101073

Project Title: Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order

Project Applicant: Central Coast Water Board (Regional Water Quality Control Board, San Luis Obispo)

Project Location: The Central Coast Water Board's boundary which includes all of Santa Cruz, San Benito, Monterey, Santa Barbara, and San Luis Obispo counties, as well as the southern one-third of Santa Clara, and small portions of San Mateo, Kern and Ventura counties.

Project Description: The purpose of this project is to renew the 2004 Agricultural Order with revised conditions. The 2012 Agricultural Order (Order No. R3-2012-0011) renews a conditional waiver of waste discharges of waste from irrigated agricultural lands in a manner protective of water quality and consistent with the Porter-Cologne Water Quality Control Act (Wat. Code Div. 7) and associated plans and policies. The Agency determined that it is unlikely that this project will have a significant effect on the environment.

This is to advise that the Central Coast Water Board (Lead Agency) has approved the above described project on March 15, 2012 and has made the following determinations regarding the above described project:

1. The project will not have a significant effect on the environment.
2. A Subsequent Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan was not adopted for this project.
5. A statement of Overriding Considerations was adopted for this project.
6. Findings were made pursuant to the provisions of CEQA.

This is to certify that the final subsequent EIR with comments and responses and record of project approval is available to the General Public at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml

Signature (Public Agency): Michael Thomas Title: Assistant Executive Officer

Date: 4/3/2012 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code. Revised 2011

EXHIBIT “G”

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Attorneys for Petitioners
6 Ocean Mist Farms and RC Farms

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9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10
11 OCEAN MIST FARMS AND RC FARMS

SWRCB/OCC File No. _____

12 vs.

13 CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
14 CENTRAL COAST REGION

DECLARATION OF DALE HUSS IN
SUPPORT OF REQUEST FOR STAY AND
PETITION FOR REVIEW OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, CENTRAL COAST REGION,
ORDER NOS. R3-2012-0011, R3-2012-0011-
01, R3-2012-0011-02, AND R3-2012-0011-03,
AND RESOLUTION NO. R3-2012-0012

DECLARATION OF DALE HUSS

I, Dale Huss, declare as follows:

1. I am the Vice-President of Artichoke Production of Ocean Mist Farms. In my capacity as the Vice-President of Artichoke Production, I am responsible for oversight and supervision of operations at Ocean Mist Farms and Ocean Mist Farm's enrollment in the 2004 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (the "2004 Ag Waiver"). I have personally reviewed California Regional Water Quality Control Board, Central Coast Region's ("Regional Board's") Order No. R3-2012-0011 ("2012 Ag Waiver"), and Order Nos. R3-2012-0011-01, R3-2012-0011-02, and Order No. R3-2012-0011-03 (the "Monitoring and Reporting Program"). Based on my review of the 2012 Ag Waiver and my own knowledge of Ocean Mist Farms' operations, I know the following facts to be true, and if called upon to do so, I would testify to these facts.

2. Ocean Mist Farms is a major vegetable grower and packer based in the Salinas Valley, Castroville, and Pajaro areas of the Central Coast region. The total irrigated acreage, owned or operated by Ocean Mist Farms in the Central Coast region, far exceeds 500 acres. Portions of the Ocean Mist Farm operations are located within 1000 feet of several surface waterbodies listed on the 2010 List of Impaired Waterbodies, which is attached to the 2012 Ag Waiver as Table 1. As part of its operations, Ocean Mist Farms has used products containing nitrogen to fertilize its crops and has applied chlorpyrifos and/or diazinon at its farms as agronomic need arises. For at least part of its operations, Ocean Mist Farms applies fertilizers, pesticides, fumigants or other chemicals as needed by all various legal processes. Ocean Mist Farms uses irrigation retention ponds as part of its mitigation efforts to improve water quality in the Central Coast region.

3. Ocean Mist Farms is currently enrolled in the 2004 Ag Waiver. The 2012 Ag Waiver introduced new regulations that are substantially different from those of the 2004 Ag Waiver. The new regulations will significantly impact Ocean Mist Farms' operations and management.

1 4. If the enforcement of 2012 Ag Waiver is not stayed immediately, Ocean Mist
2 Farms will suffer substantial harm. Based on information provided to me by operators of other
3 farms in the Central Coast region, I believe other farms that are similarly situated will also suffer
4 substantial harm under the 2012 Ag Waiver.

5 5. Specifically, the 2012 Ag Waiver requires that Ocean Mist Farms immediately
6 comply with applicable Total Maximum Daily Loads, prevent its existing containment structures
7 (such as retention ponds or reservoirs) from percolating any waste to groundwater, and maintain
8 riparian vegetative covers and riparian areas for aquatic and wildlife support. (See 2012 Ag
9 Waiver, p. 24, ¶24, & p. 20, ¶33 & 39.) To satisfy the new regulations that are currently subject
10 to review by the State Water Resources Control Board (“State Board”), Ocean Mist Farms will
11 need to hire experts and consultants to develop a program to comply with the Total Maximum
12 Daily Loads, design and construct new containment structures to replace its existing retention
13 ponds, and hire and/or train its employees to maintain riparian vegetative covers and riparian
14 areas. Since these regulations take effect immediately, Ocean Mist Farms must act on an urgent
15 basis to avoid any liability under the 2012 Ag Waiver. To comply with these regulations, Ocean
16 Mist Farms will incur substantial costs, estimated to be between \$50.00 and \$100.00 per acre
17 (several hundreds of thousands of dollars), all of which will be incurred in the short period of
18 time that the Petition is subject to review by the State Board. Many of these costs will be
19 ongoing and could position Ocean Mist Farms at a distinct financial competitive disadvantage to
20 other growers in other regions of the state, other states, and other countries who are direct
21 competitors with California Vegetable Production.

22 6. Moreover, due to its crops, the size of its farmland and its vicinity to the impaired
23 waterbodies, Ocean Mist Farms will have many farms likely be classified as a Tier 2 or Tier 3
24 participant pursuant to the 2012 Ag Waiver. As such, Ocean Mist Farms has to install backflow
25 prevention devises at its wells and pumps, develop a farm water quality management plan, submit
26 an Annual Compliance Form, calculate its nitrate loading risk facts, and conduct photo
27 monitoring of surface waterbodies by October 1, 2012 – less than six months from now. (See
28 2012 Ag Waiver, p. 19, ¶31, p. 21, ¶44, & pp. 27-28, ¶¶67, 68 & 69.)

1 7. As a farm with a high nitrate load risk crops (vegetables) we are required to
2 determine the nitrate uptake for each crop type. The new regulations would require by October 1,
3 2012 Ocean Mist to calculate nitrate chemical uptake for each of our many crops, each different
4 soil type, each different soil pH, and considerable other important variables. These studies and
5 calculations take many experts, and considerable time to evaluate. We could not possibly comply
6 within the October 1, 2012 regulatory deadline.

7 8. The waiver would also require that we initiate an Irrigation and Nutrient
8 Management Plan (INMP) which is to be certified by a CCA or propose a Groundwater
9 Monitoring and Reporting Plan (GMRP) for each ranch unit and assess if waste will cause
10 exceedances of nitrate in groundwater. (Page 29, ¶¶ 74-79.) It is totally an unreasonable
11 requirement for a farmer to calculate the nitrogen uptake for each crop for each ranch, much less
12 calculate how much of a particular chemical would not be taken up by plants, tied to soil particles
13 or otherwise attenuated by the soil and its organic components and therefore may actually
14 percolate to groundwater.

15 9. Given the size of Ocean Mist Farms' operations, six months will not even be
16 enough time to implement the required actions. To ensure compliance, Ocean Mist Farms must
17 take actions now to (a) retain experts and consultants to develop management plans, and calculate
18 nitrate loading risks, (b) purchase, install, and maintain the backflow prevention devices for its
19 wells and pumps, and (c) train and/or hire additional employees to perform the required work. As
20 a result, Ocean Mist Farms will incur substantial costs, estimated to be in the hundreds of
21 thousands of dollars, for compliance with regulations that the State Board may later revoke.

22 10. As the State Board may not render its decision on the Petition until well after
23 October 1, 2012, the costs described in paragraphs 5 and 6 above will be incurred during the time
24 that the Petition is subject to review. If a stay is not granted immediately, Ocean Mist Farms will
25 suffer irreparable and substantial harm as described above.

26 11. I have not received any information that suggests interested persons or the public
27 interest will be substantially harmed if a stay is granted, and on that basis, I believe that a stay
28 will not cause substantial harm to interested persons or to the public interest.

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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 12th day of April, 2012, at Castroville, California.



Dale Huss

LAW OFFICES OF
BEST BEST & KRIEGER LLP
500 CAPITOL MALL, SUITE 1700
SACRAMENTO, CALIFORNIA 95814

EXHIBIT “H”

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 4 Sacramento, California 95814
 Telephone: (916) 325-4000
 5 Telecopier: (916) 325-4010
 Attorneys for Petitioners
 6 Ocean Mist Farms and RC Farms

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 8
 9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10
 11 OCEAN MIST FARMS AND RC FARMS

SWRCB/OCC File No. _____

12 vs.

13 CALIFORNIA REGIONAL WATER
 14 QUALITY CONTROL BOARD,
 CENTRAL COAST REGION

DECLARATION OF DENNIS SITES IN
 SUPPORT OF REQUEST FOR STAY AND
 PETITION FOR REVIEW OF CALIFORNIA
 REGIONAL WATER QUALITY CONTROL
 BOARD, CENTRAL COAST REGION,
 ORDER NOS. R3-2012-0011, R3-2012-0011-
 01, R3-2012-0011-02, AND R3-2012-0011-03,
 AND RESOLUTION NO. R3-2012-0012

LAW OFFICES OF
 BEST BEST & KRIEGER LLP
 500 CAPITOL MALL, SUITE 1700
 SACRAMENTO, CALIFORNIA 95814

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DECLARATION OF DENNIS SITES

I, Dennis Sites, declare as follows:

1. I am the Consultant for RC Farms. In my capacity as the Consultant, I am responsible for RC Farm's enrollment in the 2004 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (the "2004 Ag Waiver"). I have personally reviewed California Regional Water Quality Control Board, Central Coast Region's ("Regional Board's") Order No. R3-2012-0011 ("2012 Ag Waiver"), and Order Nos. R3-2012-0011-01, R3-2012-0011-02, and Order No. R3-2012-0011-03 (the "Monitoring and Reporting Program"). Based on my review of the 2012 Ag Waiver and my own knowledge of RC Farms' operations, I know the following facts to be true, and if called upon to do so, I would testify to these facts.

2. RC Farms is a major vegetable grower and packer based in the Salinas Valley, of the Central Coast region. The total irrigated acreage, owned or operated by RC Farms in the Central Coast region, far exceeds 500 acres. Portions of the RC Farm's operations are located within 1000 feet of several surface waterbodies listed on the 2010 List of Impaired Waterbodies, which is attached to the 2012 Ag Waiver as Table 1. As part of its operations, RC Farms has used products containing nitrogen to fertilize its crops and has applied chlorpyrifos and/or diazinon at its farms as agronomic need arises. For at least part of its operations, RC Farms applies fertilizers, pesticides, fumigants or other chemicals as needed by all various legal processes. RC Farms uses irrigation retention ponds as part of its mitigation efforts to improve water quality in the Central Coast region.

3. RC Farms is currently enrolled in the 2004 Ag Waiver. The 2012 Ag Waiver introduced new regulations that are substantially different from those of the 2004 Ag Waiver. The new regulations will significantly impact RC Farms' operations and management.

4. If the enforcement of 2012 Ag Waiver is not stayed immediately, RC Farms will suffer substantial harm. Based on information provided to me by operators of other farms in the Central Coast region, I believe other farms that are similarly situated will also suffer substantial harm under the 2012 Ag Waiver.

82418.00001\7378179.2

LAW OFFICES OF
BEST BEST & KRIEGER LLP
500 CAPITOL MALL, SUITE 1700
SACRAMENTO, CALIFORNIA 95814

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BEST BEST & KRIEGER LLP
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SACRAMENTO, CALIFORNIA 95814

1 5. Specifically, the 2012 Ag Waiver requires that RC Farms immediately comply
 2 with applicable Total Maximum Daily Loads, prevent its existing containment structures (such as
 3 retention ponds or reservoirs) from percolating any waste to groundwater, and maintain riparian
 4 vegetative covers and riparian areas for aquatic and wildlife support. (See 2012 Ag Waiver, p.
 5 24, ¶24, & p. 20, ¶33 & 39.) To satisfy the new regulations that are currently subject to review by
 6 the State Water Resources Control Board (“State Board”), RC Farms will need to hire experts and
 7 consultants to develop a program to comply with the Total Maximum Daily Loads, design and
 8 construct new containment structures to replace its existing retention ponds, and hire and/or train
 9 its employees to maintain riparian vegetative covers and riparian areas. Since these regulations
 10 take effect immediately, RC Farms must act on an urgent basis to avoid any liability under the
 11 2012 Ag Waiver. To comply with these regulations, RC Farms will incur substantial costs,
 12 estimated to be over \$100 per acre, or \$500,000 on an annual basis, all of which will be incurred
 13 during the time that the Petition is subject to review by the State Board. These costs do not
 14 include loss of production when forced to use the nutrient management program required by the
 15 Regional Board.

16 6. Moreover, due to its crops, the size of its farmland and its vicinity to the impaired
 17 waterbodies, RC Farms will have many farms likely be classified as a Tier 2 or Tier 3 participant
 18 pursuant to the 2012 Ag Waiver. As such, RC Farms has to install backflow prevention devices
 19 at its wells and pumps, develop a farm water quality management plan, submit an Annual
 20 Compliance Form, calculate its nitrate loading risk facts, and conduct photo monitoring of surface
 21 waterbodies by October 1, 2012 – less than six months from now. (See 2012 Ag Waiver, p. 19,
 22 ¶31, p. 21, ¶44, & pp. 27-28, ¶¶67, 68 & 69.)

23 7. As a farm with a high nitrate load risk crops (vegetables) we are required to
 24 determine the nitrate uptake for each crop type. The new regulations would require by October 1,
 25 2012 RC Farms to calculate nitrate chemical uptake for each of our many crops, each different
 26 soil type, each different soil pH, and considerable other important variables. These studies and
 27 calculations take many experts, and considerable time to evaluate. We could not possibly comply
 28 within the October 1, 2012 regulatory deadline.

8. The waiver would also require that we initiate an Irrigation and Nutrient Management Plan (INMP) which is to be certified by a CCA or propose a Groundwater Monitoring and Reporting Plan (GMRP) for each ranch unit and assess if waste will cause exceedances of nitrate in groundwater. (Page 29, ¶¶ 74-79.) It is totally an unreasonable requirement for a farmer to calculate the nitrogen uptake for each crop for each ranch, much less calculate how much of a particular nutrient would not be taken up by plants, tied to soil particles or otherwise attenuated by the soil and its organic components and therefore may actually percolate to groundwater.

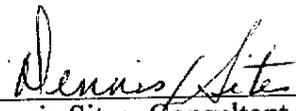
9. Given the size of RC Farms' operations, six months will not even be enough time to implement the required actions. To ensure compliance, RC Farms must take actions now to (a) retain experts and consultants to develop management plan and calculate nitrate loading risks, (b) purchase, install, and maintain the backflow prevention devices for its wells and pumps, and (c) train and/or hire additional employees to perform the required work. As a result, RC Farms will incur substantial costs, estimated to be over \$100 per acre, or \$500,000 on an annual basis, for compliance with regulations that the State Board may later revoke. Again, this does not include loss of production and subsequent revenues.

10. As the State Board may not render its decision on the Petition until well after October 1, 2012, the costs described in paragraphs 5 and 6 above will be incurred during the time that the Petition is subject to review. If a stay is not granted immediately, RC Farms will suffer irreparable and substantial harm as described above.

11. I have not received any information that suggests interested persons or the public interest will be substantially harmed if a stay is granted, and on that basis, I believe that a stay will not cause substantial harm to interested persons or to the public interest.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 12th day of April, 2012, at Salinas, California.



Dennis Sites, Consultant, RC Farms

EXHIBIT “I”

LAW OFFICES OF
BEST BEST & KRIEGER LLP
500 CAPITOL MALL, SUITE 1700
SACRAMENTO, CALIFORNIA 95814

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Attorneys for Petitioners
Ocean Mist Farms and RC Farms

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

OCEAN MIST FARMS AND RC FARMS

vs.

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
CENTRAL COAST REGION

SWRCB/OCC File No. _____

DECLARATION OF WILLIAM THOMAS IN
SUPPORT OF REQUEST TO STAY AND
PETITION FOR REVIEW CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, CENTRAL COAST REGION,
ORDER NOS. R3-2012-0011, R3-2012-0011-
01, R3-2012-0011-02, AND R3-2012-0011-03,
AND RESOLUTION NO. R3-2012-0012

LAW OFFICES OF
BEST BEST & KRIEGER LLP
500 CAPITOL MALL, SUITE 1700
SACRAMENTO, CALIFORNIA 95814

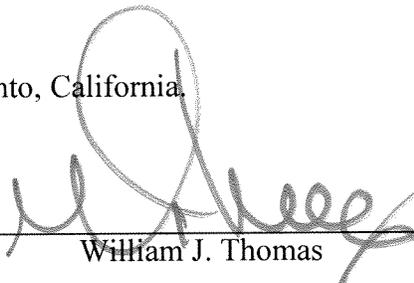
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5. I am not aware of any interested persons or public interest that will be substantially harmed if a stay is granted.

6. The Petitioners' ability to prepare the Request for Stay and the Petition has been prejudicially impeded by the Regional Board's slow response time in providing the necessary documents. The California Water Code provides that the regulated parties have only 30 days to appeal actions by the Regional Boards. Although the Regional Board adopted the 2012 Ag Waiver, the Monitoring and Reporting Program, and Resolution No. R3-2012-0012 on March 15, 2012, mandating the appeal be filed by April 16, 2012, the Regional Board however did not provide my office with the 2012 Ag Waiver and the Monitoring and Reporting Program until March 26, 2012, and Resolution No. R3-2012-0012 until April 10, 2012. Moreover, the Regional Board has not produced a Notice of Determination ("NOD") that bears the stamp of the Office of Planning and Research, indicating that the NOD has been filed. Furthermore, despite repeated requests for expedited transcripts for the Regional Board hearing conducted on March 14 and 15, 2012, the Regional Board did not provide the draft March 14, 2012 hearing transcript until April 11, 2012 and the final transcript until April 13, 2012. My office received the March 15, 2012 hearing transcript on April 3, 2012. Consequently, the 30 day statutory period for our clients to exercise their due process appeal rights has effectively been cut to only a few days.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 16th day of April, 2012, at Sacramento, California.



William J. Thomas

EXHIBIT “J”

A6028BD
PANEL HEARING MARCH 14, 2012

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HEARING OF THE WAIVER OF WASTE DISCHARGE
REQUIREMENTS DISCHARGED FROM
IRRIGATED LANDS
CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
PANEL HEARING
SAN LUIS OBISPO, CALIFORNIA
MARCH 14, 2012

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REPORTED BY: FRANCES M. GARRITY, CSR NO. 8934
FILE NO.: A6028BD

A6028BD
PANEL HEARING MARCH 14, 2012

1 HEARING OF THE WAIVER OF WASTE DISCHARGE
2 REQUIREMENTS DISCHARGED FROM
3 IRRIGATED LANDS
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10 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
11 PANEL HEARING
12 SAN LUIS OBISPO, CALIFORNIA
13 MARCH 14, 2012
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17 TRANSCRIPT OF PROCEEDINGS taken on
18 behalf of the Central Coast Regional Water Quality
19 Control Board, at 333 Madonna Road, San Luis Obispo,
20 California, 93405, commencing at 9:30 a.m., Wednesday,
21 March 14, 2012, before FRANCES M. GARRITY,
22 CSR No. 8934.
23
24
25

Page 2

1 APPEARANCES
2
3 FOR THE CENTRAL COAST REGIONAL WATER QUALITY
4 CONTROL BOARD:
5
6 JEFFREY S. YOUNG, CHAIRMAN
7 RUSSELL M. JEFFRIES, VICE CHAIRMAN
8 FRANCES McCHESNEY, SENIOR COUNSEL
9 MONICA S. HUNTER
10 JEAN-PIERRE WOLFF
11 MAYOR BRUCE DELGADO
12 MIKE JOHNSTON
13 MICHAEL JORDAN
14 HARVEY PACKARD
15
16 **LEAD STAFF PERSONS:**
17 ROGER W. BRIGGS, EXECUTIVE OFFICER
18 MICHAEL THOMAS, ASSISTANT EXECUTIVE OFFICER
19 LISA HOROWITZ McCANN, SECTION MANAGER
20 ANGELA SCHROETER, AGRICULTURAL REGULATORY
21 MATTHEW KEELING, PROGRAM/BASIN PLANNING
22
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1 SAN LUIS OBISPO, CALIFORNIA
2 WEDNESDAY, MARCH 14, 2012
3
4 **MR. YOUNG:** Good morning, everyone. I'm
5 Jeff Young, Chair of the Central Coast Regional Water
6 Control Board. Welcome to San Luis Obispo. It is
7 March 14th, and why don't we begin with our roll call.
8 Mr. Briggs?
9 **MR. BRIGGS:** Oh, Harvey is going to call roll.
10 Harvey Packard.
11 **MR. YOUNG:** Oh, okay.
12 **MR. PACKARD:** Jeffrey Young.
13 **MR. YOUNG:** Here.
14 **MR. PACKARD:** Russell Jeffries?
15 **MR. JEFFRIES:** Yes.
16 **MR. PACKARD:** Bruce Delgado.
17 **MR. DELGADO:** Here.
18 **MR. PACKARD:** Monica Hunter.
19 **MS. HUNTER:** Present.
20 **MR. PACKARD:** Mike Johnston.
21 **MR. JOHNSTON:** Here.
22 **MR. PACKARD:** Michael Jordan.
23 **MR. JORDAN:** Here.
24 **MR. PACKARD:** Jean-Pierre Wolff?
25 **MR. WOLFF:** Here.

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1 **MR. YOUNG:** Okay. Thank you.
2 Mr. Briggs, introductions?
3 **MR. BRIGGS:** Thank you, Mr. Chairman.
4 Welcome everybody. We just heard from
5 Harvey Packard of our Staff over there, our Assistant
6 Executive Officer, Michael Thomas, is standing right
7 there, and to my left is Frances McChesney, our counsel
8 from the State Water Resources Control Board, who
9 represents the Board.
10 We have testimony cards available.
11 John Gonee is at the door, right there, and has those
12 cards available, so if you're interested in speaking on
13 any items today, please fill those out and hand them to
14 Staff, so we'll know to call your name.
15 Restrooms are out there, down this way, I
16 believe. And we would appreciate if you would turn off
17 your cell phones, or at least so they don't make
18 noise. I just reminded myself.
19 Let's see. And we'll be hearing is we'll be
20 introducing other Staff as they come up later today.
21 And, I believe, that's it for now,
22 Mr. Chairman.
23 **MR. YOUNG:** Okay. Thank you, Mr. Briggs.
24 Staff recognitions?
25 **MR. BRIGGS:** Yes.

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1 Mr. Chair, this morning we want to recognize
2 seven Staff, representing both the State Board, and
3 that is the Staff from both of State Board and our
4 region, who were awarded Superior Accomplishment Awards
5 for their outstanding job performance for the Water
6 Board, the bigger Water Board. Their joint effort to
7 develop and implement the Water Board's Electronic
8 Notice of Intent, leveraging the Water Board's
9 Geotracker Data Management System, that's an existing
10 system, this is in addition to it, for irrigated
11 agriculture, has made an exceptional contribution
12 towards advancing Water Quality Improvement, improving
13 the effectiveness and efficiency of the Water Board.
14 So State Board and/or Staff worked together
15 and did a really incredible and unprecedented job to
16 implement this project in a very short window of time.
17 And that involved coordinating with the agricultural
18 industry, technical assistance providers, working with
19 hundreds of growers to provide compliance assistance,
20 and ended up representing over 84 percent enrollment of
21 irrigated agricultural acreage on the Central Coast,
22 which was pretty outstanding for initial rollout.
23 The team demonstrated a high commitment to
24 water quality and exceptional customer service, and
25 were each integral to the success of the project. This

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1 system is the first of its kind in California, and very
2 possibly the nation, for irrigated agricultural. So we
3 have some plaques here. By the way, the two State
4 Board representatives were unable to be here today,
5 it's my understanding, but if we can have Elaine Shaul,
6 Monica Barricarte, Karen Huckelby, Hector Hernandez and
7 Wey Lu come forward, please.
8 I feel like we should have some music for
9 you. Why don't you just come up here, please. Is
10 Wade not here, too? I guess, John Wade is not here.
11 Okay. I guess John Wade couldn't be here, but Elaine,
12 here's your plaque. Karen, here's your plaque.
13 Monica, here is your plaque, and Hector, last, but not
14 least, of course, here's your plaque. I want to -- the
15 Board and I want to thank you very, very much for your
16 outstanding commitment and your accomplishment, and
17 congratulations, and how about a round of applause.
18 Thank you, again.
19 **MR. YOUNG:** Okay. Why don't we move on to Item
20 Number 4 in our Agenda, the Conditional Waiver of Waste
21 Discharge Requirements For Irrigated Agricultural.
22 Mr. Briggs.
23 **MR. BRIGGS:** Thank you, Mr. Chairman.
24 This is Item Number 4, and we'll start
25 with -- oh, I'm sorry.

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1 **DR. WOLFF:** And, for clarification, I'm going to
2 recuse myself from participating in the discussion
3 pertaining to Item 4 of the Ag Waiver, because I myself
4 am an agriculture Discharger; however, I will stay here
5 in the room, in the front row and listen to all the
6 upcoming comments, but I just wanted to clarify this
7 with all of you, thank you.

8 **MR. BRIGGS:** Thank you, Dr. Wolff.

9 **MR. DELGADO:** Mr. Chairman, is this the
10 appropriate time for Ex Parte comments?

11 **MR. YOUNG:** It will be, I think, once I get
12 through this, I've got an opening statement and then
13 we'll go ahead and get to Mr. Delgado.

14 **MR. DELGADO:** Thank you.

15 **MR. YOUNG:** Okay. This is the time and place for
16 a public hearing to consider adoption of a Waiver of
17 Waste Discharge Requirements for Discharges of Waste
18 from Irrigated Lands. A monitoring and reporting
19 program and certification of the subject environmental
20 impact report.

21 This hearing is being held before the
22 Central Coast Regional Water Quality Control Board. I
23 am Jeff Young, Chair of the Regional Board. I am
24 joined by Vice Chair, Russell Jeffries, Monica Hunter,
25 Mike Jordan, Mike Johnston and Bruce Delgado.

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1 For your information, as you just heard,
2 Bruce, Board member Dr. Jean-Pierre Wolff, has a
3 conflict and may not participate on this matter as a
4 Board member, in accordance with State Law.

5 The official record of the testimony of this
6 hearing will be created by our court reporter. We are
7 also using a tape recorder and videotape recording
8 today, but the recordings will not be the official
9 record of the hearing.

10 At the end of the hearing today, I will close
11 the record in this matter, and this Board will
12 deliberate and arrive at a decision. The Board may
13 adopt, reject or modify the proposed Order. The Board
14 will accept oral comments today. As you can see,
15 there's a great deal of interest in this matter. In
16 Order to allow for an orderly and fair process, and to
17 allow time for Board deliberation, I will limit the
18 time per speakers. I have allowed extra time to those
19 persons who have requested extra time in advance, as
20 set forth in the Public Notice for this item. The rest
21 of the public will have up to three minutes, but it may
22 be less, depending on the number of speakers. If you
23 wish to speak, please submit a speaker card now. They
24 are available at the back of room, and I will accept
25 speaker cards until noon. Following the lunch break,

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1 which we will try to limit to one hour, I will announce
2 the amount of time I will be able to allocate for
3 public speakers. Please summarize your comments and
4 avoid repetition.

5 The Board members have fully reviewed the
6 record, and will consider all comments. The Board has
7 three recently appointed Board members. The new Board
8 members have become thoroughly familiar with the record
9 and are prepared to consider the record and your
10 comments today and deliberate on this matter.

11 Would any of you, if I call, would you like
12 to add anything?

13 Mr. Jeffries?

14 **MR. JEFFRIES:** Mr. Chairman, I know there is some
15 concern that I wasn't present at the February meeting
16 and workshops, and I want to make sure to let both the
17 Board members and the public know that I have listened
18 to the audio of that meeting, at least twice, some
19 sections more than that. And going back to actually in
20 the fall, when I was appointed, it was made clear to
21 me, both in the pre-appointment and post-appointment
22 process with the Governor's office, that I was to keep
23 a clear and open mind on this matter. They knew it was
24 coming up right away and they knew that the
25 appointments of the three people would immediately lead

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1 to a quorum and it would bring the item up
2 immediately. So I'd just like to reassure both the
3 public and my Board members that I have reviewed both
4 of the meeting in February, the past three years' worth
5 of the documents, both audio and written, and I do have
6 an open mind. Thanks.

7 **MR. YOUNG:** Thank you.

8 Anyone else?

9 **MR. DELGADO:** I would like to disclose that
10 because I have the duty of being major in the city
11 where I live, I have a lot of interactions with public
12 and elected officials, and on numerous occasions,
13 people have made very cursory comments to me regarding
14 this issue, and in some cases, they've made negative
15 comments about the process or this Board, and in some
16 cases they've just said things like, "Boy, it sounds
17 like a really tough issue. Wouldn't want to be in your
18 shoes. How is it going?" that kind of thing. But with
19 none of those, have I ever discussed the particulars of
20 the Ag Order, and so although it's a very complicated
21 and difficult issue, I remain fully impartial and
22 unbiased, and I just wanted to disclose that.

23 **MR. YOUNG:** Thank you, Mr. Delgado.

24 Anyone else have anything to add?

25 Okay. The hearing will proceed as follows:

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1 Regional Board Staff will give their presentation first
2 and then be followed by the following groups that have
3 requested extra time. The Ag Working Group and Farmers
4 for Water Equality will have 60 minutes of time, one
5 hour. Dr. Barbeau has five minutes, or he could be
6 pulled into the Ag Working Group 60 minutes, if he
7 needs more time. That's up to them. Dr. Los Huertos
8 has 10 minutes. Ross Clark, Central Coast Weapons
9 Group, has eight minutes. Ms. Cleary, Clean Water
10 Action, has 24 minutes. The Otter Project Coast
11 Keepers, has 24 minutes, and then we'll have public
12 comments, three minutes or less, if needed, to
13 accommodate everybody. Closing statement rebuttal of
14 Farm Bureau Abatement may use some of their 60 minutes
15 remaining time for a closing statement, after other
16 commenters have made their statements. And that means
17 after the conclusion of all of the three minute or less
18 individual speakers, Farmers Bureau can allocate
19 additional time, if they choose, as a final rebuttal or
20 conclusion comments. That's up to them.

21 After the conclusion of testimony and
22 comments, Staff will be provided an opportunity to
23 summarize and make a recommendation.

24 A timer will be used to allow for the orderly
25 conduct of the hearing. I've requested that you end

Page 14

1 your comments when your time is complete. When the
2 timer buzzes and the red light comes on, I will allow
3 you to complete your sentence and then move on to the
4 next speaker. We appreciate your cooperation. Folks,
5 I know that I have been pretty lenient, historically,
6 with the buzzer. Typically, even when the red light
7 goes off and three minutes goes off, to allow people
8 extra time. Today, I'm going to ask you to please
9 finish your sentence when you see the red light.
10 Finish your sentence. Let's conclude, so we can move
11 on to the next speaker.

12 Board members, Executive Officers and Counsel
13 may ask questions, at any time. I request that the
14 Board members hold questions until the end of
15 presentations, to limit repetition and provide for an
16 orderly process.

17 And to my colleagues, this is going to be a
18 little bit different, this Board meeting, as I've
19 conducted it in the past, so we can get through
20 everything in a more orderly and timely way.

21 I'll do my best not to ask questions
22 regarding speakers. We'll listen to what someone has
23 to say and take notes, and then we can all ask
24 questions at the conclusion of that speaker. I think
25 that helps us.

Page 15

1 To make this easier, we've asked for outlines
2 and slide printouts so that you could see from the
3 outline, the potential question, maybe answer in an
4 upcoming session, and you can easily jot down remaining
5 questions next to the slide in the printout to make it
6 easier to remind yourself later of the question and
7 what part of the presentation process the question is.

8 We will begin the Staff's presentation,
9 Mr. Briggs.

10 **MR. BRIGGS:** Thank you.

11 Before we start the presentation, I think
12 there's something she wants to say.

13 **MS. McCHESNEY:** I just want to say that I think --

14 **MR. BRIGGS:** Speak up.

15 **MS. McCHESNEY:** -- that I think these microphones
16 are live all the time.

17 Is there a way to turn them off? Does anyone
18 know?

19 MR. BRIGGS: No.

20 **MS. McCHESNEY:** Okay. Since they're live, Board
21 members, in Order to have the recording be accurate,
22 that we not make noises during the proceeding.

23 **MR. DELGADO:** Before you start, I need a pad.

24 **MR. YOUNG:** Do you have any extra pads?
25 Okay. Go ahead.

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1 **MS. DUNHAM:** Thank you.

2 For the record, Tess Dunham, with Somach
3 Simmons & Dunn here, representing the Farmers for Water
4 Quality Group. We just have a couple of quick
5 procedural objections we want to make. First, we
6 appreciate the review of the Los Fuertos report to make
7 a determination whether it should be in the record.
8 Unfortunately, we do disagree with the Chairman's
9 ruling with respect to not allowing it in, but going
10 forward, there are some references within the Staff
11 Report and some new materials that were just released
12 yesterday that we do believe is prejudicial with
13 respect to the agricultural community, and having it in
14 the record, in that it is information that came in
15 after the close of the written comment period.
16 Specifically, in the Staff Report, on Page 8, there is
17 a reference to the September 2011 presentation by
18 Dr. Harter that was made before this Board that was not
19 made in conjunction with the hearing or workshop on
20 this Ag Waiver, and, therefore, we think it is
21 improperly referenced within the Staff Report.

22 There is a reference to an October 2011,
23 State Water Board Report, also within the Staff
24 Report -- I'm sorry, I don't have the exact page
25 number -- that we think is an improper reference,

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1 again. That is, referenced as material that has come
2 about after the close of the written comment period.
3 There is a reference in materials that were
4 released yesterday, that was circulated to a
5 presentation by the Lawrence Livermore Laboratory that
6 was made in September 2011, as well, which again, was
7 made not in conjunction with the workshop or the
8 hearing, and, therefore, was also made after the close
9 of the written comment period, and also there are
10 excerpts from the 2004 Administrative Record, which
11 would be improperly included in this record.
12 The 2004 record stands alone as its own.
13 This record begins with the adoption of the 2004 Order,
14 may include the 2004 Order, the 2004 record itself is
15 not a part of this Administrative Record. So those are
16 the objections we would like to place with respect to
17 information that is referenced, and we believe that
18 information, by allowing it in, would be prejudicial to
19 Agriculture, as we have not been given the opportunity
20 to provide written comment with respect to that
21 information.
22 Thank you.
23 **MR. YOUNG:** You gave us Page 8. I got that down.
24 **MS. DUNHAM:** Yes.
25 **MR. YOUNG:** And there was reference to the

Page 18

1 Lawrence Livermore Laboratory. What page?
2 **MS. DUNHAM:** That is in the question and answer
3 document that was released yesterday.
4 And the October 2011 State Water Board
5 Report, I don't have the exact page number, but it's in
6 the Staff Report, as well.
7 **MR. YOUNG:** Can you share with us how you feel the
8 referencing of this material is prejudicial to your
9 clients?
10 **MS. DUNHAM:** Well, you are referencing
11 information, scientific information, with respect to
12 the Harbor Report of Lawrence Livermore, and using it,
13 in what appears to me, as justification for certain
14 findings for information with respect to the Order.
15 Because that information was not presented in context
16 with this hearing, nor were we given the opportunity to
17 review that information and provide written comments,
18 that it would be prejudicial for inclusion in reference
19 to that information, at this point in time. Any
20 information that this Board is relying upon with
21 respect to evidence and technical information should
22 have been available for us to provide written comment,
23 prior to close of the written comments phase.
24 **MR. YOUNG:** Comments?
25 **MS. McCHESNEY:** And on the issue of the references

Page 19

1 to those documents, I think that they're not part of
2 the written record closed, whenever they were closed
3 last summer.
4 **MS. DUNHAM:** August 1st or 2nd.
5 **MS. McCHESNEY:** So any documents that were
6 referenced are not part of the record, and so I agree
7 with that comment.
8 As far as the 2000 reference to the 2004
9 Order, I don't think it's quite as clean cut, but at
10 least the Order itself, the 2004 Order, is part of the
11 record, but there are some. For example, the CEQA
12 document refers to the Declaration that is prepared for
13 the 2004 Order, and that is part of the record for this
14 item because the Sequa document, before the Board
15 today, is the subsequent Environmental Impact Report
16 that supports the negative Declaration and are issues
17 that are in the 2004 Report, so that aspect of the
18 record is and I have to reconsider more whether there
19 are any other aspects of the 2004 record that should be
20 part of this record, but at least those two things are
21 definitely part of the record, so --
22 **MS. DUNHAM:** I think what was referenced
23 yesterday, or circulated yesterday, were excerpts
24 unrelated to either of those.
25 **MS. McCHESNEY:** Correct. And I just am not sure

Page 20

1 that I totally agree with your objection, as far as the
2 past, previous record, but I'll give it some thought
3 and get back to that later.
4 **MR. YOUNG:** Okay. Thank you.
5 **MR. DELGADO:** Chairman?
6 **MR. YOUNG:** Yes?
7 **MR. DELGADO:** I just want to caution the Board
8 members to speak into your microphone because it's hard
9 to hear here.
10 **MR. YOUNG:** Okay. When I was talking or Frances?
11 **MR. DELGADO:** When you were talking.
12 **THE REPORTER:** Both.
13 **MR. YOUNG:** Okay. Why don't we move forward with
14 Staff presentation, Mr. Briggs.
15 **MR. BRIGGS:** We'll do that as soon as I cover a
16 few more logistic items.
17 **MR. YOUNG:** Okay.
18 **MR. BRIGGS:** Let's see. We have Spanish
19 interpreters' translation assistance in the back of the
20 room. There are headsets available at the front
21 table. Are they over here? And, um, our interpreters
22 are Alejandro Bronco and Afisha Hyatt in there, back
23 there in the back corner. We also have
24 Hector Hernandez, of our Staff, who is available for
25 assistance with Spanish/English, if that's needed. We

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1 have a court reporter, and I'm sorry, I don't have her
2 name right now, but we will -- maybe Michael can get
3 that, at some point, and then after the break, we will
4 provide the information for the reporter, in case you
5 need to contact the court reporter. And I've asked our
6 court reporter that if you're getting overwhelmed, at
7 any point, either ask us to slow down or take a break,
8 whatever you need. We appreciate your being here. And
9 Elaine Staul is going to be helping out with the
10 recording notes, as well.

11 **MR. YOUNG:** Okay. Mr. Johnston, as a --
12 **MR. JOHNSTON:** Perhaps we should announce, in
13 Spanish, the availability of Spanish translation
14 because it doesn't do much to announce it in English.
15 "El instruccion en Espanol hay unas personas
16 alli atras en el cuarto que escuela instruccion."
17 **MR. BRIGGS:** Thank you, Mr. Johnston.
18 And now one other logistics item. We just
19 have a few people who are standing, maybe that's
20 because you want to, but there are plenty of seats
21 available. I see plenty of empty seats, right here, in
22 the first five rows, so feel free to take a seat, if
23 you'd like to.
24 Okay. So go ahead with the clicker.
25 So our recommendation today is regarding the

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1 updated -- thank you, Lisa -- is updated additional
2 Waiver of Waste Discharge Requirements for Discharges
3 from Irrigated Lands. And the action before the Board
4 is to consider voting on adoption of this updated Order
5 and there is a number -- there's part of a quote from
6 our mission statement for the Water Board, "I'm sure
7 the highest reasonable quality for the water, for the
8 state, is a good thing to keep in mind." So as an
9 overview, after my introduction, we'll talk about the
10 process that has gone into this Order, a brief summary
11 of the water quality conditions.
12 We've gone over these things many times in
13 the last three and a half years. A summary of the
14 draft Order itself. We'll have a bit more discussion
15 on implementation and enforcement, followed by our
16 conclusion. Then will be the opportunity for public
17 comment, and our chair has outlined how that will work,
18 and then after that, public comments, a Staff
19 presentation.
20 So, again, we've talked about the severity of
21 the problems that we have, unfortunately, in the
22 Central Coast. I've listed these in a little bit
23 different way from in the past, in that I'm -- I've put
24 these things in pretty much priority Order, with the
25 top priority at the top; that is, nitrate groundwater.

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1 This is a public health problem, so, consequently, we
2 say that's a higher priority, the highest priority, and
3 then toxicity nitrate and nitrate in surface water and
4 sediments, on down the list. Now, to provide a little
5 perspective on these things, and the Board's
6 involvement, I'll start at the bottom with what I'll
7 say is the lowest priority issue, although this is
8 still very important, as demonstrated by the fact that
9 the Board has, in the recent past, taken some pretty
10 serious enforcement actions for sediment problems, just
11 sediment problems, in some pretty small areas. For
12 example, some against CalTrans for some construction
13 projects, for some Ag property owners for grubbing, for
14 construction sites. And sometimes, these have been at
15 the tune of hundreds of thousands, hundred thousand
16 dollars or multiple hundreds of thousands of dollars.
17 That shows you how serious the Board has taken the
18 product of sediment for some small isolated areas for
19 nutrients in surface water. Similarly, the ordinance
20 required municipalities to spend tens of millions of
21 dollars for upgrading their discharge to meet nutrient
22 requirements for discharged surface water, especially
23 nitrate and nitrogen. For toxicity, similarly, the
24 Board has had requirements that have prompted
25 municipalities to eliminate toxicity from their

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1 discharges. For example, ammonia from waste water
2 treatment plants, to the tune of tens of millions of
3 dollars. And these are in pretty small areas. Short
4 segments of streams. So it demonstrates the severity
5 of the way the Board's treated these problems as being
6 serious, even though they're in fairly small areas.
7 And then, of course, as far as drinking water, the
8 Board has taken action with regard to perchlorate,
9 which has a lot of similarities as a nitrate in terms
10 of the way it acts and it has a maximum contaminate
11 level, the way it travels in groundwater basin. When
12 we discovered plumes in the north part of the region
13 from a few sites, the Board took very swift and
14 stringent action to require replacement water with
15 immediate enforcement with time schedules from
16 remediation, that is, pulling that water out of the
17 groundwater, remediating it, cleaning this up at tens
18 of millions of dollars per case. So we've had these,
19 and we've had other threatened well examples where from
20 leak sites relatively small plumes, less than sometimes
21 a 10th of an acre as far as the plume, and we have had
22 communities come to our Board meeting, like today, but
23 going ballistic about what is the Board going to do
24 about our wells that are threatened, and these were
25 cases where the wells were not even tainted by the

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1 constituents. They definitely weren't contaminated,
2 yet the Board took severe and stringent action to those
3 small cases, so how does that compare with what we have
4 before us today? You've seen this, at least the Board
5 has seen this slide several times, where we have those
6 depicted here different sources that we deal with.
7 Timber, for example, where it is actually mostly
8 related to sediment problems, urban storm water, animal
9 problems and our relative degree of regulation, with
10 really, historically, the most regulation for point
11 sources and drinking water pollution cases, again, like
12 I said, the highest priority, because of public health
13 threats and landfills in here, but here is where we are
14 depicting the degree of regulation for the existing,
15 that is the 2004 continuing Waiver.
16 Now, as far as relative degree of water
17 quality impacts, timber, we think is down here,
18 landfill is down here, municipal waste water a little
19 bit more of a threat, urban storm water, and again,
20 high priority drinking water pollution cases and we see
21 irrigated agricultural related problems as being at the
22 far end of the scale, because it has all those problems
23 that are severe and not just in isolated areas. They
24 are widespread through numerous areas in our region.
25 So, for example, with drinking water pollution cases,

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1 we're not talking about plumes that are a 10th of an
2 acre or less than an acre, we're talking about hundreds
3 of square miles that exceeds the maximum contaminant
4 level. That's why this is such a huge issue of such
5 huge importance and why it's necessary for us to be
6 acting to do something about it. It's a change that's
7 mismanagement of what we have now, compared to the
8 threat.
9 So here's what we're proposing with the 2012
10 draft Order, where we still have a low degree of
11 regulation for the Tier 1, which Angela Schroeter will
12 be talking about in a minute, a greater degree for
13 Tier 2 and Tier 3. And these are degree of threat as
14 we depicted them. So, again, here's -- here are those
15 problems. What are we proposing to do about it?
16 Without getting specific, it's, basically, the Order
17 includes that we are calling for implementation
18 practices. That doesn't mean that we're specifying the
19 practices, just the practices that the growers
20 typically tell us what they are trying to do anyway, or
21 to accomplish groundwater protection, to accomplish
22 discharge control, and really, the most important thing
23 boils down to irrigation nutrient management. There
24 are various ways to do that. We're not specifying
25 how. And then, coupled with that, so that we know that

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1 we are making progress, we're monitoring reporting, to
2 effectively indicate that we have loading reductions in
3 water quality improvement. So now we're going to move
4 on to the process to renew the agricultural Order, and
5 Lisa McCann, which is our section manager, is going to
6 be discussing that section.
7 Lisa McCann.
8 **MS. McCANN:** Thank you, Roger.
9 Board members, you might recall, I used this
10 timeline at the February Workshop to illustrate the
11 process to review the Agricultural Order, and I'm going
12 to use it again, just to review and point out, once
13 again, that this is one of the most extensive public
14 processes that this Board has used for any decision you
15 have ever made.
16 We have been at this process to renew the
17 Agricultural Order for about three and a half, almost
18 four years now. We started in July 2008, and we're
19 here today in March 2012, with our 7th Board Workshop
20 or a Hearing, each of the blue stars on this timeline
21 represents a Board workshop or a hearing, and in each
22 of those, you've had multiple hours of opportunity for
23 members of the public to address you and share their
24 views and report on issues related to the item before
25 you. The process also involves several written public

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1 comment periods. Those are shown as green boxes along
2 this timeline, and altogether, we received about 2,000
3 comment letters during all these various written
4 comment periods.
5 Staff made multiple revisions to the Draft
6 Order in response to all of these written comments.
7 You see, here, four different iterations and, in fact,
8 that makes a fifth as far as the recommendation that
9 you have before you today. Most of those revisions
10 addressed comments predominantly from agricultural
11 interests. In addition, I'm going to review some
12 background, a little bit of history, on the engagement
13 and cooperative efforts between agriculture and various
14 state, public and the Water Board prior to adoption of
15 the first Conditional Waiver in 2004.
16 In the '90s, Water Board Staff was
17 implementing the State's Nonpoint Source Pollution
18 Control Policy. At that time, that State policy
19 emphasized voluntary efforts and only stepping up to
20 regulatory encouraged efforts or regulatory required
21 actions if it was found that source of pollution was
22 contributing to cause water quality problems.
23 So Staff was very engaged in supporting and
24 funding voluntary efforts, such as education and
25 outreach capacity building for local groups and

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1 coalitions, agricultural water quality research and
2 demonstration projects.

3 Between 2000 and 2011, the State and Central
4 Coast Water Board funded Agricultural Water Quality
5 projects in the Central Coast region, and we spent or
6 allocated out about \$44 million in public grant funds
7 and an additional \$12 million in settlement funds or
8 apportionment fees. Also, during that same time
9 period, the State Water Board Research Control Board
10 made about \$600 million available statewide, for
11 similar Agricultural Water Quality Projects.

12 The types of projects funded in this region
13 included agricultural Water Quality Research,
14 Irrigation and Nutrient Management Practice
15 Demonstrations, as well as actual implementation,
16 Erosion Control Demonstrations, and implementation, and
17 wetland and other treatment systems, monitoring and
18 habitat Restoration.

19 Also during the '90s, the Central Coast
20 Ambient Monitoring Program was gearing up and started
21 collecting water quality data, along with other local
22 agencies and citizens' monitoring groups. The results
23 of this monitoring data informed or was used to
24 identify waterbodies, to add to the Clean Water Act,
25 Section 303 List of Impaired Waters. In the Central

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1 Coast Region, the results of that evaluation included
2 adding many impaired waters throughout the region for
3 several different pollutants.

4 In 2002, the majority of the listings in the
5 Central Coast Region were and remain, to this day, for
6 sediment, nutrients and pesticides for toxicity in
7 agricultural areas.

8 In 2004, the State Water Resources Control
9 Board adopted the Policy for Implementation and
10 Enforcement of the Nonpoint Source Pollution Control
11 Program. That policy required the Regional Boards to
12 regulate all nonpoint sources of pollution, and to use
13 permitting authorities to do that.

14 The policy further required Nonpoint Source
15 Dischargers to do several things. Dischargers must
16 comply with permits or waivers, as individuals, and may
17 comply with these permits or waivers via programs of a
18 third-party coalition. Any program of a third-party
19 coalition must meet five key elements and be approved
20 by the Water Board. The key elements include the
21 following: Pollution control that achieves and
22 maintains water quality objectives, management practice
23 implementation and verification, time schedules and
24 quantifiable milestones, and on-time schedules and
25 milestones, the policy explicitly states that those are

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1 to apply when it's acknowledged that it will take time
2 to meet water quality objectives. Element 4 is
3 feedback mechanisms so the Regional Board dischargers
4 and the public can determine if the actions taken are
5 achieving their stated goal, or if different actions
6 need to be required or adjusted.

7 And finally, consequences for failure to
8 achieve objectives, the Board is responsible is the
9 Boards are responsible for identifying those and making
10 it clear that individual dischargers must take all
11 necessary actions to meet water quality objectives.

12 The policy was adopted in 2004, which was
13 20 years after hundreds of millions of dollars were
14 granted from public funds for various cooperative
15 efforts and water quality improvement efforts between
16 agriculture, government agencies and other
17 stakeholders.

18 In 2004, the policy was also adopted in
19 response to increasing evidence of water quality
20 problems. This is before we had the monitoring data,
21 that we have today, that indicates severe and
22 widespread surface and groundwater problems from
23 agricultural discharges.

24 The policy was developed and adopted at the
25 same time, and in parallel with, the 2004 Conditional

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1 Waiver that currently applies to irrigated agricultural
2 lands in our region, and the policy fundamentally
3 shifted the State's emphasis from voluntary approaches
4 that focused more on public funding and providing
5 technical assistance, education and outreach, to
6 instead requiring regulated approaches. As described
7 in the policy specifically, those regulated approaches
8 established clear requirements for dischargers to
9 implement and verify their practices, meet water
10 quality objectives, monitor and report, and be
11 accountable by adapting their practices or incur
12 enforcement if water quality requirements are not met.

13 The State Nonpoint Service Policy, adopted in
14 2004, continues to support and encourage implementation
15 by third-party groups or coalitions as long as those
16 third-party groups' program meet the terms of the
17 policy. With that frame of reference, we support the
18 Farmers for Water Quality efforts to use a third-party
19 coalition, as this has been recognized as a valuable
20 structure for controlling nonpoint source pollution to
21 meet current requirements. The Draft Order that's
22 purposed encourages and allows for such coalitions. An
23 example is the existing Central Coast Vineyard
24 Sustainable Practice and Certification. However, as
25 we've reported to you many times in all of our Staff

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1 reports, we continue to find that the Ag Proposal is
2 legally inadequate and unenforceable because it's not
3 crafted as required by the Nonpoint Source Policy or
4 consistent with the Water Code. From our prospective,
5 the main flaw with the proposal is the proposed
6 reporting elements. These are the annual report
7 elements that have been presented to us in their
8 proposal: Names of participants, operations audited,
9 watershed where audits will be conducted, aggregated
10 summary of audit results, summary of third-party
11 assistance, and summary of education workshops.
12 We find these insufficient, given the
13 severity of water quality conditions legally
14 inadequate, and lacking in accountability. These
15 reporting elements don't require measurement or
16 reporting of any indicators by dischargers that
17 demonstrate effectiveness of management practices to
18 control waste discharges nor pollution reduction within
19 the five-year term of the Order, and most of the
20 reporting elements describe activities by the
21 third-party group, and not activities or progress by
22 the actual dischargers. Monitoring and reporting of
23 Discharger effectiveness and pollution reduction are
24 necessary and required by the Water Code and the
25 Nonpoint Source Policy.

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1 This slide shows the proposed annual
2 reporting requirements for the Staff Draft Order
3 compared to the Ag Proposal. And, again, I use this to
4 show you that the reporting elements in the Ag Proposal
5 lack meaningful or accountable short term measures of
6 progress because they did not include nitrate loading
7 indicators, pollution reduction indicators, practice
8 effectiveness indicators, or any individual discharge
9 monitoring.
10 In addition to the comments and alternative
11 proposals from Agriculture, we also received many other
12 comments on a lot of input on the Order. Environmental
13 organizations and environmental justice organizations
14 have generally been in support of the Order and
15 critical that the Order does not adequately protect
16 water quality.
17 Environmental organizations also submitted an
18 alternative proposal, and that proposal was essentially
19 the February 2010 Staff Draft Order, with some
20 additional requirements as shown listed here. We also
21 engaged with many other government, regulatory and
22 resource management agencies, and we specifically
23 received letters or comments of support on Drafts of
24 the Order from Staff of Monterey Regional Stormwater
25 Management Program, both the Regional and State offices

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1 of the California Department of Public Health,
2 California Department of Fish and Game, State Parks
3 Department, State Coastal Commission, National Marine
4 Fisheries Service, Monterey Bay National Marine
5 Sanctuary, and the US Environmental Protection Agency.
6 Sam Zigler, the manager of the Watersheds
7 Office of the US EPA Region 9, Water Division sent this
8 comment: "I've reviewed the Order and find it
9 to be an excellent program that I hope gets
10 approved. My support for the program is
11 based largely on its consistency with the US
12 EPA approved California Nonpoint Source Program
13 that calls for the appropriate use of
14 California's Regulatory authorities to foster
15 more extensive implementation. The program as
16 proposed serves as an excellent example of using
17 state authorities to address water quality
18 impairments and focus on protecting public
19 health. Furthermore, the program appears to be
20 based on extensive data, and documentation is
21 extremely well developed, and presented and can
22 serve as a national model to address agricultural
23 dischargers, particularly those causing water
24 quality impairments and a threat to public
25 health."

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1 Cindy Forbes, Chief of the Southern
2 California Field Operation's Branch sent, this
3 comment: "The Department of Public Health supports
4 the requirements outlined in the Draft
5 Agricultural Order and encourages the adoption
6 of the Order by your Board. Protection against
7 continued nitrate contamination of the
8 groundwater in the Central Coast region will
9 minimize the need for additional treatment of
10 public water supply sources from this
11 contaminant which poses a significant public
12 health threat."
13 We incorporated most of the comments received
14 through the various edits we made to the Draft Order
15 that is before you today, or we have provided
16 defensible rationale for maintaining the conditions as
17 written to adequately control waste discharges from
18 irrigated agricultural operations and to improve water
19 quality.
20 That concludes my comments, and now
21 Matthew Keeling will speak about the groundwater
22 quality condition.
23 **MR. KEELING:** Good morning, Mr. Chairman, members
24 of the Board.
25 There are approximately 1.5 million people in

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1 the Central Coast Region that are relying on
2 groundwater for a great percentage of their drinking
3 water supply. In some areas, like the Salinas Valley,
4 groundwater accounts for almost 100 percent of the
5 drinking water supply as well as agricultural and the
6 industrial supply. The nitrate pollution is one of the
7 most widespread and severe public health and water
8 quality problems in our region as well as the State.
9 Major portions of entire groundwater basins and
10 aquifers are polluted with nitrate, and the data
11 documenting the significance of this problem is
12 overwhelming, along with the numerous lines of evidence
13 documenting the irrigated agricultural is, by far, the
14 largest source of the ongoing nitrate pollution within
15 our region as well as the State. Subsequently, there
16 are thousands of people within our region that are
17 potentially susceptible to having their drinking water
18 polluted with nitrate. This is particularly true for
19 people within the Spanish communities that are
20 generally in rural agricultural regions of our region.
21 Although a number of case studies in our region
22 indicate that we will see improved drinking water
23 conditions in localized areas, in relatively short time
24 periods. It's likely going to take several decades
25 before we start to see improving water quality

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1 conditions on a regional scale, in our region as the
2 result of reduced nitrate discharges. Consequently,
3 it's going to take a long-term commitment from us and
4 various other state agencies, local agencies, if we're
5 going to effectively address the significant water
6 quality possible health problems.

7 The good news is that there are studies,
8 available now, that indicate that significant
9 reductions in fertilizer application and subsequent
10 discharge to groundwater are achievable using readily
11 available nitrate management and irrigation management
12 techniques. In some cases, implementation of those
13 methods will result in a cost savings to the growers,
14 and for various crops, reduced fertilizer application
15 will also likely achieve drinking water standards in
16 the water that is being discharged from agricultural
17 areas to groundwater. I want you to look away really
18 quickly. I'm about to skip over this next slide
19 because it unfortunately contains information from the
20 recent trip that was referenced by Tess. And, I'm
21 going to skip right to this one here.

22 Lawrence Livermore National Laboratory
23 recently conducted two nitrate driven focus studies in
24 our region. The most recent of which was a nitrate
25 base transport study in the Salinas Valley that

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1 indicated that chemical fertilizer is the primary
2 source of nitrate in groundwater and surface water in
3 areas where nitrate concentration were above background
4 levels. Moreover, the study documented nitrate
5 pollution within the San Jerardo cooperative well was
6 from chemical fertilizer, and also some wells within
7 the Salinas Valley that the nitrate pollution is from
8 recent agricultural discharges and not that of base
9 pollution that occurred decades ago.

10 **MS. DUNHAM:** Can we just clarify that the 2011
11 report is referring to the Lawrence Livermore, which is
12 footage in the record prior to the close of the written
13 comment period in August?

14 **MR. KEELING:** We have the draft of that report
15 prior to August.

16 **MS. DUNHAM:** You have the draft? Was it made
17 publicly available for comment?

18 **MR. YOUNG:** Tess, why don't you come up to the
19 podium and make your comments.

20 **MS. DUNHAM:** Sorry about that. I just was asking
21 for a clarification whether this 2011 report, that he's
22 referring to, was available for review and response to
23 before the close of the written comment period?

24 **MS. McCHESNEY:** So, Matt, was that what you is
25 what you just said is, that there's a draft of the

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1 report and this information was in the draft of the
2 report and when was that draft report available?

3 **MR. KEELING:** When was it publicly available?

4 **MS. McCHESNEY:** Yes.

5 **MR. KEELING:** I'm not sure, but it was available
6 to us well before August.

7 **MS. DUNHAM:** Yeah, but available to you, but was
8 it available to us?

9 **MR. KEELING:** I believe is.

10 **MS. McCHESNEY:** I believe that it was referenced
11 in the Staff reports during the past three years of
12 this.

13 **MR. KEELING:** Yeah.

14 **MS. DUNHAM:** Well, I --

15 **THE REPORTER:** Excuse me.

16 **MR. KEELING:** It references preliminary is.

17 **THE REPORTER:** Stop. Hang on a second. You need
18 to wait until she finishes talking, please, because I
19 can't get all of you at once. Okay?

20 Can we go with what you said last?

21 **MS. DUNHAM:** Just asking for further clarification
22 as to where and when this draft report was referenced
23 to within, you know, the Staff Report, prior to the
24 close of the written comment period in August?

25 **MR. KEELING:** We referenced the preliminary

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1 results with Appendix G in the March 2011 Staff Report.
2 **MS. DUNHAM:** And is the 2011 reference that you're
3 talking about here, the exact same report that was
4 referenced?
5 **MS. McCANN:** Would you like us to look that up and
6 verify that?
7 **MS. DUNHAM:** Yes.
8 **MS. McCHESNEY:** And while you're doing that, why
9 don't we go on, Matt, with the rest of your
10 presentation.
11 **MR. KEELING:** Well, there was another study within
12 the August Groundwater Basin which is in the Morgan
13 Hill Gilroy areas. It documented similar findings with
14 regard to chemical fertilizer, irrigated agriculture
15 being the primary source of nitrate and nitrogen within
16 groundwater, as well as recent discharges from
17 agriculture versus base pollution and we also
18 documented increasing nitrate trends at the time, and
19 these are very technical and highly personal reports,
20 but the bottom line is that they indicate that real
21 people, like the two women that are depicted here from
22 the San Jerardo Cooperative, are affected by nitrate
23 pollution from chemical fertilizer. And the costs
24 associated with dealing with nitrate polluted drinking
25 water is significant, as you can see through some of

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1 the real cost examples that we have shown here for our
2 region. And as you've heard during previous workshops
3 and presentations, that people who live in
4 disadvantaged communities are typically paying a higher
5 portion of these costs, because they live within,
6 usually within rural agricultural areas and they're
7 more susceptible to nitrate pollution.
8 In some cases, people in these areas are
9 paying for a drinking water supply that's not safe to
10 drink, while also having to pay for bottled water. And
11 this is a reality that the people of San Jerardo lived
12 for several years.
13 As pointed out here, San Jerardo just got a
14 new well at a cost of over \$3 million, but how long is
15 it going to be before their new well is polluted with
16 nitrate? How long is it going to take for them to
17 replace it and at what cost?
18 Our highest priorities are focused on
19 identifying and protecting the most at-risk portions of
20 the population from nitrate pollution, who may not be
21 aware of the risk and/or can't afford clean water. And
22 these include domestic well owners, farm labor camps,
23 schools and local communities within rural agricultural
24 areas, and obviously with an emphasis on disadvantaged
25 communities. We've been focusing on the protection of

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1 the domestic and municipal beneficial uses of drinking
2 water because of how significant the water quality of
3 public health, along with the costs associated with
4 dealing with it, but we are also responsible for
5 protecting two other beneficial uses of groundwater,
6 which are industrial supply and agricultural supply.
7 Nitrate can also be problematic with certain industrial
8 processes and typically needs to be removed along with
9 other minerals, before use.
10 Data also showed that groundwater in
11 agricultural areas, in some areas, exceeds our water
12 quality objectives and base and plan for irrigation on
13 certain types of crops, like citrus, avocados and
14 grapes, and this is also true for some surface waters
15 in our region.
16 Now, we may be rapidly approaching maximum
17 nitrate thresholds for other high valued crops in our
18 region, given we're in uncharted territory with
19 increasingly high nitrate concentration in
20 groundwater. Nitrate concentration in agricultural
21 areas are also at levels that can be harmful to
22 livestock and other animals. And according to nitrate
23 toxicity guidelines for cattle, there are wells in our
24 region that have nitrate concentrations that are high
25 enough to kill a cow. So we need to be conscious that

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1 we're not just looking at protecting the drinking water
2 beneficial use, but also the other beneficial uses, to
3 ensure that we have sustainable agricultural and other
4 communities in our region.
5 And that concludes my presentation.
6 **MS. McCANN:** The 2011 Preliminary Report by
7 Lawrence Livermore Lab was referenced in the March 2011
8 Staff Report text, as well as in that Appendix G.
9 **MR. YOUNG:** I didn't pick all that up, Lisa.
10 Was this available to the public?
11 **MS. McCANN:** Yes. Those Staff Reports were made
12 available as part of the Staff Report.
13 **MR. YOUNG:** Okay.
14 **MR. DELGADO:** Mr. Chair, I thought there was a
15 follow-up question about whether what we saw just now
16 was exactly what was in that earlier 2011 Report.
17 Something to that effect.
18 **MR. KEELING:** Yeah, the data didn't change. It's
19 the same information.
20 **MR. YOUNG:** All right. Who's up next?
21 **MR. BRIGGS:** Karen Worcester of our Staff, who is
22 our manager of our Central Coast Regional
23 Monitoring/Basin Planning Program.
24 **MS. WORCESTER:** Yes, good --
25 **THE REPORTER:** Speak up, please.

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1 **MS. WORCESTER:** Good morning, members of the --
2 **THE REPORTER:** I can't hear you.
3 **MS. WORCESTER:** Okay. How's that?
4 **THE REPORTER:** Okay. Thank you.
5 **MS. WORCESTER:** I'm going to be briefly discussing
6 some of the priority water quality issues that Roger
7 mentioned in his introduction in surface waters of our
8 region, focusing on two high priority areas, Santa
9 Maria and Lower Salinas.
10 Um, a State Board Report entitled "Toxicity
11 in California Waters" describes Central Coast streams
12 as having the highest percent of toxic sites
13 statewide. We're looking at a combined data set of
14 information from multiple projects. Over half of the
15 sites in our region were toxic, and almost a quarter of
16 these sites were highly toxic. In particular, Salinas
17 and Santa Maria areas are severely impaired by
18 toxicity. These maps come off of our website, The
19 Central Coast Monitoring Program website. The
20 greyish-blue areas are where irrigated agricultural is
21 located. The brown areas, sort of, see them below the
22 sites here (indicating), this is the Salinas -- is
23 Salinas and Santa Maria. The dots on the map are where
24 we have samples collected, either by our program or by
25 the Property Monitoring Program for Agriculture. Green

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1 dots have shown no toxicity at all, but you can see in
2 these, in the lower Salinas and lower Santa Maria
3 areas, most of the sites that we have monitored, or
4 that we have data on are highly toxic. These dark red
5 dots are toxic, at least half the time they're sampled,
6 in some cases, always. Just to clarify, toxicity is a
7 measure of effects to a test organism. So we take a
8 sample, take it to the lab, expose the test organism to
9 that water and the organism measures survival. So in
10 these dark red sites, the organisms were dying. One of
11 those sites that we are particularly concerned about is
12 just above this important estuary, Santa Maria River
13 mouth. This location supports several threatened and
14 endangered species, and you could see by the data here,
15 100 percent of the samples that have been collected
16 there for invertebrates in sediment have been toxic,
17 and almost as many have been toxic in water, because of
18 pesticide concentrations. In addition, we are seeing
19 pesticides and spongidicides in fish tissue in this
20 lagoon. They are sport fisherman downstream of this
21 along the beach in this area. In terms of the benefit
22 health, there are no bugs in this system you consider,
23 quote, "trout food," May Flies, Caddis Flies, Storm
24 Flies. In fact, there are none in the lower Salinas
25 area at all -- or, sorry -- Santa Maria area, at all,

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1 which is one of our primary indicators of health in a
2 stream system. So we consider this system extremely
3 impaired.
4 This is a map of the same area, looking at
5 nitrate concentrations and again similar pattern as to
6 toxicity with widespread violations of our drinking
7 water standard throughout the area. The darkest red
8 dots here, at least half of the samples collected at
9 these sites, have exceeded the drinking water standard,
10 and in most cases, this is by multiple fold. The site
11 circled in pink here, is the same site I just showed
12 you at the Santa Maria Estuary, and you can see the
13 concentration graph at the bottom. The red line is our
14 drinking water standard at 10, here.
15 Um, most EPA and others working on aquatic
16 life issues would consider 1 protective for aquatic
17 life, so it's much lower than the drinking water
18 standard. You can see, we've had concentrations as
19 high as 100 in the site, just above our Estuary,
20 extremely impaired. You can also see, just for
21 reference, the point at which the (inaudible words)
22 agriculture started. So this is a mix of -- for both
23 our program and their program, very similar results in
24 the lower Salinas area.
25 In this case, the site I'm highlighting is,

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1 the old Salinas River discharges directly into
2 Mass Landing and then waters are taken up into Ojai
3 slue from there, so similar situation where we have
4 poor estuary resources, that some of the highest
5 concentrations in our region are discharging to. This
6 site, again, averaging twice the drinking water
7 standards and exceeding it by multiple folds.
8 At times we're not -- this data is not the
9 first to acknowledge these very high concentrations.
10 This was a report that came out many years ago, in the
11 mid '90s, and this quote from the report stating that
12 the extraordinary high nitrate concentrations in this
13 system, may be the highest recorded in scientific
14 literature for a river or estuary.
15 This data is from the Monterey Bay Aquarium
16 Research Institute. This is a nitrate probe near the
17 Masland Harbor and the old Salinas System, and you can
18 see there, I'm showing similar trends. This is
19 starting in 2004 to the data that we've collected,
20 increasing over time.
21 Okay. In summary, particularly in the Lower
22 Salinas and Santa Maria areas, we're still seeing
23 extremely high nitrate concentration and widespread
24 toxicity. Also, very poor biological health, and most
25 sites are not showing improvement. Although, we are

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1 seeing some decreases in loads at some locations,
2 although, the concentrations remain high. But
3 generally, these waters are not healthy for aquatic
4 life and not healthy are not fully recharged for
5 drinkable groundwater.
6 And now Angela Schroeter is going to present
7 the summary of the document.
8 **MR. YOUNG:** Mr. Johnston?
9 **MR. JOHNSTON:** One quick question for Karen.
10 **MR. YOUNG:** It's got to be quick, because I
11 wanted everyone --
12 **MR. JOHNSTON:** Oh, did you want us to wait until
13 the end of --
14 **MR. YOUNG:** Exactly.
15 **MR. JOHNSTON:** Oh, I thought we were waiting for
16 the end of each individual person.
17 **MR. YOUNG:** No, no.
18 **MR. JOHNSTON:** I'll wait.
19 **MR. YOUNG:** This is one presentation.
20 **MR. JOHNSTON:** Okay. I'll wait.
21 **MR. YOUNG:** Thank you.
22 Angela Schroeter.
23 **MS. SCHROETER:** Thank you.
24 So good morning, Chair and members of the
25 Board. Again, my name is Angela Schroeter. I am the

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1 Senior Engineering Geologist and also the
2 Program manager for the Agriculture Regulatory
3 Program.
4 So as Lisa mentioned, the Water Board
5 received more than 2,000 comment letters from
6 stakeholders throughout the process, over the last
7 three and half years. While every comment is unique,
8 the public comments received consistently focused on a
9 few main issues that the Draft Order should address.
10 The first comment that we have heard from all
11 stakeholders, primarily agriculture, but also
12 environmental stakeholders, is that every farm is
13 unique and has individual unique threat to water
14 quality based on the characteristics of those farms and
15 that the Draft Order should address those
16 characteristics and not be one size fits all.
17 In addition, comments also specified that the
18 Draft Order should focus on the most impaired areas of
19 the region.
20 Comments stated that those farms that are in
21 the unimpaired area of the region should not be subject
22 to the same requirements as those that are the most
23 severely impaired.
24 In addition, we also heard from stakeholders
25 that among the highest priority for this Order should

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1 be the prioritization of public health and drinking
2 water protection.
3 Finally, we also heard that the job
4 Agricultural Order should build upon the success of the
5 2004 Conditional Waiver.
6 So based upon this input, and the severity of
7 the water quality conditions that you've heard
8 described by Karen Worester and also Matt Keeling,
9 Staff proposed three Tiers, based upon the individual
10 characteristics of the farms, and threat to water
11 quality.
12 Tier 1 are those farms which are the lowest
13 threat to water quality. They are the farms that do
14 not use chlorophyll-a phosphor diazinon, are not in an
15 area where surface water is impaired, or near an
16 impacted drinking water well. And if those farms
17 produce crops that are known to load nitrogen to
18 groundwater, they must be less than 50 acres.
19 In addition, Tier 1 also includes those farms
20 which are certified sustainable, such as a sustainable
21 practice certification, which is conducted by the
22 Central Coast Vineyard team.
23 Tier 2 includes those farms which are a
24 moderate threat to water quality. They are the other
25 farms that use chlorophyll-a phosphor diazinon in our

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1 apparent surface water area or near an impacted
2 drinking water well.
3 If those farms produced a crop that is of
4 those for higher risk for loading nitrogen, those farms
5 would be between 50 and 500 acres.
6 Tier 3 are those farms which we considered to
7 be the highest threat to water quality. There's two
8 criteria for Tier 3. Those are the farms that use
9 chlorophyll-a phosphor diazinon and discharge to an
10 impaired surface water body as impaired for toxicity or
11 pesticides.
12 The second criteria is if that farm is
13 growing crops for loading nitrogen to groundwater.
14 Those farms are greater than or equal to 500 acres.
15 In response to the comment that the Draft
16 Order should build upon the success of the Conditional
17 Waiver adopted by the Board in 2004, I'll just start by
18 reminding the Board what those conditions were.
19 So 2004 Conditional Waiver stated that
20 discharges must meet water quality standards. They
21 must file and update the Notice of Intent. It must
22 develop and implement a farm plan. Dischargers must
23 also submit an Annual Management Practice Checklist,
24 conduct surface receiving water monitoring, and also
25 comply with education and time schedules.

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1 Again, these requirements in black, are those
2 that are part of the 2004 Conditional Waiver, adopted
3 by the Board in 2004, that growers are currently
4 required to comply with.

5 In response to the severe water quality
6 conditions that you've heard about from Matt Keeling,
7 we've also introduced or proposed new requirements to
8 address threat to groundwater. These are shown here in
9 blue: Groundwater monitor reporting, backflow
10 prevention, and proper well abandonment.

11 In addition, Staff is proposing to improve
12 reporting of the Agriculture Order, by adding an annual
13 compliance form that's submitted online. And this
14 annual compliance form would replace the Management
15 Practice Checklist.

16 So these requirements, the black ones that
17 you see here, from that 2004 Conditional Waiver, as
18 well as these new proposed requirements in blue, make
19 up the requirements for the 2012 Draft Order for
20 Tier 2. This is -- are those farms considered to be a
21 moderate threat to water quality.

22 Also recognizing that Tier 1 growers, those
23 are the lower threat to the water quality, should have
24 lesser requirements, Staff is proposing to remove the
25 Annual Compliance Form from the Tier 1 requirements.

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1 So Tier 1 requirements would have no annual
2 reporting for on farm, with the exception of filing an
3 updated Notice of Intent.

4 In response to the comments that the Draft
5 Order should focus on the areas that are most impaired,
6 and those farms which are in the highest risk, the
7 Draft Order also proposes new requirements for Tier 3
8 farms, for those farms that are the relatively highest
9 threat to water quality.

10 Those new requirements are: Individual
11 Discharge monitoring. Also for subset of Tier 3, which
12 have an increased nitrate loading risk, to develop an
13 Irrigation Treatment Management Plan, which is to
14 achieve certain Nutrient Balance Targets, as well as a
15 subset of Tier 3 farms that are adjacent to a sediment
16 temperature or to an impaired creek, would also have to
17 submit the Water Quality Buffer Plan.

18 So, again, these are the proposed is some of
19 the proposed requirements in the Draft Order. The
20 center is Tier 2, which is the more threat. On the
21 left, you see Tier 1, which is the lower threat, which
22 are the farms that we are proposing to reduce the
23 reporting requirements for, and Tier 3, increased
24 requirements for the higher threat farms.

25 At this point, I also want to point out that

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1 to address concerns about reporting, the Draft Order
2 specifies that the precise locations of groundwater
3 wells, and any trade secrets, secret processes or other
4 priority information, are protected from public
5 disclosure.

6 I also want to mention, at this point, that
7 Staff recognizes that many growers have already taken
8 proactive action to protect water quality. For
9 example, the Sustainable Practice Certified Vineyard
10 Growers require specific water quality practices. The
11 Avocado Commission has indicated that they encourage
12 current control for the storm water protection. The
13 Cut Flower Industry has indicated that they are
14 reducing the use of chemicals, and the Strawberry
15 Commission has indicated that many growers already meet
16 proposed nutrient balanced targets.

17 Staff commends these growers and wants to
18 ensure that all growers are doing their part to protect
19 water quality.

20 So let's look at the farm's acreage. Tier 1
21 and Tier 2 include the most acreage and farms in the
22 region. And, in fact, Tier 1 includes the most farms
23 in the region, at 55 percent of the region. Tier 3
24 includes the least amount of farms. 3 percent of the
25 farms, have 103 and 51,000 acres. This acreage of

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1 farms is based upon information submitted by growers in
2 the electronic Notices of Intent.

3 The Draft Order also includes incentives for
4 those growers who can demonstrate efforts to reduce the
5 threat to our quality and implement our water quality
6 improvements.

7 For example, sustainable certifications,
8 being able to transfer to a lower Tier, as well as
9 encouraging cooperative monitoring projects, or I'm
10 sorry, cooperative water quality treatment projects,
11 such as treatment wetlands or management aquatic
12 recharge or other efforts, for example, by a watershed
13 group. These projects could propose alternative
14 monitoring or reporting, as well as alternative time
15 schedules.

16 In addition, the Draft Order also includes
17 flexibility and alternatives. Individuals or groups
18 can request specific Orders for commodity or for a
19 specific individual farming operation. It specifies
20 that third-party groups are acceptable, and also
21 provides the flexibility for dischargers to comply with
22 both surface receiving water monitoring as well as
23 groundwater monitoring, either individually, or as a
24 cooperative effort.

25 The Draft Order also allows growers to comply

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1 with groundwater monitoring by submitting existing
2 groundwater data, if it's available.
3 The Draft Order also includes flexibility for
4 growers to evaluate nitrate risk by farm or by unit.
5 For example, if a grower has numerous crop types on a
6 farm, and nitrate loading risk is only high for a
7 particular area, it could evaluate that nitrate loading
8 risk by unit.
9 The Draft Order also includes alternatives to
10 the Tier 2 reporting of how nitrogen applied, the
11 Tier 3 Certified Irrigation Treatment Plan, as well as
12 the Tier 3 Water Quality Buffer Plan.
13 So this, take a closer look at the farms and
14 the tiers. This is a map of the Central Coast
15 Regions. The farms, Tier 1 farms, again, are the
16 lowest relative threat to water quality. They're shown
17 here, blue dots. Notice that Tier 1 farms are located
18 throughout the region. They really are not
19 concentrated in any particular one area.
20 The crop types, Tier 1 farms predominantly
21 include vineyards, also orchards, as well as several
22 crops, both berries, vegetables, and nurseries and
23 greenhouses, but predominantly the crop type in this
24 Tier are the vineyards.
25 Moving on to Tier 2, this is those farms

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1 which would be considered a moderate threat to water
2 quality. These are shown here in green. So in
3 response to comments that the Draft Order focus on this
4 impaired areas of region, notice that Tier 2 are
5 starting to get a closer focus on the areas where we
6 see the most impairment, as described by Matt Keeling
7 and Karen Worcester, so predominantly in the
8 Salinas Valley as well as the Santa Maria area.
9 In terms of types of farms we see in Tier 2,
10 we see predominantly road crops in Tier 2, for the
11 berries and vegetables. We still also see orchards,
12 nurseries, greenhouses and some vineyards in Tier 2.
13 Again, this is based upon information submitted by
14 growers in the electronic Notice of Intent.
15 So finally, this is a map of the Tier 3
16 farms. They are shown here in red, and now we are
17 focusing, almost exclusively, in the areas where we see
18 the most severe impairment. The Salinas Valley, and
19 also lower parts of Santa Maria. In terms of the types
20 of farms in Tier 3, again, there's only 103 farms so
21 now we can start getting very specific. In this Tier,
22 we see 96 farms that grow road crops, primarily
23 vegetables, but also see just a handful of other farm
24 types, approximately five strawberry farms, one nursery
25 and one greenhouse.

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1 So this is a summary of the Tier farms
2 again. The Tier 1 in blue, the Tier 2 is in green, and
3 the Tier 3 is in red. Again, 97 percent of the farms
4 are Tier 1 and Tier 2 and 3 percent of the farms are in
5 Tier 3. So let's take a closer look at the Tier 3
6 requirements. This is for the 103 farms in the --
7 actually, it's -- I'm sorry, there's 51,000 acres.
8 The subset, the Tier 3 farms have to conduct
9 individual discharge monitoring, as well as Irrigation
10 Treatment Management Plan, and a Water Quality Buffer
11 Plan. If we look at the subset of the Tier 3 farms
12 that would have to prepare an Irrigation Treatment
13 Management Plan, Staff estimates that about 61 of the
14 103 farms have to prepare Irrigation Treatment
15 Management Plan.
16 Similarly, Staff estimates that approximately
17 58 farms would have to prepare a Water Buffer Plan.
18 And this is based on looking at the information in the
19 electronic Notice of Intent as well as the location of
20 those specific farms. So one of the most significant
21 improvements of the Draft Order is improved monitoring
22 and reporting to evaluate the progress towards water
23 quality improvement and verify the effectiveness of the
24 Order.
25 So what new information is gained? Well,

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1 from all farms, we get data to identify groundwater
2 impacted by nitrate. Get data to protect drinking
3 water, beneficial uses. We also receive new
4 information on individual pesticides protected surface
5 water. As well as get an identification of farms that
6 are certified sustainable. There are many farms we
7 also get information to identify those that have an
8 increased nitrate loading risk. We get the
9 identification of practices that are implemented, as
10 well as indicators that practices are effective and
11 blue loads reduced. From a few farms, those
12 higher-risk farms, we also get a certification is the
13 certification of Irrigation and Nutrient Land Plans.
14 Data to evaluate the quality of individual discharges,
15 protection of adjacent surface water, and verification
16 of progress and effectiveness, according to specific
17 indicators and milestones.
18 This new information will enable the Water
19 Board to efficiently and effectively evaluate
20 compliance and prioritize farms for appropriate
21 follow-up, based on water quality, and ensure the
22 protection of safe drinking water sources. It will
23 also allow the Water Board to evaluate the
24 effectiveness of the Order. Most importantly, this new
25 information will help us to learn more and adapt as a

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1 Board to continuously improve the Order and its
2 implementation.

3 So, in conclusion, the Draft Order is
4 responsive to the input from State Boards. It does
5 address comments that requirements should be based on
6 individual farms and not one size fits all. The Draft
7 Order does focus on the areas of the region that are
8 most impaired. It does include requirements
9 prioritizing the protection of drinking water and
10 groundwater and Draft Order does build on the 2004
11 Conditional Waiver, and maintains similar requirements
12 for a large percentage of growers and reduced the
13 reporting for more than half. It increased
14 requirements for a small percentage of growers
15 exhibiting an increased threat to water quality.

16 The Draft Order complies with the Water Code
17 Plans and Policies and is reasonable, given the
18 severity of water quality conditions and tap and
19 drinking water.

20 And now Michael Thomas will list for you
21 about implementation and reports.

22 **MR. THOMAS:** Good afternoon, Mr. Chair and members
23 of the Board.

24 **THE REPORTER:** I can't hear you.

25 **MR. THOMAS:** How about that?

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1 **MR. YOUNG:** Hang on one second, Michael. Madam
2 Reporter, can you hear everything okay?

3 **THE REPORTER:** Right now I am, yeah. I'm letting
4 them know when I can't.

5 **MR. YOUNG:** Would you prefer being in a different
6 location?

7 **THE REPORTER:** Maybe after the break, I'll move.
8 Right now, we're good.

9 **MR. YOUNG:** We'll take a break in a bit and if you
10 want to move anywhere, well, just let me know.

11 **THE REPORTER:** Okay. Thanks.

12 **MR. THOMAS:** Good afternoon or good morning,
13 Mr. Chair and members of the Board. I'm going to talk
14 a little bit about enforcement related to this
15 Conditional Waiver of Waste Discharge Requirements, and
16 the Order that is before the Board today.

17 This 2012 Conditional Waiver has
18 administrative type requirements, and that is,
19 enrollment fees and online reporting and submittal due
20 dates and reporting. And Staff can pursue enforcement
21 action for violations of those administrative type
22 actions. And the typical sequence that we would follow
23 is when we find that there is a violation, I usually
24 make a phone call or I send an email, and the majority
25 of violations are resolved at that point, without

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1 taking further action. If we need to, we'll send a
2 letter to the Discharger, if we can't get a hold of
3 them, otherwise, if the letter does not work, we send a
4 Notice of Violation. Again, the majority of violation
5 issues are resolved at that point. Rarely, do we have
6 to send a notice, Second Notice of Violation or move on
7 to proposed fines. If we do move on to proposed fines,
8 we usually offer a settlement as a fraction of the
9 maximum allowable and the majority of those cases are
10 settled without coming to the Board. But if the
11 Discharger would like to, they can come to the Board
12 and have a hearing before the Board, and that has
13 happened, I think, if I remember correctly, once with
14 respect to 2004 Order, in eight years. And when it
15 does come to the Board, if it comes to the Board, the
16 Board can dismiss the proposal of fines, or they could
17 decrease the proposed amount, or increase.

18 At the last workshop in February, we heard a
19 lot about this fear factor. What about enforcement of
20 Water Quality Standards? When the Order is adopted,
21 will Staff pursue enforcement action immediately
22 against growers for violation of Water Quality
23 Standards? The answer to that is no, period. The
24 permits, the Draft permit states in Attachment A,
25 Page 2, "The Central Coast Water Board recognizes

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1 that dischargers may not achieve immediate
2 compliance with all the requirements. Thus
3 this Order provides reasonable schedules for
4 discharge to reach full compliance, over
5 many years, by implementing management
6 practices and monitoring and reporting
7 programs that demonstrate and verify
8 measurable progress annually."

9 And that's a quote.

10 So what does it look like, if we obviously
11 want growers to eventually achieve water quality
12 standards? What's that look like? It's a difficult
13 process. The growers have to implement management
14 practices, monitor and report effectiveness to the
15 Board, and then adjust, based on those results, and
16 then keep improving those management practices and
17 eventually achieve the water quality. It is possible
18 that some growers will not do anything, will do little
19 or no implementation. They believe that the Water
20 Board doesn't have authority to regulate them, so they
21 will choose not to. And in that case, we will pursue a
22 different avenue, and that is Waste Discharge
23 Requirements. Waste Discharge Requirements is a
24 different kind of Order, and so if growers are not
25 complying with this Conditional Waiver, we would

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1 consider Waste Discharge Requirement. Waste Discharge
2 Requirements often do have Water Quality Standards in
3 them, and they are enforceable. And there are cases
4 right now that we are considering for pursuing Waste
5 Discharge Requirements. We are not working on those,
6 because we have been working on this Order continuously
7 for three and a half years.

8 **MR. YOUNG:** Well, can you just quickly clarify,
9 what do you mean cases? Agricultural --

10 **MR. THOMAS:** Yes.

11 **MR. YOUNG:** -- cases?

12 **MR. THOMAS:** There are cases where operations that
13 are not complying with the existing Order, in our
14 opinion, and I can't go into details about it, because
15 it could be a pending action before the Board. But
16 there are such cases and we will pursue these.

17 We need to move from the condition on the
18 left here, which is not protected with benefits for
19 uses, which is causing the kind of pollutions that we
20 have heard about extensively today, and in every
21 previous workshop and hearing that we've had. We need
22 to move for the conditions on the right. There are
23 solutions available and we can do this.

24 You've heard that people or growers are
25 worried about complying with water quality objectives

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1 as long as the record is adopted. I just explained
2 that that is not the case. We will not be taking
3 forcible action on Water Quality Objectives, but what
4 we talk about internally is not how we are going to
5 enforce Water Quality Objectives. What we talk about
6 is the best defense for growers is a good offense.
7 What they need to be doing is demonstrating the
8 implementation of practices, and providing the
9 information that verifies the effectiveness of those
10 practices. That is, by far, the best defense that they
11 could possibly have.

12 Again, these programs are available. There
13 are places in our region that this Board has spent is
14 not spent, allocated tens of millions of dollars
15 towards projects to demonstrate that there are
16 practices available, and that they work.

17 There are also Ag developed programs, like
18 the sustainability and practice certification. We
19 didn't develop this. The Ag industry did. The
20 standards or Sustainability In Practice are, they look
21 at the farm in its entirety and they consider the
22 orchards, soil fertility, cover crop, wildlife, native
23 plants, and irrigation, and they look at the whole
24 system.

25 Operations that are SIP Certified are

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1 automatically in Tier 1. And the Ag industry, other
2 segments of the Ag industry are free to pursue and
3 develop these kinds of programs and this Order, this
4 Draft Order, encourages them to do so.

5 Briefly, I want to mention the amount of
6 resources that we've allocated to this effort. All of
7 the people listed here have been working on this
8 project over the past three and a half years now.

9 Those that are listed in bold, at the beginning, have
10 been spending almost 100 percent of their time on this
11 project. It does not include Executive Officers, and
12 Assistant Executive Officers or Board time. We have
13 spent more time on this project, than any other project
14 on the Board, and we are tying up resources and not
15 doing other things that we should be doing, that we are
16 responsible for doing. That includes implementation of
17 the Ag Program.

18 The Board adopted an Order in 2004, and we
19 are not implementing the things that we need to
20 implement to deal with the severe water quality
21 pollution problem, because we are spending time on
22 bringing this forward to the Board again and again, in
23 workshops and hearings.

24 We are not taking action on Public Health
25 Protection. There are drinking water problems that we

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1 need to be addressed. We have identified several. We
2 know there are several more. We need to be taking
3 action on this, and we haven't been doing it because
4 our resources are tied up on this delay.

5 There are also total maximum daily load
6 reports that we are required to do by law. These
7 Orders, many of these Orders, address the most severe
8 agricultural water quality pollution issues and they
9 rely on this Order. They refer to this Order and they
10 rely on this Order for implementation. We need to get
11 this Order adopted because it affects many other things
12 that we do.

13 We're also planning to bring basic plan
14 amendments to the Board. Our basic plan describes the
15 water quality conditions in our regions, and our
16 resources, and the programs are in place to address the
17 most severe problems. We have major basic plan
18 amendments that we need to bring before this Board, and
19 we're not.

20 The Water Board's mission, as a reminder, is
21 preserve, enhance, and restore the quality of
22 California Water Resources, for the benefit of the
23 present and future generations. We're not doing it.

24 These conditions do not protect resources for
25 this generation or future generations. Water quality

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1 data that you have seen, that have been brought to you
2 multiple times, that can be established in the record
3 and in the literature, demonstrates the severity of the
4 water pollution problems in our regions, and the number
5 of people that are affected, and public health, which
6 is extraordinary. We need to move from the condition
7 on the left to the condition on the right.
8 The State Water Board has an Environmental
9 Justice Policy, and the number one goal listed is
10 integrate Environmental Justice Consideration into the
11 development, adoption, implementation, and enforcement
12 of the Board's decisions, regulations, and policies.
13 We are not doing this.
14 Sonia Lopez. This is a picture of
15 Sonia Lopez, and her son, Leonardo, from that
16 San Jerardo area. They're affected by the pollution,
17 groundwater pollution, and the extraordinary costs that
18 are being incurred by that community. She said it
19 better than anyone, "Our problem is going to be
20 your problem. It's everyone's problem. There
21 are solutions, but we need the people in charge
22 of our communities to do something about it."
23 That's us.
24 The Water Board is the only agency with the
25 authority and the responsibility to address this water

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1 quality problem. Porter-Cologne Water Quality Act
2 says, "The Board must be prepared to exercise its
3 full power and jurisdiction to protect the
4 quality of waters in the state from
5 degradation."
6 We are not doing this.
7 As Matt pointed out earlier, this quote from
8 The Health and Safety Code: "Every citizen of
9 California has a right to pure and sanitary
10 water."
11 We have been arguing about this for three and
12 a half years. We have been meeting with people who
13 tell us it's not true, that the public does not have a
14 right to clean water. We have an obligation to clean
15 it up if they want to use it. It's not true. They do
16 have a right to clean water. It's our job, as the
17 Water Board and Water Board Staff, to try to provide
18 that, and to protect them. We're not doing it.
19 In conclusion, the Water Quality Degradation
20 is severe, and it's getting worse. The more data we
21 get, the worse it looks. The threat to public health
22 is paramount. We must act now to comply with our laws,
23 our plans, and our policies to do what is required of
24 us. We cannot negotiate away protection of public
25 health and public resources. We often hear that we

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1 should delay and continue to negotiate. If we just
2 negotiate a little while longer, perhaps we can resolve
3 this. Resolving this is dealing with the public health
4 threat and the pollution problem. It is not
5 negotiating away protection of public health or public
6 resources.
7 The California Constitution has a Public
8 Trust Doctrine Policy and we are responsible for
9 protecting the public trust and implementing that
10 Doctrine. Delay prevents implementation and action on
11 our priority cases, as I have already mentioned. It's
12 a real delay. It's a real delay of these other
13 priority actions that we are supposed to be acting on.
14 An unwillingness to submit data or specified
15 information is not a reason for delay. All of the
16 other parties that this Board regulates, they all
17 submit information to this Board. That is public
18 information. An unwillingness to submit information to
19 demonstrate a reduction in the pollution load is not a
20 reason to delay. The solutions are available. This
21 Board has allocated, as I have said, tens of millions
22 of dollars to demonstrate those solutions. They're out
23 there, and they can be implemented.
24 That concludes my (inaudible word).
25 **MR. YOUNG:** Okay. Thank you, Mr. Thomas.

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1 For the rest of you, we are going to take a
2 break some time before noon. I know Congressman Farr
3 has to -- is it leave by noon? Okay. Um, we can go on
4 to our own questions of Staff now or we can take a
5 ten-minute break right now.
6 **MR. DELGADO:** I just have a very brief question.
7 On the packet, there's an irrigation slide that we did
8 not see. Do you want to do that now or later?
9 **MR. KEELING:** We will go back, and when all of the
10 other presentations are made, and the Executive Officer
11 will make a recommendation.
12 **MR. YOUNG:** You guys want to take a break? You
13 do? Okay. So folks, ten minutes, we'll come back.
14 Believe it or not, at 11:20, I'm going to start
15 speaking and asking you to take your seats.
16 (Brief recess.)
17 **MR. YOUNG:** Any questions of Staff? I wanted to
18 give Congressman Farr the opportunity to approach the
19 Board and give us his comments and then, Mr. Sanchez,
20 you had also requested time. And I will invite, if any
21 of our other elective representatives would like to
22 come up to immediately follow Mr. Sanchez. If you wish
23 to speak now, that will be fine. If you want to wait
24 until later, that's also okay. I'll leave it up to
25 you.

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1 Congressman.
2 **MR. FARR:** Thank you very much, Chairman Young,
3 and thank you, members of the Board. Thank you for
4 your public service.
5 My name is Sam Farr. I'm a member of
6 Congress and I represent Monterey, Santa Cruz and San
7 Benito in the 17th Congressional District. One of my
8 roles, in Congress, is to serve as the ranking member
9 on the Ag Appropriations Committee. That's the
10 committee that funds all of the Department of
11 Agriculture and the FDA. And in that role, I've heard
12 every single issue there is about Agriculture in
13 America. In particular, the interest now in water
14 quality in other States. Big huge problems in the
15 Mississippi Delta, Mississippi River Basin,
16 Chesapeake Bay. One of the things I've seen in my
17 public service of being a County Supervisor, a State
18 Assembly member, a member of Congress since in public
19 office since 1975, is that what we really have here in
20 Central Coast, not only incredible amount of
21 agriculture that is feeding its nations, about 70
22 percent of all the fresh fruits and vegetables in the
23 world, let alone, the United States come from here.
24 And it's a huge, huge economic engine. But it only
25 works, when we work together. And I brag about the

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1 fact that we, here in the Central Coast, we've been
2 able to come up with solutions. Like the is it's
3 mentioned by the Staff, the Central Coast Vineyard
4 Team. The Leafy Green Marketing Order, which,
5 essentially, was all private sector driven, came up
6 overnight, incredible enforcement program on, you know,
7 quality, on health quality of leafy greens. The
8 Waiver, when we first started that, it was all
9 voluntary, and it ended up being nine counties wide.
10 The program was the first flush in studying all the
11 streams and all the other additional programs that have
12 worked very successfully, that the Staff just
13 mentioned.
14 Nitrate contamination is a huge problem.
15 It's a serious problem. But, remember, the Salinas
16 Valley was first farmed by dairies. Hundreds of
17 dairies, wall-to-wall dairy products. That dates back
18 160 years. There's been a lot of build-up since then,
19 and I remember this discussion when I was on the Board
20 of Supervisors in Monterey County in the 1970s. It's a
21 problem that's going to take, as Staff has suggested,
22 it's going to take, and the reports that you've just
23 seen, the Davis Report and the Huertos Report, it takes
24 good science to know where the problem is, and it takes
25 a technical way to clean it up. Your Board member,

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1 Bruce Delgado, really knows that system from Fort Ord,
2 because we had contaminates in the groundwater there.
3 We had a pumping and we'd clean up the water and
4 recharge it and it's going to probably take 20 or 30
5 years to clean up that phosphor.
6 We also had huge problems with unexploding
7 ordinances, and haven't been able to solve those at the
8 moment, and I really felt the Board's or the Staff's
9 passion in telling you, you know, we got to get this
10 done, but frankly, this isn't a Staff driven project.
11 You're the political responsibility to listen to the
12 public and get it done and we've got to get it done in
13 a collaboration. I mean, as pointed out, it only will
14 work, all this contamination in your mandate, your
15 mandate, it seems to me is the mandate about
16 restoring. I saw that in your responsibilities
17 regarding water quality, but also restoring. And this
18 can't be done overnight. It can't be done at all
19 without the landowners and the growers on that land.
20 They have got to be part of this solution. And all
21 I've learned in my life of politics, and certainly
22 being a father and grandfather, is there are no
23 absolutes. We can work down and work it out. And my
24 coming down here today was just to urge you to take
25 whatever time you need to get this, so that it will

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1 work. It's not going work in a penalistic way. Leafy
2 Green Marketing Order is a great example of a thorough is
3 through examination reporting. All voluntary. But
4 that, now, is the model to the whole nation. And you
5 ought to see the push back from other states. Oh, we
6 can't do that. And the industry came up with that. In
7 fact, the industry came before our committee and said,
8 "Please regulate us. We'll give you some suggestions."
9 And now we hope that that will become a National
10 Order. We can do it here. We have the capability. We
11 have the wherewithal, and the growers that are sitting
12 behind me and others in our environmental community and
13 I just know the only time these things actually work is
14 when you use a carrot and a stick. But in this case,
15 restoration is going to take some time, and a lot of
16 carrots. It's going to take cooperation of the
17 farmers. And I urge whatever Order you come up with,
18 that it works for them.
19 Thank you very much.
20 **MR. YOUNG:** Thank you for your comments.
21 Mayor Delgado.
22 **MR. DELGADO:** Yeah. Can I ask you a couple
23 questions, Sam?
24 **MR. FARR:** I don't know. In my business, you have
25 to ask the Chair if you can ask me some questions.

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1 **MR. DELGADO:** I did that already.
2 **MR. YOUNG:** Yeah, he did. But please refer to him
3 as Congressman Farr, sir.
4 **MR. FARR:** No, you can drop all that.
5 **MR. DELGADO:** Sam, you mentioned the legacy of
6 decades of land use leading up to today. And I don't
7 know if you were here earlier, but were you here when
8 you heard the 2011 Lawrence Livermore Study cited,
9 saying that the pollution is legacy, as you mentioned,
10 and also recent, as the contamination levels they are
11 finding are in part due to ongoing land use, in
12 addition to the legacy. I'm just wondering if you
13 caught that.
14 **MR. FARR:** Yes. And, in fact, looking at the
15 Davis Report and the Executive Summary is it looks like
16 I tore that page out and didn't bring it in is but I
17 remember that of the last recommendations on that, the
18 ninth one talks about is here it is. One of the
19 problems is inconsistency and inaccessibility of data
20 prevent an effective and continuous assessment. A
21 statewide effort is needed to integrate diverse water
22 related data collection activities by many state and
23 local agencies. Many of the issues that were shown by
24 Staff of requiring plans and submission of data is done
25 also by Leafy Green Marketing Order, done by different

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1 entities that is the Vineyards is Sustainable Vineyards
2 project Organic Standards Project and on and on and I
3 think that there's, there's a lot of successes out
4 there that seems to be less penalistic than this one.
5 And I'm not a grower, and, you know, part of it is
6 that is sustainability. That's what we talked about.
7 We all want that. It's an easy word to use. It's a
8 hard word to implement. But the reality is, if indeed
9 we want to sustain fresh nutritious agriculture, which
10 is what we're supposed to be eating in this country.
11 Part of our health care problems is to, you know is I
12 say, the farmers are the first responders to this new
13 health care plan, because the health care plan assumes
14 that Americans will grow up healthy. Water quality is
15 a big issue, but if we don't sustain these growers in
16 some cost effective way, through regulation, we're
17 going to lose them. I think that would be is I mean,
18 we grew up with agriculture. I think we take so much
19 for granted. Sometimes you have to get out of this
20 system realizing how big it is. You know, California
21 is still the number one Ag state. Nobody else in the
22 United States believes that. They don't think
23 California is an Ag state. You know, we grow about 200
24 crops in this state that no other state grows. We're
25 the only producer of almonds. We're the only producer,

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1 I think, of walnuts in the United States. So there's
2 huge, huge crops and big international markets. China
3 is running out of land. The future is to grow in
4 California, if you can afford to be in agriculture. So
5 all this regulatory process, as you know, is in balance
6 with how do you make it work, and my suggestion, and I
7 don't know all the specifics of it, but it seems to me
8 that agriculture isn't trying to deny there's a
9 problem. They're trying, you know, they're working
10 with you to try to figure out, how do we get a workable
11 solution so we can both win.
12 **MR. DELGADO:** Sam, Congressman Farr, when you
13 mention that it's we don't want to be too penalistic,
14 are there any examples of the kinds of penalties that
15 you think are the problem, or by penalistic, are you
16 suggesting that the whole process is so onerous that
17 it's sort of a -- it's a surrogate for a penalty, even
18 though -- or are you actually worried about actual
19 penalties.
20 **MR. FARR:** No, it's the onerous part of it. It
21 seems to me, there's more stick than carrot.
22 **MR. DELGADO:** All right.
23 **MR. FARR:** And I think it's going to work when you
24 get more carrot.
25 **MR. DELGADO:** Okay. And I --

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1 **MR. FARR:** And the Waiver, you've been giving all
2 these years, has been phenomenal. Remember, that all
3 started off voluntarily. That was not something that
4 the Board came up with and said you got to do this.
5 The regulations were out there and they said here's how
6 we can do it. We'll need some waivers, in order to do
7 it, but we're working on it. So I think you've had a
8 history, that it's a very cooperative effort. It's
9 successful.
10 **MR. DELGADO:** Thanks. My last question, and I
11 know your time is valuable, last year in February, you
12 sent a very thorough letter to our Board -- I wasn't
13 here then -- and a couple months later, in April, the
14 Board Staff responded to your letter and that back and
15 forth communication, including some of the concerns
16 that you mentioned today, and it also included some
17 others that you didn't mention today, probably because
18 you're not going to repeat everything you said a year
19 ago, but my question is, since I thought that the
20 response to your letter was a pretty good response, I'm
21 wondering if, since then, if your Staff decided to
22 engage or not engage in further discussions, since you
23 got the response?
24 **MR. FARR:** I'm not sure I understand the
25 question.

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1 **MR. DELGADO:** That you had some concerns expressed
2 last year, and then there was a response to those
3 concerns. Since then, has there been any discussion or
4 desire for discussion?
5 **MR. FARR:** Yes. I think, frankly, the work that
6 the Staff has been doing with the community has been
7 very progressive. It's been a work in progress. I
8 think the frustration now is this, sort of, mandate
9 that we got to do it now. I mean, the Staff works for
10 you, not the other way around. And it's your decision,
11 is this good enough to be adopted? When you have that
12 feeling, and it will work. The bottom line here is not
13 coming up with a regulatory system, it's coming up with
14 a process that will work. That's -- that may take more
15 time. It may take tweaking. I think there's been some
16 good progress made, and I'm not sure that today is.
17 That's all. This is not your final day.
18 **MR. DELGADO:** Thank you very much.
19 **MR. YOUNG:** Congressman, I guess some of them are
20 not done with you yet.
21 Mr. Johnston.
22 **MR. FARR:** This is what happens when you're
23 responsible for a hundred billion dollars of your
24 taxpayer's money.
25 **MR. YOUNG:** Did you bring a bag with you today?

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1 **MR. FARR:** No. You usually have to ask me for
2 it.
3 **MR. JOHNSTON:** You brought the checkbook, right,
4 Congressman? Um, look, Congressman Farr, I -- while I
5 very much understand Staff's frustration with the fact
6 that resources have been diverted for a long time on
7 this, it's been a very difficult process, and I, as
8 much as anyone, want to get this resolved.
9 I agree with you, we should approve it when
10 we have the right Order. I guess my concern is, and I
11 agree with you, frankly, that to the extent that we can
12 promote collaboration, it's better. My concern is, as
13 I've been trying to review a two-foot tall stack of
14 records from the last four years, and going back and
15 forth with our legal counsel, what I'm hearing and what
16 I'm seeing is that some elements of -- of what Ag is
17 proposing appear to be nonnegotiable. Elements that
18 involve withholding virtually all information about
19 what's actually being done in terms of management
20 practices from the Board, no real way that the Board
21 can participate in a feedback mechanism to figure out
22 what's working, and what isn't, and to understand that,
23 and to understand who's implementing, and who isn't --
24 **MR. FARR:** Could I respond to that?
25 **MR. JOHNSTON:** -- and no way for individual

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1 dischargers to be accountable, what I'm being told by
2 legal staff, and -- or what we're being told by legal
3 staff is that those are violative of the law. And I
4 got my law degree at K-Mart. I mean, I'm not in much
5 position to argue those questions, unless it's -- I
6 understand they're legal opinions, legal advice, but
7 still, it's pretty high bar for us, as a Board, to say
8 we disagree with that. So I just want to make it
9 clear, I mean, our problem is that it does no good to
10 say, or at least my view of our problem, it does no
11 good to say, let's give a bunch of additional time to
12 negotiate, if there are fundamental issues that appear
13 to be nonnegotiable in terms of Ag's view, as far as
14 what they're willing to do, and in terms of law, as far
15 as what it requires. So I'm looking for some help
16 here. I'd like to hear it.
17 **MR. FARR:** Well, I always believe there's never --
18 nothing that's -- you're a labor leader -- there is
19 nothing that's nonnegotiable. There are standard
20 practices in what is priority information and how to
21 handle that. There's lots of requirements in law for
22 proprietary information to be filed, and you just have
23 to make sure that whatever standards -- I think, what
24 the concerns I hear is more that the paperwork it takes
25 to do, that is just so onerous. It's not sort of --

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1 you know, we're are not the -- they're not CPAs,
2 they're growers. And, uh, how do you make a project
3 that allows them to be cost effective in growing
4 things, rather than just having to be paper managers.
5 And I don't know the answer. There is a way. There's,
6 there's -- but I always go to, and I think this whole
7 issue is about what are the best management practices?
8 You're in a new frontier. If there was some place in
9 the United States that had solved this problem, you
10 would be looking at it for models and for history. But
11 you're -- you're the first instance here. You're the
12 first responders. Now, how do we deal with that
13 groundwater contamination, a very serious problem? And
14 I think you just have to make sure that you can get it
15 as good as you possibly get. It's never perfect.
16 That's why you have amending process that comes back.
17 And now is the time to really try to make sure if
18 you're going to do this for the first time out, that
19 you have a collaboration because you would admit and
20 say that the only way it could be solved is if the
21 people who are applying nitrates, or monitoring water,
22 or applying water, or own the land where it's been
23 contaminated for 100 years, how do you get that cleaned
24 up? You've got to have their cooperation, it seems to
25 me. Put out those objectives that you want to achieve

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1 and get their suggestions on how to solve them.
2 **MR. JOHNSTON:** Well, maybe, we'll hear today that
3 some stuff that we think is not negotiable is
4 negotiable. I haven't heard it yet.
5 **MR. YOUNG:** Okay.
6 Mr. Jeffries.
7 **MR. JEFFRIES:** Thank you. And I can call him Sam
8 because I know him. I've known Sam --
9 **MR. FARR:** And I'll call you Mr. Mayor.
10 **MR. JEFFRIES:** We did the political stuff a couple
11 years ago. But I'll make my question very short to
12 you.
13 Is it your fear that -- and I agree with you,
14 we need to offer more carrots than sticks -- and I
15 think I'm the only Board member who was here when we
16 developed the 2004 Order, except you, Mr. Chairman.
17 That's why you're chairing. I did a lousy job in
18 2004. But it was worth -- it was the environmental
19 group. It was the agriculture group and it was the
20 Staff that worked together and drove to complete the
21 2004 Order.
22 **MR. FARR:** Um-hmm.
23 **MR. JEFFRIES:** And you said that -- through the
24 response of Mr. Johnston -- that there was a lot of
25 people that worked together and a lot of people looked

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1 at us, at that particular time, because we were able to
2 achieve that Order, and it wasn't something that we hit
3 them over the head to make it happen.
4 My question to you is your fear that if we
5 overregulate the Ag culture community, and it's a very
6 important economic business within the state, and
7 especially in Monterey County, and all the counties in
8 this area, that it will stymie the Ag culture community
9 and leave the State of California, or even leave the
10 United States?
11 **MR. FARR:** Well, I don't think this alone will
12 drive that, but it's -- there's a lot of issues.
13 There's accessibility of labor here. As my grower
14 friends tell me, there's no labor problems in Mexico.
15 We can go there without having any shortage of labor.
16 Mr. Meyers moved his tomato operation to Mexico, and he
17 told me, at one time, he had 70,000 employees. Those
18 70,000 could be here in the Central Coast. For
19 whatever reason, he chose to go to Mexico. So it's
20 just -- it's a cumulative of issues. And obviously,
21 you know, we get better, higher quality in California,
22 and we got a micro climate that you're not going to
23 have a lot of states being able to grow these
24 products. But you're in a world competitive market and
25 everybody wants to grow value-added crops. We have a

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1 provision in Federal Law, if you're in the commodities
2 business, you're receiving some subsidies from that
3 Federal Government, you're not allowed to go out and
4 grow a specialty crop because you would have -- you
5 have this safety net, this insurance. Well, I'll
6 harvest my wheat or my cotton or my rice and just try
7 the fresh agriculture on the side. I'll try to grow
8 strawberries. We can't do that. We prohibit you
9 that. You either have to go into agriculture without
10 any subsidies or stay in the commodities program.
11 Remember, commodities can all be stored in
12 silos. That's the reason you have the commodities
13 program anywhere. You store cotton, you store wheat,
14 you store beans, you store rice, and so what happens is
15 that the people who were storing those crops told the
16 farmers, we don't need your crop this year. We have
17 enough from last year. So they had -- so we were
18 trying -- it was, you know, a food safety issue. How
19 do we ensure that we'll have farmers there on the land,
20 so we subsidized in the commodity programs. We don't
21 have that in agriculture. This is huge competition,
22 huge competition. So everything that goes into it is a
23 cost, and it's not just water quality. You want to --
24 I think what I'm trying to say, Mr. Jeffries, is that
25 look at the success we built on. That was voluntary.

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1 Because one stated, here's the problem, and we've got
2 to solve it.
3 Will you come up with -- your -- will you
4 organize among the growers and meet these goals, these
5 standards, that you've created, the Board created? And
6 they did. In fact, all these other counties that were
7 skeptical at first, joined. They looked at Monterey
8 County and said, "It's working. They're not coming
9 out and arresting us. They're not fining us.
10 We're not going to jail. We'll get into this
11 program."
12 The only reason I'm here today -- I want to
13 continue that success.
14 **MR. YOUNG:** Dr. Hunter.
15 **DR. HUNTER:** Congressman Farr, and I really do
16 appreciate having your time today, and your prospective
17 on these issues. And while I fully, fully appreciate
18 the economic issues at stake, I would really appreciate
19 hearing from you regarding the other dimension of this,
20 which weighs heavily before the Board, in terms of the
21 decisions we have to make. And that concerns the
22 health impacts of contaminated groundwater, and
23 especially considering that we have more information
24 now about where these sites are, and relative to
25 disadvantaged, low income communities, and in many

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1 cases, people relying on drinking water, private small
2 drinking water, domestic wells, they're not even aware
3 that they may be drinking contaminated water, because
4 we have no information. We have elders. We have
5 children. We have mothers. And these people are now,
6 have recently, in the last year to two years, joined
7 this discussion and brought these issues into full
8 detail for us. And so my concern -- how do we find the
9 balance in implementing changes that are going to have
10 effects that we need to see to ensure that people are
11 drinking safe water?

12 So please help me understand how -- where can
13 we find that path to assure that we are protecting
14 those with the least ability to speak in this room?

15 **MR. FARR:** Well, I've had the pleasure, when I was
16 the County Supervisor, sitting on the California
17 Coastal Commission Air Resources Board, The Waste Water
18 Board, um, which was our reclamation project, and some
19 other Regional Environmental Monitoring Boards. I
20 also, as my first job on the Board, had the pleasure of
21 dedicating a remarkable farm housing unit, an old farm
22 labor camp called San Jerardo. Jerardo had awful
23 water, it's contaminated. And it's taken, until, I
24 think, just these last few years, to find a process to
25 clean it up.

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1 So the response to your question is yes,
2 they're incredibly serious. What we ought to be
3 doing is setting goals, objectives, and being able to
4 use our grant process and our funding process to make
5 sure that the project to clean up those individual
6 wells, in rural areas, I mean, big commercial people
7 can do it, in the urban area. That's part of their
8 rate. But these -- Monterey County has more mutual
9 water companies and water purveyors than any other
10 county in the United States. They have to meet the
11 National Water Quality Standard, which California has
12 implemented. So I think that you have, in that law,
13 ways of addressing goals and objectives to address it.
14 Nitrate is going to have to be cleaned up. It's going
15 to have to be extracted from the water, and that's
16 going to take very expensive, filtering processes and
17 other science that I'm not aware of. But you have some
18 suggestions here, the Los Huertos Report, and I think
19 this Davis Report speaks to some ideas of how that can
20 be done.

21 **DR. HUNTER:** Thank you.

22 **MR. YOUNG:** Okay. Thank you.

23 And, Congressman, just let me say, on behalf
24 of the Board, I don't think any of us suffer from an
25 illusion that we're going to see immediate results.

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1 As to the legacy problems, we know they're
2 there. They've been building up for decades. This is
3 going to take time. None of us is going to expect
4 immediate change in water quality data. This is a
5 long-term process. We're aware of that. Nothing is
6 probably going to show up in the next -- in this permit
7 cycle, except the BMPs will get implemented and, in
8 time, we would hope to see improvements to water
9 quality, but we're not sitting here thinking, boom, in
10 five years we better see, you know, that kind of
11 improvement. We know it's going to take a long time.

12 **MR. FARR:** Well, I appreciate the role you have to
13 play. It's a tough role. You've been appointed to
14 have this awesome responsibility. I wish you well. As
15 I said, it's the first instance and the nation will be
16 watching you, so I hope you can get it right.

17 **MR. YOUNG:** Thank you for your comments.

18 Okay. Mr. Sanchez.

19 **MR. SANCHEZ:** Good morning.

20 Thank you very much for the courtesy for
21 allowing us the opportunity to address you. I know you
22 have a long day, so we really appreciate that.

23 My name is Sergio Sanchez. I am the District
24 Director for Assemblyman Raul Luis Alejo. He
25 represents over half a million people in the counties

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1 of Monterey, San Benito, Santa Clara and Santa Cruz
2 County. A good majority of them farm workers; a good
3 majority of them farmers. This is definitely an issue
4 we are concerned about, and with your permission and
5 indulgence, I'd like to read you some of his comments,
6 and share some additional information with you.

7 This is a letter addressed to you,
8 Mr. Young.

9 "Chairman Young, thank you for the
10 opportunity to address you one more time
11 before you make the decision on the Ag
12 Waiver.

13 "In my previous communications to you,
14 I have shared my concerns regarding the
15 proposed regulations, it's impact in our
16 region's agricultural industry, but I'm
17 especially concerned about the impact to
18 small farmers and their future should
19 this regulation be approved, as proposed."

20 Specifically, Assemblyman Alejo, myself,
21 and other staff, have met with small farmers, and all
22 kinds of farmers -- "and the biggest fear" is and I'm
23 going to share a little bit of a comment from one of
24 them, that said, "In the days when I used to
25 be a farm worker, and I was undocumented,

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1 working in this area, I feared being picked
2 up by the immigration" is what we call "Migra" is
3 "and it's just, I always knew where I was
4 going to end up. I was going to end up
5 back in Mexico and I knew how I could
6 come back. So my fear was short term.
7 That fear compared to my fear now, as
8 a farmer, that I could eventually lose
9 my farm, and not know where the decisions
10 are going to take me. That's the biggest
11 fear that I've faced, because I don't know
12 where I'm going to go. I don't know when
13 I'm going to return, and I don't know how
14 I'm going to get back."
15 And that's just directly from one other
16 comment. What Staff fails to address, and to inform
17 you of is the impact on those folks that are sitting on
18 the Tier 2 and Tier 3, that are going to be the most
19 impacted. And that is the small farmer. That is the
20 farm worker that made it. Now he's got a little piece
21 of land or bigger and now he's an employer, and now
22 he's an entrepreneur and trying to make ends meet.
23 What Staff fails to address is that sometimes
24 language is a barrier, technology is a barrier. I
25 think the small farmer -- the bigger farmer is going to

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1 be able to deal with a lot of this stuff, and they're
2 the ones -- possibly not in this situation, but the
3 small farmer is the one that is already on Tier 3 and
4 is going to be devastated by not -- I mean, just the
5 fear of filling out all of that paperwork online is
6 causing tremendous chaos within that community. That
7 becomes a real issue, and those are the folks that your
8 Staff has failed to inform you. Because they have not
9 shared the communication with them. They have not
10 talked to them, at length, to figure out their fears
11 and figure out how they're going to address their
12 concerns, because literally, what they're saying should
13 the regulations go as proposed, they're going to be
14 wiped out. They're going to close their farms and
15 they're gonna do exactly what Congressman Farr
16 thought. They're going to move down south, in Mexico,
17 and start their farms, because there is a little bit
18 more flexibility there.
19 My final thoughts and concerns remain the
20 same. I appreciate the changes to the proposed,
21 regulations your Staff has suggested is as suggested by
22 concerned parties, but the regulations, as proposed,
23 will impact agriculture significantly. Our region
24 already faces many challenges, and even the remote
25 possibility of the loss of agriculture job is

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1 unthinkable. I have also shared with you my support
2 for the coalition by the agriculture representatives
3 and also by the Los Huertos Study Report. I truly
4 believe this approach is the most beneficial to the
5 environment and our region's water quality. It really
6 addresses the issue of water quality. This approach
7 allows for a collaborative effort among farmers,
8 environmental advocates, and research community. As a
9 region, we must do more than just monitor water, but
10 rather learn and apply new innovative practices that
11 truly improve water quality.
12 This approach is also the most recent and
13 economical for all. The need for technical staff to
14 monitor water quality and runoff, as proposed by Staff,
15 is unreasonable due to the lack of available technical
16 staff to manage such a huge program. The coalition
17 approach allows a different way to what the Board wants
18 to do, which is to improve water quality, but in a
19 reasonable and achievable manner. This is really a
20 win, win situation for all. I would sincerely
21 appreciate that you seriously consider this approach,
22 as suggested by agriculture representatives, and by
23 Dr. Los Huertos, in your deliberations today.
24 Again, thank you for your time and attention
25 to this very important issue. I look forward to a

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1 positive decision for you and your Board.
2 And if you have a question, you can always
3 call him. Thank you very much for this opportunity.
4 Have a good day.
5 **MR. YOUNG:** Thank you, Mr. Sanchez.
6 Any questions or comments?
7 **MR. DELGADO:** Yeah. Sergio, do you want to take
8 any questions?
9 **MR. SANCHEZ:** If you ask me tough questions,
10 Mr. Mayor, I will defer them. You can go ahead and ask
11 me.
12 **MR. DELGADO:** I think everyone is concerned about
13 the small farmers. We understand that they have less
14 resources. Do you think that there's a lot of small
15 farmers that would be in Tier 3?
16 **MR. SANCHEZ:** I know there is. There is at least
17 300 farmers between 2 and 3 and the majority are ethnic
18 minorities, either Hmong or Filipino or Latino, but the
19 majority of them Latino, yes. And that's a fact, it's
20 not a -- we have already -- we have ID'd those
21 individuals.
22 **MR. DELGADO:** Okay. And then it seems like a
23 major point in Lewis and Lake and Simmon and Alejo's
24 letter that you read -- and I think you agree, I can
25 tell, you know, that you're very concerned about

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1 this -- a major point is that -- I'm losing my thought
2 process here. That what's being proposed by
3 agricultural community is more workable than the
4 Draft Ag Order that is before us. And so my question
5 is, because the Ag alternative relies heavy on
6 aggregated monitoring, and that's a major sticking
7 point, whereas the Ag Order Draft relies mostly on
8 monitoring that can eventually be attributed to
9 individual farms, that we're hearing it's not workable
10 to do it in aggregate because we'll never know where
11 the problem is coming from, and the law requires that
12 we're able to track it to individual farms, to be able
13 to monitor the effectiveness that each farm is
14 implementing new practices to reduce their
15 contributions, if they're going to an impaired water
16 body, for instance.

17 So my question is, how is workable, in your
18 mind, to do an aggregate monitoring effort, if our
19 laws, that we're required to follow, require us to know
20 on an advantage basis?

21 **MR. SANCHEZ:** Thank you for the question.
22 I think that we have found --

23 **MR. YOUNG:** You know, Mr. Sanchez, you don't have
24 to answer that.

25 **MR. SANCHEZ:** I would like to.

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1 **MR. YOUNG:** Okay.

2 **MR. DELGADO:** It wasn't a tough question.

3 **MR. YOUNG:** I know, but here's the thing. As to
4 the nonparties, and these are people giving us, kind
5 of, public comments, more policy statements, I think
6 that we should not really engage in a kind of
7 cross-examination, asking them to respond to our
8 questions so much.

9 **MR. DELGADO:** Well, it's really important to me
10 that -- that our elected officials are telling us
11 something is unworkable, so I'm just trying to flush it
12 out.

13 **MR. YOUNG:** Go ahead.

14 **MR. SANCHEZ:** With your permission, I can answer.

15 **MR. YOUNG:** Sure.

16 **MR. SANCHEZ:** What we have found is a lot of these
17 folks, that I addressed in the letter, do not belong to
18 the big groups, like The Farm Growers or The Grocery
19 Shippers or different associations, just because of the
20 resources, because of the outreach, just like it
21 happens with any other service, any other program.
22 It's hard for them to get involved in this kind of
23 stuff. This approach was explained to them by
24 different people. They get this, and they find it
25 easier to begin the compliance and to begin the process

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1 because it's a huge fear and nightmare for them to
2 begin this process and hiring the different technical
3 staff. Just the fact that it went from a paper report
4 to actually going online, that created humongous fear
5 and chaos amongst them because they don't have
6 computers like that. They don't -- people think that
7 everybody has email and everybody does website stuff.
8 Not everybody does that. And it's very hard for those
9 from -- so this approach actually brings them together,
10 but what they really get excited about, they can
11 actually learn from each other. And you're right about
12 the fact that it doesn't go individually, but they
13 learn together, because they would actually, for once,
14 as a small agriculture and ethnic minorities belonging
15 to this industry, they would actually be included into
16 this kind of group, and learn from each other, and even
17 if they know that the neighbor -- there's a lot of
18 communication amongst them, and for the first time
19 ever, they're coming together as Latino strawberry
20 growers and some different minority groups, they're
21 coming together because of this. So it forces them to
22 come together, and now, for the first time, are talking
23 to each other and so, as they learn what their
24 experiences, and how they monitor, and how it goes
25 through the rotation. They are going to learn from

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1 each other because they will share information and this
2 is the best way that they could see that is more
3 affordable, more economical, and more efficient and
4 they can actually get them to do, because if they are
5 the ones that are at the Tier 3, which is the most,
6 creates the most impact on the environment, then those
7 are the ones we need to address, and you need to
8 really go out of your way on how do you bring them in
9 rather than putting them in an individual monitoring
10 process.

11 I hope I addressed your question.

12 **MR. DELGADO:** Thank you very much.

13 **MR. YOUNG:** Let me suggest this. Do you have a
14 list of the 300 small farmers?

15 **MR. SANCHEZ:** We can get that to you.

16 **MR. YOUNG:** Why don't you provide it to Staff and
17 they can, you know, make sure -- well, if they want
18 help, if they want assistance, okay, and based on the
19 concerns you've expressed, to make sure there is no
20 communication lapses, that they understand that they
21 can get questions answered, and that would be my
22 recommendations, to make sure that Staff knows who
23 you're concerned about. Especially if there's people
24 who have contacted your office and felt out of the
25 loop. That's what I'm trying to address.

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1 **MR. SANCHEZ:** Okay. We can definitely work with
2 you on that.
3 **MR. YOUNG:** Thank you very much.
4 Okay. All right. I have some other speaker
5 cards here. Anyone from Senator Blakelee and
6 Senator Stricklin's office? Okay.
7 Would you like to address us now?
8 **MR. POSHMAN:** Good morning, almost afternoon, to
9 the Water Board. Last time I spoke before you in
10 Salinas, I was representing solely Senator Blakelee.
11 Today, I have the pleasure of representing both Senator
12 Blakeslee and Senator Stricklin in a joint statement.
13 I'll supply a copy of the statement to you and your
14 Staff after I read it to you.
15 "Regional Water Quality Board
16 members, in November 2010, Staff released
17 a Draft Agricultural Order, which was the
18 subject of many public hearings. Today you
19 are considering adoption of an updated
20 Agricultural Order that is substantively
21 similar to proposed is proposal issued
22 16 months ago. Much has transpired in
23 those 16 months. Dozens of community
24 members provided comments and testified
25 at public workshops in San Luis Obispo,

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1 Watsonville and Salinas. Working groups
2 were convened to solicit input from
3 subsets of the stakeholder community
4 including agriculture, elected officials,
5 Republicans and Democrats from the State
6 Legislature, and Congress, repeatedly
7 submitted letters expressing their
8 concerns with the Staff Proposal, and
9 urging greater consideration of the info
10 from the agricultural community.
11 The agriculture community went so far
12 as to submit a comprehensive alternative to
13 the Staff Proposal. On paper, this appears
14 to be a process designed to incorporate
15 input from stakeholders. Unfortunately,
16 the proposal before you does not include
17 much of the important effect provided that
18 the agriculture community is supported by
19 the officials who represent them.
20 "The Water Board can check the box
21 on their regulatory to do list to claim
22 that they have asked for state input.
23 However, the purpose of attaining that
24 input is to incorporate the best ideas
25 into the proposal. Because the proposal

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1 has not significantly changed over the
2 last 16 months, we are forced to draw
3 one of two conclusions: Either the
4 Staff Proposal was superior in every
5 way to the agricultural ideas and so
6 very little is worth including or other
7 potential terms were presented, but the
8 Regional Water Board Staff have already
9 predetermined what should be in the final
10 product.
11 "No one is suggesting that improved
12 water quality should not be vigorously
13 pursued, but we continue to argue, as we
14 have for years at this point, that
15 incorporating feedback from the
16 agricultural community is critical to
17 developing an effective program. This
18 proposal fails to sufficiently do so. We
19 strongly urge the Water Board to delay a
20 vote on the updated Agriculture Order, and
21 instead, engage the agricultural community
22 to develop a proposal that satisfies your
23 statutory obligations, advances water quality
24 improvement, as well as enables Central Coast
25 farms and ranches to continue to providing

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1 food to our local communities and to families
2 across the nation."
3 And that's from Senator Blakeslee
4 and Senator Stricklin who represent about 1.8 million
5 people in your district.
6 **MR. YOUNG:** Any comments or questions for
7 Mr. Poshman? Thank you very much.
8 Bill Ritz, from Senator Cannella's office.
9 **MR. DELGADO:** I have a question for Staff, I
10 guess.
11 **MR. YOUNG:** Okay.
12 **MR. DELGADO:** Part of the -- thank you, Hans.
13 Part of Hans' comment was that apparently, in
14 every way, the Ag Alternative was not as good as the
15 Draft Ag Order, because in the last 16 months, there's
16 been no significant changes.
17 So my question is I can't recall the
18 timeline. When did the three Tiers, when were they
19 created in response to a public input? Was that more
20 than 16 months ago, or less than 16 months ago?
21 **MS. SCHROETER:** I believe the Tiering was a
22 change, but a change that was adopted in November of
23 2010. However, since then, the Tiering fundamentally
24 changed because we went operation to farm, in response
25 to concern that the Tiering criteria, and we actually

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1 got positive comments about the Tiering criteria, but
2 that they should be based on the individual farms.
3 That happened, actually, in May of 2011.
4 **MR. DELGADO:** So maybe later today, we can hear if
5 there's been other changes in response or not. I know
6 now is not the time.
7 **MR. YOUNG:** Okay. All right. Mr. Ritz.
8 **MR. DELGADO:** That would be a concern, right, if
9 we had a volume of input that was not reflected in
10 modifications.
11 **MR. YOUNG:** Yeah.
12 **MR. DELGADO:** Okay.
13 **MR. YOUNG:** I mean, I note that the Tiering took
14 place after we had that meeting in the large hall in
15 San Luis Obispo at the Elk's Club, and that was an
16 immediate outgrowth of that meeting.
17 **MR. JEFFRIES:** The Tiering is based on the size of
18 the farms, and 1,000 acres of farming put them in a
19 certain plateau, compared to the others. So if
20 somebody did 199 acres, they're one category, and the
21 person did 1,000 plus, they're in another category.
22 So, I think, that's the reason Staff -- I didn't read
23 into what Staff is proposing on the Tiers, but that was
24 a lot of the concern from the agriculture community is
25 the size of the farm. And, collectively, if they have

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1 500 acres at one location, 250 at another and 300 at
2 another, it was all considered 1,000 acres plus one.
3 And that was a concern for me, as well.
4 **MR. YOUNG:** Okay. Mr. Ritz.
5 **MR. RITZ:** Good afternoon, Chairman and Board
6 members. I'm Bill Ritz, District Representative for
7 Senator Anthony Cannella at District 12. He represents
8 900-plus thousand people. I'll get those figures up
9 there for you. I'd like to read a letter this morning,
10 or this afternoon. It's kind of a recap. The Senator
11 held an Ag hearing, an agricultural hearing, he's the
12 chair of the Senate Ag Committee. He held this meeting
13 in Salinas, on February 24th, and I'd just like to read
14 this to you, from the Senator.
15 "On February 24, 2012, I convened a
16 meeting of the Senate Agriculture Committee
17 in Salinas to discuss the impacts of regulation
18 on the agricultural industry. One of the
19 hearing's panel discussions covered the impact
20 that the Draft Staff Conditional Discharge
21 Waiver for Irrigated Lands on the Draft Order
22 would have on agriculture. I wanted to express
23 my gratitude to Mr. Michael Thomas, Assistant
24 Executive Officer, Central Coast Regional
25 Water Quality Control Board, for attending the

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1 hearing and for providing very thoughtful
2 testimony. I have" -- he included an audio
3 portion of this that should have been sent to
4 Mr. Grayson. I think we talked about that. I'll skip
5 over that.
6 "The Senate hearing raised a number of
7 remaining issues concerning the Draft Order,
8 which I urge the Board to address prior to
9 finalizing the Agricultural Waiver.
10 "First, new members have recently been
11 added to the Board, establishing a quorum and
12 enabling the Board to now act on the Ag Waiver.
13 After only a few months, these new members are
14 expected to fully understand a very complex
15 set of issues that have evolved over several
16 years. Many of the Senate committee hearing
17 participants expressed concern that these
18 board members will not have had sufficient
19 opportunity to appreciate the complexities
20 associated with compliance with these
21 regulations before being asked to vote on
22 them. I also share this concern. It is
23 my understanding that the existing waiver
24 has been extended to September. I would
25 ask that any Board decision be postponed

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1 from this hearing in March to allow new
2 members more time to study and appreciate
3 the complex issues underpinning the
4 development of an achievable regulatory
5 policy. A farm tour should be arranged
6 for new members so they can hear of and
7 witness some of the practical issues
8 associated with several of the draft
9 recommendations first-hand. In his
10 testimony, Mr. Thomas indicated that a tour
11 of this nature for new members could be
12 possible -- or would be possible.
13 "Secondly, I am concerned that many of
14 the draft regulations have been developed
15 without proper awareness of other
16 agricultural initiatives and regulations
17 and, therefore, may be in conflict with
18 other practices. One example that emerged
19 at the Senate hearing concerned the Draft
20 Order's mandates for the creation of
21 riparian buffers. Several participants
22 pointed out that these buffers would be in
23 conflict with food and safety practices
24 outlined in the Leafy Greens Marketing
25 Agreement, which are meant to prevent

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1 contamination of food by pests and
2 animals. This is just one example of
3 possible conflicts with other initiatives or
4 regulations which may be created by the new
5 Ag Order. These conflicts should be surfaced,
6 analyzed and eliminated before adoption of
7 the final regulations.

8 "Thirdly, there seems to be a significant
9 difference of opinion as to how many farms
10 would fall into each of the three proposed
11 tiers of the new Ag Order. In his response
12 letter to me dated April 4, 2011, Executive
13 Director Roger Briggs indicated that Board
14 Staff estimates that 42 percent of growers
15 would fall into Tier 1, 46 into Tier 2 and
16 12 percent of all growers would fall into
17 the more onerous Tier 3. In their testimony,
18 the Monterey County Farm Bureau and
19 Grower/Shipper Association of Central
20 California estimated the number of growers
21 and farms which would be clarified as
22 Tier 3 would be much higher. Neither
23 Mr. Thomas nor the agricultural industry
24 representatives could answer the question
25 of how many acres would fall into each

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1 category. I would hope that Board Staff
2 could provide both reconciliation between
3 Staff's calculations and that of the
4 agricultural industry for a number of
5 farms/growers and compute an estimate of
6 total acreage, which would be classified
7 as Tier 3. Farmers for Water Quality has
8 estimated the cost of Tier 3 compliance
9 at approximately \$600 per acre per year
10 making that land infeasible for farming
11 based on row crops economics. I think
12 it is imperative that we reconcile the
13 percentage of our agricultural land that
14 may be forced out of production under the
15 provisions of the Tier 3 regulatory
16 requirements contained in the Draft Order.

17 "Fourthly, agricultural expressed grave
18 concerned about the ability to implement the
19 proposed program according to the time lines
20 that have been outlined in the Draft Ag Order.
21 I am told that although there are
22 approximately 40 Certified Crop Advisors (CCAs)
23 in the central coast, there are only five or
24 six CCAs on the Central Coast Region who today
25 have the training and qualifications to help

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1 agriculture comply with the new technical
2 on-farm data collection and regulations, with
3 further training. Although this may sound
4 like a significant number of CCAs, this is
5 still a shortage of CCAs as compared to the
6 large number of growers on the Central Coast.
7 Statements from grower representatives that,
8 we are being set up for failure from the
9 beginning were met by assurances from
10 Mr. Thomas that the Board's goal was not
11 to be punitive, but rather to work with
12 growers toward achieving compliance. In that
13 same regard, several participants at the
14 committee hearings discussed the difference
15 in approach in developing this new Ag Order
16 from which occurred in 2004 when the
17 agricultural community worked collaboratively
18 with the Board to develop the current
19 Agricultural Waiver.

20 "While I will appreciate the expression
21 of goodwill conveyed by Mr. Thomas, I think
22 it prudent that regulator and regulated agree
23 at the outset on an achievable pathway to
24 compliance for any new regulatory change.
25 The limited number of CCAs available to

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1 assist growers with compliance is merely
2 one example of a myriad of concerns that
3 exist and which should be fully understand
4 by the Board.

5 "Finally, at the Senate hearing, the
6 Dr. Marc Los Huertos report, "A proposed
7 Model to Implement the Conditional Discharge
8 Waiver for Irrigated Farms" was referenced
9 by the agricultural panelists as presenting
10 ideas that warrant substantial study and
11 consideration by the Board as an alternative
12 to the Draft Order. While this report was
13 discussed in the last Board workshop in
14 early February, it is my understanding that
15 the document has not yet been allowed into
16 the public record and, therefore, has not
17 been viewed by the Board members. Again,
18 this issue is critical to the health of
19 the environment and the public, as well
20 as the health of the economy for the
21 entire region. It would be far better
22 to be open to all information, than to
23 rush to a decision. I encourage the
24 Board to fully consider the ideas
25 contained in the Los Huertos report

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1 into the record prior to making any
2 decisions.
3 "I understand that all sides of
4 this issue believe that clean water
5 is very important to maintaining a
6 healthy environment. Indeed,
7 agriculture has worked closely with
8 the Board to improve water quality
9 in the region since adoption of
10 the 2004 waiver. If there was a
11 shortcoming in the 2004 program, it
12 was that the program may not have
13 been adequately enforced against
14 growers that were not enrolled. That
15 should be addressed so that the good
16 actors are not punished for the
17 failures of growers who did not
18 enroll. However, realistic goals and
19 collaboration between the Board and
20 the agricultural community is essential
21 to developing a feasible and
22 implementable solution which achieves
23 co-equal objectives of preserving our
24 agricultural economy in Monterey County
25 while protecting our precious water

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1 supplies from pollution.
2 "Thank you for your continued work
3 on this issue and for your consideration
4 of the concerns expressed at the
5 February 24, 2012 Senate Committee on
6 Agriculture hearing as summarized herein
7 and as contained in the transcript that
8 we have sent. Sincerely, Anthony Cannella,
9 Senator, District 12."
10 And I thank you for your time.
11 **MR. YOUNG:** Thank you, Mr. Ritz.
12 Perhaps Staff could comment, as part of your
13 presentation, to some of the points raised by Mr. Ritz.
14 Okay. At least that concludes elected
15 officials comments, and it's 12:15, so we are going to
16 take a break for lunch. We're going to try to limit it
17 to one hour as best we can. I urge everybody that
18 wishes to address the Board to submit a speaker card
19 before you leave. Because once I come back from lunch,
20 I'll look up -- I'll look at all the cards, count them
21 up, and we're going to allocate time accordingly. So
22 please get a speaker card and submit it. Thank you.
23 So let's convene back here at 1:20.
24 (Whereupon a lunch break was taken from
25 12:15 p.m. To 1:20 p.m.)

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1 SAN LUIS OBISPO CALIFORNIA
2 WEDNESDAY, MARCH 14, 2012
3 1:20 P.M.
4
5 HEARING RESUMED
6 **MR. YOUNG:** We are now going to have questions by
7 Board members of Staff. Folks, that's it for the
8 public testimony cards. I'm not going to be accepting
9 any more after this moment. We have about 56. So if
10 everyone was to get three minutes, it would push three
11 hours alone, so I may cut the time down a little bit.
12 I want to see where we end up with our prepared
13 presentations first.
14 Okay. This is the time for the Board to ask
15 any questions of the Staff, the Staff Presentation.
16 Any Board member questions? Okay.
17 Mr. Jeffries.
18 **MR. JEFFRIES:** Thank you.
19 I don't know which Staff member, but I'll
20 just read these off. On the Slide Number 29 that talks
21 about "Impacts of Nitrate Pollution," and it shows
22 different cities and so forth, where did that
23 information come from that gave the cost? And was that
24 cost strictly for nitrates, or other contaminants as
25 well?

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1 What's that, Matt?
2 **MR. DELGADO:** Through the Chair, while we're
3 waiting, can we also ask questions on the Ag Order that
4 were not part of the presentation, or is there another
5 time for that?
6 **MR. YOUNG:** You know, I mean, we can. I'm just
7 thinking, perhaps, we should wait until we've heard
8 from everybody first.
9 **MR. DELGADO:** Sure.
10 **MR. YOUNG:** I think that would help the flow of
11 things. Jot it down and we'll get to it in the end.
12 **MR. DELGADO:** Thank you.
13 **MS. McCANN:** I can answer your question,
14 Mr. Jeffries.
15 This is the slide you're referring to --
16 **MR. JEFFRIES:** Yes.
17 **MS. McCANN:** -- here?
18 So on the left side you have public drinking
19 water bottles with the cost to King City and Salinas.
20 Those numbers are based upon our discussions with the
21 Water Purveyor, Cal-M Water. So this is only -- this
22 is not for the entire city, King City and Salinas, but
23 just those wells that --
24 **MR. JEFFRIES:** Well, my question was, is this cost
25 directly related to nitrates in the water?

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1 **MS. McCANN:** Yes.
2 **MR. JEFFRIES:** Directly?
3 **MS. McCANN:** Directly, yes. These are wells going
4 out of production or requiring treatment because of the
5 nitrates exceeded in a violation.
6 **MR. JEFFRIES:** Part B of my question is a little
7 bit further down. It says "Monterey County Elementary
8 Schools."
9 Is that all of the county schools?
10 **MS. McCANN:** No. That's one school in San Lucas.
11 **MR. JEFFRIES:** One school?
12 What school was that?
13 **MS. McCANN:** San Lucas Elementary School.
14 **MR. JEFFRIES:** I didn't hear you.
15 **MS. McCANN:** San Lucas.
16 **MR. JEFFRIES:** San Lucas. Okay. So that's -- we
17 have -- and then my next question is -- I don't know
18 what slide it was, but it dealt with the "Nitrates in
19 Old Salinas River Channel." I think Karen touched
20 that.
21 I wasn't challenging that, but you did say
22 something about Elk Horn Saloon, and the report was --
23 I believe you showed from 1988 to mid-1996. You didn't
24 show anything since then because there's been
25 considerable improvement on the Elk Horn Saloon on

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1 nitrates bulk, because of the Elk Horn Saloon
2 Foundation buying of the property around the saloon.
3 **MS. WORCESTER:** The nitrate is being pulled in on
4 the incoming tide, and this channel, and is going up
5 into the slue.
6 **MR. JEFFRIES:** Okay.
7 **MS. WORCESTER:** I have some data showing extremely
8 low oxygen in some of the shallow areas off the main
9 channel, so it is having problems associated with
10 nutrient enrichment.
11 **MR. JEFFRIES:** But you don't have a report since
12 1996?
13 **MS. WORCESTER:** The data I showed you before the
14 slide was all collected recently through our program,
15 or the Ag Program.
16 **MR. JEFFRIES:** Was that included in the graph that
17 was included in the Old Salinas River Channel? Is that
18 all --
19 **MS. WORCESTER:** Yeah. This graph on this
20 particular slide goes through 2011. This is --
21 **MR. JEFFRIES:** Yes, I saw that, but I thought that
22 was pertaining to the Old Salinas River Channel itself
23 and not the Elk Horn Saloon.
24 **MS. WORCESTER:** That's true. They have similar
25 probes up in the slue, as well. That's how they've

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1 been able to put this story together. The nitrate
2 plumes were coming up on the incoming tides.
3 **MR. JEFFRIES:** Okay. My next question is probably
4 to Michael Thomas, when he talked about the amount of
5 people working on this Ag Order.
6 My question is if the Board approved this Ag
7 Order today, would you have enough Staffing to be able
8 to mandate and to enforce the Order?
9 **MR. THOMAS:** Yes.
10 **MR. JEFFRIES:** Yes?
11 **MR. THOMAS:** Yes.
12 **MR. JEFFRIES:** And still do all the rest of the
13 business the Board does?
14 **MR. THOMAS:** Yes.
15 The way we designed this Order and the online
16 enrollment data base, we now have a data base designed
17 to be able to manage the problem as it exists. And
18 we're bringing this program online with the other
19 programs. For example, we have our underground tank
20 program, which has far more responsible parties then we
21 have in the Ag Program. And the Ag Program has
22 approximately 6,000 cases. We manage those cases
23 through a database system. That is similar to what we
24 have created for the Ag Program. And we bring in this
25 program, modernizing it and bringing it in mind with

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1 several of our other programs. The way that it is
2 designed today we would be able to manage it far more
3 effectively than in the past.
4 **MR. JEFFRIES:** Okay. That's all the questions I
5 have.
6 **MR. YOUNG:** Mr. Johnston.
7 **MR. JOHNSTON:** Yeah, a couple of questions. One
8 for Karen.
9 I'm looking at Slide 32, "Toxicity in
10 California Waters," and it talks about the highest
11 percentage of toxic sites, Statewide California Central
12 Coast Streams and 56 percent of region 3 sites are
13 toxic, 22 percent of the Region 3 sites are highly
14 toxic.
15 Just so I understand, are these sites
16 throughout the region or are these sites concentrated
17 in the impacted parts of these water sheds where we are
18 expecting to find the problem, and we are looking for
19 the problem?
20 **MS. WORCESTER:** That's a good question.
21 There is several sets of data, so they
22 basically pulled all the data sets they could together,
23 and so the Ag data is in there, our data is in there,
24 and several resource programs are in there. Our data
25 tends to not book us only on the impacted areas, but

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1 the Ag data does. And then there's a couple of other
2 data sets, and some of that research was done in
3 Agriculture data. There was an urban study also that
4 looked at urban areas throughout the State. So it's a
5 mix of data sets, and obviously, that is going to
6 affect a percent-type calculation.

7 **MR. JOHNSTON:** So it's a mix of data sets. Would
8 it be safe to say its skewed to the heavily impacted
9 areas?

10 **MS. WORCESTER:** Yes. It's expensive to do, but
11 it's higher risk.

12 **MR. JOHNSTON:** And the other question is for
13 Matt.

14 Um, and you talked about the blurring of well
15 locations for the groundwater monitoring, and that
16 would essentially not reveal the location of a well,
17 just the general area.

18 Does that also mask the identity of the well
19 owner or operator who's reporting?

20 Maybe it wasn't Matt.

21 **MS. McCANN:** That's a question for me.

22 We did talk to our counsel about that, and,
23 yes, both the location and the identity of the well
24 could be used to locate it, so both of these would be
25 examples of disclosure.

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1 **MR. JOHNSTON:** So if an individual farmer is
2 reporting groundwater data, there will be a -- what
3 will be public data will be the general area of the
4 well, but what will not be public data is either the
5 specific location of the well or the identity of the
6 individual farmer who's reporting the data; is that
7 correct?

8 **MS. McCANN:** That's correct.

9 **MR. JOHNSTON:** Thank you.

10 **MR. YOUNG:** Mr. Jordan.

11 **MR. JORDAN:** Thank you, Mr. Chairman.

12 These are for the report of Mr. Tomlinson. I
13 kind of like the end of the report wrap up, and just
14 for some clarification in terms of what I heard from
15 some of the testimony up to now, and that was one that
16 the process leading to the 2004 Waiver was deemed a
17 collaborative process.

18 Would you generally agree with that?

19 **MR. KEELING:** It was a collaborative process among
20 a very small group of people, small group of select
21 stakeholders. It did not include all stakeholders and
22 including those people who were affected by the
23 pollution.

24 **MR. JORDAN:** And then Congressman Farr quickly
25 jumped over protect and went straight to restoration.

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1 And correct me if I'm wrong, but the Porter-Cologne Act
2 starts out protecting from degradation rather than
3 restoration; is that true?

4 **MR. KEELING:** Yes.

5 **MR. JORDAN:** Would you call the 2004 Waiver a
6 program, up to now, successful, given that frame of
7 reference?

8 **MR. KEELING:** I think the 2004 Order was
9 appropriate. Its level of regulation was appropriate
10 at the time it was adopted because of the information
11 we had then. Given the data that we have, it is not
12 appropriate to continue to regulate this issue with
13 that kind of Order, with the same level of
14 requirements. At the time, I think it was an
15 appropriate Order. Today, with the information we
16 have, I don't think it's appropriate.

17 **MR. JORDAN:** Okay. And then I had one other
18 question on SIPs and KEM, because they've been referred
19 to a couple of times from the Staff presentation.

20 Can those be implemented during the term of a
21 Waiver Program?

22 **MR. KEELING:** Yes.

23 **MR. JORDAN:** Okay. Thanks.

24 **MR. YOUNG:** Okay. The question we have is let's
25 see Page 17. I think Karen put the slide up. I think

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1 it's the estuary. And I want to find out how close to
2 the ocean it is, the Santa Maria River. Yeah, that
3 one.

4 **MS. McCANN:** Half a mile from that. Less than
5 half a mile from that ocean.

6 **MR. YOUNG:** And does the arrow point to the
7 sampling station?

8 **MS. McCANN:** Right.

9 **MR. YOUNG:** For that data?

10 **MS. McCANN:** Right. That is the ocean. You could
11 see it in the background.

12 **MR. YOUNG:** Okay.

13 Mr. Delgado and Dr. Hunter.

14 **MR. DELGADO:** Thank you. I believe it was
15 Senator Cannella's representative that expressed a
16 concern of confusion about the Tier percentages and the
17 acres. And he referred to his own letter of -- back in
18 2011, where 13 percent were in Tier 3, but there were
19 no acreages given then. And I note that the 13 percent
20 has changed to 3 percent, perhaps in response to that
21 communication. But my question is can you give us the
22 reason for the change from 13 to 3, and whether you
23 believe the acreages now, and the Tier percentages
24 probably would satisfy Senator Cannella or, I'm just
25 concerned because that was a concern that he

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1 expressed.

2 **MS. SCHROETER:** So the numbers that we have
3 currently, I absolutely do think that those are
4 accurate numbers as reflected here, because those are
5 based upon the information submitted by growers, the
6 electronic Notice of Intent. So there is two reasons
7 why they changed from previously reported. One was
8 because there was a fundamental change in the Order.
9 It went from "operations" to "farms," so it got more
10 specific. So farmers requested that Tiering be based
11 on characteristic individual farms, instead of by
12 association of an operation.

13 So, for example, an operation could have been
14 five farms, all with various acreage, and maybe three
15 of those farms now are only in Tier 3 and the other two
16 went to a lower Tier. In addition, at the time of that
17 statistic, we were in the middle of the process of
18 having the growers update their electronic Notice of
19 Intent. So not all growers were reflected in the
20 electronic data base. Some of them were only in hard
21 copy, and so we were just doing our best guess to
22 estimate those numbers. But primarily it went down
23 because of the change from operation to farm.

24 **MR. DELGADO:** Okay. Last month, we heard a
25 presentation by Dr. Marc De Los Huertos, and it has

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1 been referred to since then, including today.

2 My question is how much of that proposal is
3 implementable with the Draft Ag Order or the Draft Ag
4 Order to be approved? How much overlap is there?

5 **MS. McCANN:** I'd say everything about this is
6 implementable, with the exception of the reporting
7 elements.

8 So the Order would still require that the
9 reporting elements that are in the Order, but the
10 coalitions, the audits, the surveys, the technical
11 assistance provided, the types of management practices,
12 the assessing risks of farms, that is all
13 implementable, as presented in the Ag Proposal, with
14 the current Ag Order or the Draft.

15 **MR. DELGADO:** Last question.

16 I think it's a great idea the more we up here
17 see on the ground what's happening, and what doesn't
18 make sense, and what does make sense, that kind of
19 thing, so it was mentioned today, and previously, the
20 potential for tours. If such tours were to happen
21 after today, how complicated is it to modify the Order
22 in ensuing years, when we learn by trying to implement
23 it, that there is better ways of doing pieces of it?

24 **MR. KEELING:** Tours are certainly possible. We've
25 done them before. We can arrange them. Again, if the

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1 quorum of Board members go on a tour, we would have to
2 Public Notice them, and we've done that before. So we
3 can do it. As far as modifying the Order, the Board
4 can modify the Order at any time, or schedule a
5 hearing, direct Staff can schedule a hearing to modify
6 the Order, at any time.

7 **MR. DELGADO:** And how -- I mean, it's been very
8 complicated, so how many months does it take for this
9 Board to modify?

10 **MR. KEELING:** So far, the case we have so far, is
11 three and a half years.

12 **MR. DELGADO:** But that's for a wholesale
13 revision?

14 **MR. KEELING:** Yes. I was being witty there.
15 The -- if the Board had a specific change they wanted
16 to make to the Order, I think that would be done in a
17 reasonable amount of time. As you know, our Board
18 meetings are scheduled throughout the year,
19 approximately six meetings per year, and so if the
20 Board decided they wanted to make a change to the
21 Order, we would schedule it out a few months and
22 present the proposed changes.

23 **MR. DELGADO:** All right. Thank you.

24 **MR. YOUNG:** Okay. Dr. Hunter.

25 **DR. HUNTER:** Thank you.

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1 We heard from elected officials this morning,
2 and their representatives, the concerns that they have
3 for economic impacts, and so I wanted to get some
4 clarification from you on the Staff Report, which,
5 sorry, I think is on Page 16 and 17, that notes some of
6 the differences in the cost analyses that were
7 submitted in the alternative proposal, submitted by the
8 Ag community.

9 And I also note that Staff is not able to
10 clearly say who's represented in that alternative plan,
11 so that is something I'm interested in. But the
12 question I have for you right now is it seems that in
13 the Staff discussion, um, there is some gaps between
14 what costs were included in the analysis conducted by
15 the Ag Plan, versus the cost that, um, you laid out,
16 which included the cost of implementing practices.

17 So can you make up, make that clear, for me,
18 so I'm sure that I understand what that is. It seems
19 like we've been given two different sets and comparing
20 the bottom line.

21 **MS. McCANN:** So both proposals, the primary cost
22 to implement is from management measures, so the
23 individual cost of the management measures for a farm
24 depends on that farm, and that's hard for us to predict
25 without is obviously, the costs are very unique.

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1 **DR. HUNTER:** Right.
2 **MS. McCANN:** So those costs should be similar,
3 between the Ag proposal and compliance with the Draft
4 Order, and management orders will be implemented with
5 the Draft Order.
6 The written economic report or cost report
7 that we received, did not appear to include actual
8 estimates of costs to, um, for implementing management
9 practices. It estimated costs for the administrative
10 arrangement of a third-party group, and the activities
11 that the third-party group would provide, in terms of
12 the audits, and that kind of activity.
13 Subsequently, they estimated some costs.
14 They attempted to estimate some costs for management
15 measure implementation, used Tier 3 type requirements,
16 in our opinion, overestimated the application of those
17 Tier 3 requirements, to all farms, when there are only
18 subsets of farms that we have to implement those areas.
19 **DR. HUNTER:** Thank you. I also understand, that
20 by not including the management practices, it leads to
21 the idea that the alternative plan would actually be a
22 lower cost implementation process, but if you consider
23 management practices as part of the fundamental cost of
24 all farms coming into compliance, then we're talking
25 about a higher cost, actually, where coalitions may

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1 actually Order the third-party option, and actually add
2 to the cost.
3 Am I getting that right?
4 **MS. McCANN:** Yes. That's essentially what we
5 concluded in the Staff report. That it's essentially
6 apples and oranges, if you're only going to compare
7 cost of -- the administrative cost in one proposal to
8 the implementation costs in another proposal.
9 **DR. HUNTER:** Okay.
10 **MR. YOUNG:** Okay. Looks like that concludes our
11 questions of Staff on implementation.
12 Let's move to our prepared presentations.
13 And we'll start with the Working Group Farmers for
14 Water Quality. They have one hour to give us their
15 presentation.
16 **MS. DUNHAM:** We have copies, as requested.
17 **MS. McCHESNEY:** Tess, and how about -- do you have
18 an idea of how much time you want to reserve for the
19 close?
20 **MR. DUNHAM:** Probably five minutes for closing.
21 **MR. MORROW:** Okay. You want us to help you with
22 the clock?
23 **MR. DUNHAM:** That would be great. Thank you.
24 There's two different sets. One with full
25 slides and a lot of text, and one -- there are two for

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1 each, because some of those are not able to read, so to
2 make it easier for everybody, because I can do that.
3 **MR. YOUNG:** Go ahead.
4 **MS. McCHESNEY:** Are these two different
5 presentations?
6 **MR. DUNHAM:** What?
7 **MS. McCHESNEY:** Are these two different
8 presentations?
9 **MR. DUNHAM:** They're the exact same presentation,
10 but you'll see that we have some slides with a lot of
11 text so we wanted you to be able to use it.
12 **MS. McCHESNEY:** Okay.
13 **MR. DUNHAM:** And we wanted to make sure the court
14 reporter has one, that way she has one for the record.
15 **MR. YOUNG:** Go ahead.
16 **MS. SILVA:** Good afternoon, Chairman Young and
17 fellow Board members. My name is Abby Taylor Silva.
18 Today, I represent the Growers Shippers Association of
19 Central California and Farmers for Water Quality, a
20 collaborative that includes my organization
21 Western Growers, The California Strawberry Commission,
22 The Grower-Shipper Association of Santa Barbara and San
23 Luis Obispo Counties, and The Farm Growers of Monterey,
24 San Benito, Santa Clara and San Luis Obispo Counties.
25 Today, you'll also hear from Kari Fisher, The

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1 California Farm Bureau Coalition, representing the Ag
2 working group, which is made up of all farm growers in
3 the region, the other groups I just mentioned, and many
4 more agricultural groups. You will also hear from Tess
5 Dunham on behalf of Farmers for Water Quality. Our
6 presentation will provide a response to Staff's
7 representation of their report, and how, at times, it
8 contradicts the reports written. We will provide
9 recommended changes as to the September 1 Draft Order
10 to Draft MRPs, Tier comparisons between Draft Order and
11 the Agricultural Alternative and a case of the legality
12 of Agricultural Alternative.
13 **THE REPORTER:** Excuse me. Can you slow down just
14 a touch and speak up a little bit louder?
15 **MS. SILVA:** Absolutely.
16 **THE REPORTER:** Thank you, so much.
17 **MS. SILVA:** I'll get this to my height. Okay.
18 **THE REPORTER:** Thank you.
19 **MS. SILVA:** Some have said that agriculture hasn't
20 been (inaudible word). On the contrary, following the
21 dissolution of the Ag Program, agriculture's interest
22 in finding a solution has only increased.
23 In addition to submitting a proposal for the
24 most comprehensive, robust, irrigated land coalition in
25 the State, and arguably the Nation, we reached out to

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1 the Packard Foundation last spring to facilitate a
2 dialogue with environmental community leaders.
3 We agreed that we all wanted to see water
4 quality improvement on the Central Coast and were all
5 similarly interested in ensuring the continual
6 viability of commercial agriculture on the Central
7 Coast.
8 Unfortunately, despite review of many ideas
9 presented by both the agricultural and environmental
10 community, we were unable to find a solution we could
11 all agree to.
12 Additionally, we then began working with
13 Dr. Los Huertos in an effort to find more science and
14 on the ground intervention strategy to our original
15 proposal. Although Dr. Los Huertos' written report, as
16 expressed to you, verbally, in February, was not
17 allowed admittance into the record.
18 For the past two months, it has been public
19 and we've actively solicited input from all
20 stakeholders, including agriculture, conservation,
21 scientific and environmental communities.
22 Our solution-oriented focus has not dimmed.
23 Today, you'll hear more about why we believe ours is
24 the best option in meeting our mutual goal in improving
25 water quality.

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1 Thank you for providing us the time to speak
2 to you today.
3 Thank you.
4 **MS. FISHER:** Kari Fisher of California Farm Bureau
5 Federation.
6 I'm going to go over some of the responses to
7 misconceptions that were in the latest Staff Report,
8 and some legal issues that we feel are key to reiterate
9 to you guys today.
10 Approaching Misconception 1 and 2 regarding
11 if growers are treated the same or different under the
12 Waiver, we agree with Staff that, yes, growers are
13 treated differently within Staff's Order. However,
14 there's a key designation with regard to how growers
15 are actually treated under Staff's Waiver.
16 Growers are treated differently, but the
17 treatment is based on size of operation, and not threat
18 to water quality. And if the key of this Order here,
19 for the last three and a half years, is to prioritize
20 specifically on threats to water quality, it seems
21 logical that the treatment of Tiers should be on actual
22 threat to water quality, and not arbitrary designations
23 and open-ended determination of size of operation, as
24 determined by the Executive Officer, as we'll go into
25 right now.

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1 Additional examples of where the Staff Report
2 contradicts itself, are put on our slides. We just
3 pulled up, excuse me, four of them. There are many
4 more, but these, right here, talk about Tiering, and
5 how growers will actually be put into different Tiers.
6 As you can see, I highlighted the Executive Officer
7 maintains a lot of discretion with regard to where a
8 grower will be placed in a Tier, and being able to move
9 the grower, from one Tier to a higher Tier. We've
10 also -- also, it depends on the definition of operation
11 or farm, and there is conflicting information with
12 regard to what exactly is an operation. What will be
13 characterized as the operation? It's a broad statement
14 that is in itself, vague and open-ended. The wide
15 discretion that's also given to the Executive Officer
16 to change who falls within each Tier really hampers the
17 ability to come before the Board and tell you exactly
18 how many growers will be in Tiers 1, 2 or 3.
19 Right now, you have Staff estimation. Again,
20 that's an estimation that we don't agree with. And,
21 really, you guys will not know, until the end of the
22 day, where growers fall, in Tiers 1, 2 or 3, and that
23 will change, again, throughout, depending on the EO's
24 discretion, at any time, to move folks.
25 Just briefly, for Misconception 3, with

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1 regard to what was previously talked about, the
2 figures, the 3 percent versus other percentages that
3 were thrown out earlier, what should be also pointed
4 out, is that the 3 percent is just the number of
5 growers, and there's also the 14 percent figure that is
6 never mentioned, that is, kind of, put in there, in the
7 Staff Report, and that's the number of acres. And that
8 really needs to be highlighted, so folks understand
9 that there is a big difference between the 3 percent
10 figure and the 14 percent figure.
11 With regard to Misconception Number 4, on the
12 Draft Order, not specifying how a grower must comply
13 with the Order, we disagree with this statement and
14 certain examples include Paragraph 35, Page 19, of the
15 Staff Order, which says, "Dischargers must implement
16 source control or treatment management practices to
17 prevent erosion" -- and goes on to talk about Treatment
18 and Control of Stormwater Runoff, as you could see the
19 first, on the first line on the bullet point says the
20 words "Discharger must implement."
21 This is very specific language that dictates
22 mandate practices with regard to erosion and stormwater
23 runoff. And the Basin Plan, your own Basin Plan says,
24 on Page 512, "Erosion shall be minimized through
25 BMPs." It does not use the word "must implement."

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1 With regard to Page 38, or excuse me,
2 Paragraph 38, Page 19, the Order says, "Dischargers
3 must maintain existing, naturally occurring riparian
4 vegetation and maintain riparian areas."
5 The Basin Plan actually used the language
6 "shall be maintained" when -- excuse me -- "wherever
7 possible."
8 As you could see, "maintain wherever
9 possible" is very different than "must maintain
10 existing naturally occurring and maintain riparian
11 areas."
12 With Attachment 2C, Page 20, which is the MRP
13 for Tier 3, the Staff Report dictates that these folks
14 will have to have Buffer Plans. Growers must submit a
15 Water Quality Buffer Plan, which must include the
16 following three bullet points a, b and c, as you see up
17 there.
18 The requirement of a Buffer Plan -- and we've
19 heard otherwise from the Staff Report -- but the
20 requirement, as written in the language in this MRP, is
21 a dictation of a management practice.
22 If the true intent of the Water Quality
23 Buffer Plan is to protect riparian habitats, the MRP
24 and the Order should state this and allow growers to
25 choose the appropriate implement practice that is

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1 applicable to their Tier, whether it be a riparian
2 buffer, or something else beneficial for their land.
3 With regard to Misconception 5, the "Draft
4 Order requires growers to implement management
5 practices to minimize waste."
6 We disagree with this conclusion, as the
7 "Draft Order contains many provisions that require
8 immediate compliance with water quality standards even
9 if effective management practices have yet to be
10 developed."
11 On this slide right here, I'll get into more
12 detail. As we heard earlier today, it was told that
13 notwithstanding the fact that the Order specifically
14 says, must meet water quality standards, Staff will not
15 enforce the water quality standards. However, that's
16 not what the plain language of your Order says.
17 Additionally, Staff put up a slide that
18 showed Attachment A, and said that Attachment A would
19 allow discretion with water quality standard
20 achievements.
21 However, Attachment A is not within the
22 Order. Attachment A is off -- Attachment A is, I
23 believe, Paragraph 2, which is cited -- is a filing
24 provision. It's not a requirement of the Order.
25 Additionally, as currently drafted in the

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1 Order, a third-party can come to the Board and petition
2 the Board to enforce water quality standards on any
3 farmer immediately, as currently proposed in the
4 Order. So, therefore, the conclusion that has put
5 forth today is that the Order's direct language must
6 comply with water quality standards, does not apply, is
7 false.
8 With regard to Table 4 -- and this is on
9 Page 38 of the Order -- there's a table that has
10 milestones. Again, with the interpretation of not
11 having to meet water quality standards, Table 4, as
12 pointed out, as this is what folks should achieve in
13 their milestones until they are able to meet the water
14 quality standards.
15 The problem with Table 4 is simply, it is a
16 list of milestones. As stated in the Staff Report, the
17 milestones themselves are not complying with
18 conditions, and they are not enforceable.
19 So, therefore, these milestones are not
20 enforceable, and immediate compliance of water quality
21 standards, as stated in the Order, will comply.
22 With regard to Misconception 6, regarding
23 growers having to line ponds, we disagree with the
24 statement that this is not a requirement. As you can
25 see, pointed out in the language in Paragraph 32, and

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1 86, the use of the words, "must construct and maintain
2 such containment structures to avoid percolation of
3 waste to groundwater" was a dictation preventing
4 percolation and the requirements for complying with.
5 Regarding Misconception 7, regarding the use
6 of tile drains, tile drains within this Order, as well
7 as Staff Reports, contain information that is
8 conflicting. The Draft Order previously indicated, and
9 in one place still indicates, that tile drains will be
10 addressed in subsequent Orders. In another place in
11 the Order, it says tile drains must be in compliance
12 and must meet all monitoring and reporting requirements
13 of any other discharge.
14 So, therefore, a grower is left to wonder
15 what do they have to do in order for them to be in
16 compliance?
17 With regard to Misconception 8, the Draft
18 Order says that 100 percent profit efficiency is not
19 required. However, if you read Tier 3, for Tier 3
20 dischargers, the Draft Order clearly requires crops in
21 annual rotation to achieve 100 percent crop
22 efficiency. The exact language is provided for you
23 here.
24 Therefore, we question the determination upon
25 reading Bullet a, about meeting the ratio target equal

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1 to one. How it does not require the dictation of
2 meeting a 100 percent proficiency.

3 With regard to Misconception 10, regarding
4 combining monitoring proposals and combined practices.
5 "While the Draft Order suggests that combined
6 monitoring may be allowed, the cooperative groundwater
7 language as proposed provides no opportunity to
8 implement such an option. Further, to support its
9 response to this misconception, the Staff Report cites
10 a finding of the Order, not an actual provision of this
11 Order."

12 To address this, I'll actually propose actual
13 provisions to the Order a little bit later on in the
14 presentation.

15 With regard to Misconception 11, the Draft
16 Order states that there are not issues with proprietary
17 information and that proprietary information will be
18 protected. Well, technically, we agree with the
19 statement, there is a prior issue that has been, um,
20 been passed up. In reality, when we look at the MRP,
21 the reporting requirements for Tiers 2 and 3, certain
22 reporting requirements will make -- will be, uh,
23 reported in a public manner. Therefore, the
24 information will actually be of a public release.
25 In Attachment 1B, which used to be referred

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1 to as Attachment A, Additional Findings, the Staff
2 includes 140 Findings. However, they do not comply
3 with case law that requires Findings to bridge the
4 analytical gap between supporting facts and the Board's
5 ultimate decision.

6 These Findings are merely recitations and
7 summaries of studies and statements made by staff. In
8 order to remedy this, we propose the Board not adopt
9 Attachment 1B in its current state.

10 A large flaw in Attachment 1A, or Table 1A in
11 Attachment 1B is the use of Indicators of Narrative
12 Objectives within this Table. These Indicators of
13 Narrative Objectives are not adopted numeric
14 objectives, rather, within this Order, the Indicators
15 have been interpreted and translated into
16 biostimulation objectives. These objectives are not
17 within your Basin Plan. You have not adopted these.

18 Further, the use of such numbers will
19 conflict with what the State Board is currently doing
20 as they are proposing and currently developing a
21 Statewide nutrient policy. In order to remedy this, we
22 propose deleting the Table 1A. The Order already
23 requires compliance with Basin Plan, including those
24 adopted objectives, which are in your Basin Plan. We
25 also suggest deferring to the State Board's policy as

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1 they are currently going to develop, if they haven't
2 already, a nutrient objectives with respect to nitrate
3 levels in the surface water.

4 And briefly, we would also just mention that
5 we still have -- continue to maintain our concerns with
6 regard to CEQA compliance with your environmental
7 review and those comments that refer to all the letters
8 we have submitted thus far.

9 **MS. DUNHAM:** Thank you. Tess Dunham, Somach
10 Simmons & Dunn. I'm going to continue with our
11 presentation.

12 In -- at the February workshop, I believe,
13 that we talked about, you know, the fact that we had
14 the new September 2011 Order, much of what we had
15 submitted previously was based on previous orders and
16 there seemed to be an interest in looking at what
17 changes the Staff had made, what changes did we still
18 feel absolutely necessary.

19 So we've gone back. We reevaluated the
20 September 2011 Order, as well as what we have
21 proposed. We have tried to really prioritize and
22 select in the, you know, auspice of negotiation, as
23 discussed earlier, what we think would be the
24 necessary, appropriate changes in law. It will look
25 like there's a lot of slides. When you think,

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1 conceptually, of everything that is within this Order,
2 we really tried to limit it to a few number of
3 significant changes for us. So with that -- I'm going
4 to see if I can get this out.

5 Okay. I had put them in order of the Draft
6 Order and paragraph of the -- and identified the
7 paragraph and the page number. This is off of the
8 September 2011, so hopefully we can follow.

9 The first is you know, we originally had our
10 Ag proposal discussed within what we called the
11 Attachment B. And in reevaluating everything, it seems
12 that it might be more appropriate if the Ag
13 Alternative, as we proposed, was included as a specific
14 provision, or part, within the Order. And so we are
15 proposing that today, um, in showing us how that would
16 fit within the Order itself, within the specific
17 language.

18 This is your Paragraph 10, where the Staff is
19 starting to refer to a cooperative program. And we
20 have modified this slightly, to reflect that, what we
21 call Part B, and which we'll get to, where I have a
22 Part B here, that will go through to explain what the
23 Ag proposal would be within this context, which is not
24 much different than what we put to you before.

25 **MR. KEELING:** Ms. Dunham?

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1 **MS. DUNHAM:** Yes?
2 **MR. KEELING:** I'm sorry to interrupt you, but just
3 for clarification, Mr. Chairman and Frances, is this
4 new information? Do we need a ruling, or discuss
5 whether it's new information?
6 How do we handle this?
7 **MS. McCHESNEY:** No. It's going -- it's okay if
8 she presents this information and the Board will take
9 it under consideration.
10 **MR. KEELING:** It's okay to present new
11 information?
12 **MS. McCHESNEY:** There's no new information.
13 **MR. KEELING:** What is Part B?
14 **MS. DUNHAM:** Part B is our former Attachment B.
15 It's essentially the same thing, reformatted. There is
16 no new information being presented.
17 **MR. KEELING:** Okay. Thank you.
18 **DR. HUNTER:** I'm sorry. I just want to be sure is
19 am I on? I just want to be sure I understood that.
20 You have a section of your proposed Order,
21 um, that was called something else prior and now is
22 being referred to as part B.
23 **MS. DUNHAM:** That's correct.
24 **DR. HUNTER:** And what was it formally called?
25 **MS. DUNHAM:** Attachment B in the Ag Proposal.

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1 **DR. HUNTER:** Attachment B. Okay. Very good.
2 **MS. DUNHAM:** So this is a modification to the
3 current September 11th pre-Ag Order Paragraph 10 to
4 recognize the parking. This is -- would be a new
5 paragraph that just provides further clarification as
6 to which general conditions apply to the various
7 Tiers. One of the -- and some of the things we're
8 proposing things, here, is to express some of the
9 concerns of Staff. Staff expressed concerns that it
10 wasn't clear what provisions applied to which Tiers
11 within the Ag proposal, so this new Paragraph would
12 clarify that the provisions in Parts E, C, D, and H
13 would apply to everybody, those including the Notice of
14 Intent, the farm plants, all of the management, the
15 general conditions, the management practices, etc.
16 would all apply and what provisions would not, due to
17 selecting the option Part E. And, also, if we get
18 later on, but we've also included some time schedule
19 provisions that we'll talk about.
20 Next, is again to recognize if the Board were
21 to choose to adopt the Ag Alternative, there would need
22 to be a change. That's in Paragraph 18, where if the
23 executive officer elevated someone from a current
24 Tier 1 to Tier 2, to an higher Tier, and someone had
25 not chosen the Ag Alternative, to the Board included,

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1 they should have the opportunity to get that put in at
2 that point in time. So it's to recognize a change in
3 Tiers based upon the EOs discretion.
4 The next portions are more about Ms. Fisher
5 discussed the immediate compliance with Board Quality
6 Standards and the current language from Paragraph 21,
7 which we have expressed considerable concern with over
8 time. And the fact that Staff has indicated that they
9 would use discretion with respect to enforcement is
10 fine, but it doesn't provide me or my clients with much
11 comfort considering the fact that, you know, the
12 Board -- others could petition the Board and force them
13 to require immediately compliance for quality
14 standards, with the provision written as it currently
15 stands.
16 So what we have done is actually propose a
17 rewriting of the Water Standard Requirement, to where
18 it -- you divide it up between surface water
19 limitations and groundwater limitations, recognizing
20 that there's a difference between the two, and that,
21 basically -- and the accept is authorized within the
22 time schedule provisions. We're going to show you a
23 little bit later on.
24 But we are proposing that the Order
25 specifically include time schedules that will allow

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1 eight years of surface water and 15 years for surface
2 and 50 percent for groundwater.
3 And with respect to the Water Quality
4 Standards, to give us that time, until the implement of
5 management practices, so there is not that fear on our
6 part of potential requirements with respect to
7 compliance, and so this does that.
8 And also because we have expressed our
9 concerns with how the Table 1A has been identified, as
10 Ms. Fisher just did, instead referencing that Table, we
11 suggested that you reference just the applicable
12 standards to the basic plan which is where all the
13 standards are. Those would be groundwater limitations
14 that nears the surface water limitation. You will see
15 the deletion of Paragraph 22. To me frankly, I didn't
16 see a lot of difference between Paragraph 21 and 22.
17 It appeared to me that Paragraph 22 was duplicative of
18 the water quality standards with an abatement Plan
19 instead we limited it.
20 This is a small change, just to recognize
21 that Board the type of discharges that are covered by
22 the Order, it had organic materials, such as organic
23 pesticides. It is my understanding in talking with a
24 few folks in the industry that there are a few
25 registered pesticides that are not considered to be

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1 organic so this is a small change, just to change it to
2 recognize that it covered registered pesticides.
3 Now, we get into the stormwater runoff issue,
4 which there was some considerable discussion with at
5 the last hearing, with respect to the controlling that
6 one half inch of storm, and some concern for many they
7 were concerned how they would accomplish that. So in
8 order to address that concern and issue, we would
9 recommend that we, first of all, strike the word
10 treatment because treatment, you know, kind of
11 signifies more of a points verse type operation that we
12 are going to have some type of facility to treat
13 something, and instead replace with water quality
14 management practices, which is what I think we were all
15 hoping for. And now we just removed the reference with
16 respect to the controlling of the half-inch storm.
17 **MS. McCHESNEY:** I just thought I'd interrupt for a
18 second. I think some of the things you are proposing
19 are reasonable alternatives and -- but when I look
20 ahead of your presentation, it seems like a lot of very
21 significant changes and not having had the opportunity
22 for other parties or the Board to even look at this, I
23 think will create an issue, and you know I think you
24 need to explain why you think that is allowed.
25 **MS. DUNHAM:** Do you want me to explain when I get

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1 to those, or do you want me to do that now?
2 **MS. McCHESNEY:** Let me look to see where I think
3 it --
4 **MS. DUNHAM:** I think I'm okay for the next couple,
5 so should I go ahead?
6 **MR. YOUNG:** Let's let her identify this page.
7 **MS. McCHESNEY:** I think the new stuff, Part A, I
8 think this part is addressing some of those issues that
9 have been -- having a whole new subpart and it looks
10 like it's quite new and of concern.
11 **MS. DUNHAM:** Well, we would disagree with that.
12 And, actually, a lot of the changes we've made to the
13 Part A, which address some of the concerns expressed by
14 Staff, in the Staff Report.
15 **MS. McCHESNEY:** Okay. Why don't you give more
16 about that when you get to that.
17 **MS. DUNHAM:** Okay. So this changed Paragraph 38
18 is talking about the riparian corridor issue, and we
19 are looking for a clarification that basically says
20 that we should be maintaining to the extent feasible,
21 to have a requirement that seems to be an absolute, as
22 a must, without some recognition that there has to be
23 some feasibility associated with it, so we recommend
24 that you make it feasible.
25 The next one on Paragraph 39, again, is

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1 dealing with some of the riparian corridor issues, and
2 we -- currently says that, you know, where disturbance
3 of aquatic habitat is necessary, but it limits it only
4 for the purpose of water quality improvement or
5 restoration activities and we would contend that, well,
6 you may to disturb aquatic habitat for other purposes
7 as well, and, in fact, there were many other regulatory
8 programs that are there to protect the aquatic habitat
9 such as the 404 Permitting process, the street and
10 alteration process. Some counties have ordinances, so
11 there would still be significant protection for aquatic
12 habitat for any type of disturbances.
13 Page 40 -- Paragraph 43, Page 20, this is a
14 change to the Farm Plan, and this is -- I would
15 classify it as a minor clarification, but a key
16 clarification. And currently, you know, there has
17 always been our expectation that the Farm Plans will
18 remain on site and they would be convenient to Regional
19 Staff upon request at the farm or at site, and they
20 would not be submitted to the Regional Board because at
21 that point it would become a public document.
22 As currently worded, the Draft Order just
23 says they have to be presented upon request, which to
24 me, can indicate the request could be submitted to the
25 Regional Board, automatically making it public.

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1 Our clarification is to ensure that what we
2 all know and understand, that the intent is that they
3 remain on the farm and that they are given at the time
4 that the inspection occurs on the farm.
5 Paragraph 46, 21, I actually recommend that
6 we delete this whole paragraph, primarily because it's
7 recitation of existing law. It's not a condition of a
8 waiver of the Order. It's basically a summarizing of
9 what the Executive Officer's authority might be under
10 13267 and what could happen under 13304, which is a
11 Cleanup and Abatement Order process, which is a whole
12 other different process, so it seemed inappropriate to
13 include as a Condition of the Waiver so, you know, we
14 recommend it be deleted because it serves no purpose
15 with respect to the condition of the waiver.
16 Paragraph 50, Page 22, um, originally we had
17 suggested that there be a completely different
18 groundwater monitoring, and a different monitoring MRP
19 for those that select the Ag Alternative. We have
20 rethought that, and we think this is not necessary, and
21 instead we would maintain the MRP as currently exists
22 for all three Tiers with some adjustments for those
23 that would select the Ag Alternative. The adjustments
24 being that some of the reporting requirements for Tier
25 3, which are one of our petty objectives with the Ag

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1 Alternative would no longer apply so we have specified
2 which parts of the Tier 2 MRP and which parts of the
3 Tier 3 MRP would apply to those who elect to Part E and
4 those who do not and I would also say as we get through
5 you're going to see that we have withdrawn or we are
6 suggesting instead of original groundwater monitoring
7 alternative, we have taken steps currently, which as
8 proposed in the September 2011, and we are suggesting
9 some modifications instead of something completely
10 new.

11 Page 52 is just to recognize that the MRPs do
12 have a cooperative groundwater monitoring program or
13 alternative groundwater and so see this is a change to
14 reflect that.

15 Page 56, Paragraph 24, I know this is
16 difficult to read what's on the slide, I apologize to
17 those in the audience, in particular.

18 If the Board were to adopt the Ag Alternative
19 in Part E, then there will need -- have a need for
20 people to select that option within their Notice of
21 Intent process. And also if there was a potential for
22 aquatic groundwater monitoring, like there is for
23 surface water, then the people would need to be able to
24 select that option. So the first two changes are in
25 order to indicate those options, and so people would

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1 have to let the Board know which option they were
2 selecting.

3 The deletion of the last one, we suggested it
4 to be deleted for a couple of reasons. One, you're
5 already requiring a farm and ranch map, so I would
6 assume that is part of the map. Any type of springs
7 would already be identified on the map so there is no
8 need to have this requirement with respect to requiring
9 an indication of the presence of springs on the
10 property.

11 I also suggested leaving this last one more,
12 because it also talks about identification of any
13 wetlands area. Well, as many of us know, sometimes it
14 takes a biologist and a complete wetland delineation to
15 determine what is an actual wetland, and I don't think
16 this is something we want to required growers to hire
17 geologists to conduct all the wetlands delineations on
18 the property.

19 Part E -- with respect to Part E, why we
20 don't believe it makes any substantive changes.

21 First of all, it is absolutely,
22 fundamentally, still a third-party program that people
23 elect and have an option to join. We have been asked
24 whether there are criteria for the third-party. We
25 have now developed some criteria for the third-party.

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1 In order for the executive officer to make this
2 determination whether he thinks, he or she thinks that
3 the third-party is actually able to conduct the work
4 that would need to be conducted, so that continues to
5 exist. There is still the requirement that all farms
6 be audited within the term of the Order. At least 20
7 percent would have to be done. We have included some
8 new reporting requirements, because the Board has
9 indicated they wanted some additional reporting
10 requirements. So in explanation with respect to
11 reporting requirements, we have incorporated some of
12 the reporting elements as testified to by for Marc Los
13 Huertos at the hearing orally. So that is why we
14 didn't think what we doing is anything beyond what has
15 already been discussed with him.

16 We have also made changes to address one of
17 the fundamental concerns that the Board Staff has had
18 with respect to requirements of Water Quality
19 Standards. We removed language talking about working
20 towards Water Quality Standards, and has a provision
21 specific to dealing with and implementing management
22 practices for Water Quality Standards. So those would
23 be the reason why we didn't believe that our Part B and
24 proposed here is fundamentally different from what was
25 in that original Part B.

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1 The process has changed slightly, to reflect
2 with respect to timing, but again, it's still not a
3 program with reporting summarized and, you know,
4 accountability to the Board.

5 So with that, do you want to me to go ahead
6 and go through the text? Am I allowed?

7 **MS. McCHESNEY:** Without having to be able to go
8 through it, it's hard to say if what you just said was
9 accurate, but generally the rule is if there is no
10 written evidence, it needs to -- it's --

11 **MS. DUNHAM:** I don't believe this is evidence.
12 This is suggestive language changes to incorporate our
13 proposal, as we discussed previously, in a slightly
14 different format, and with some new provisions that
15 addressed Staff's concerns.

16 **MS. McCHESNEY:** Well, I think it's up to the
17 Chair.

18 **MR. YOUNG:** It's fine with me. I'd rather her go
19 ahead and discuss what's in here. There's a lot of
20 material. The Staff is going to have to respond to it.

21 **MS. McCHESNEY:** And what I would suggest is that
22 if there are any other party that want to have a little
23 bit more time to also respond, we have to take that
24 time.

25 **MR. YOUNG:** I don't see it as evidence, per se.

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1 **MS. DUNHAM:** I don't see it as evidence.
2 **MR. YOUNG:** It's a proposal on language changes.
3 **MS. McCHESNEY:** Right.
4 But the question is does it prejudice any
5 party to the proceeding, and without having seen it
6 ahead of time, I think it's okay to go ahead, but just
7 provide additional time for Staff and other parties to
8 provide response.
9 **MR. YOUNG:** Okay. If anyone feels that they're
10 prejudiced by it, let us know and if they need
11 additional time, we'll deal with that request at that
12 moment.
13 So you go ahead.
14 **MS. DUNHAM:** All right. Here we go. Okay.
15 So how this would work --
16 **MR. YOUNG:** Excuse me, Ms. Dunham.
17 Yes, Mr. Johnston?
18 **MR. JOHNSTON:** My only question is if we're going
19 to allow Staff and other stakeholders to respond to
20 this -- I know there's a limited number of copies, but
21 I'm just wondering if there are -- I see Staff is
22 working on copies of it -- I'm wondering if there are
23 any other stakeholders that need copies of this to
24 follow along on, so they could intelligently respond to
25 it, because it's certainly easier for me follow this on

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1 the piece of paper then to track it on the screen
2 there.
3 **MS. DUNHAM:** I have a few more.
4 **MR. YOUNG:** Nathan Allen; right? Mr. Shimek.
5 **MS. DUNHAM:** I have two more.
6 **MS. McCHESNEY:** Well, Jennifer Scotland.
7 Anyone else? I got one more. So that --
8 **MS. DUNHAM:** And I am going to apologize, in
9 advance, that I have broke absolutely every rule that
10 exists without protocol with respect to how much
11 verbiage is on this slide. It is the only way I could
12 do it.
13 **MR. KEELING:** Mr. Chairman, if as we go through
14 this, if we Staff believe that this is new information,
15 what are our options? We couldn't undo it. We can't
16 put toothpaste back in the tube.
17 **MR. YOUNG:** You can let me know if you think that
18 that is happening, but I perused this very quickly, and
19 this is language, proposed language changes, so, I
20 mean, first blush that's the way I'm referring it. If
21 there is that information you can interrupt the speaker
22 and let me know, and we'll stop the clock and I'll hear
23 you out.
24 **DR. HUNTER:** I have a question.
25 **MR. YOUNG:** Dr. Hunter.

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1 **DR. HUNTER:** Can you characterize for us what your
2 presenting? You say you've renamed Attachment B?
3 **MS. DUNHAM:** Yes.
4 **DR. HUNTER:** So can you characterize for us how
5 much of Attachment B survived this transition to the
6 new Part B? Are we looking at have you dropped half of
7 the what you proposed before, and are you inserting
8 additional language that we really haven't read
9 before? Because I don't have any way of understanding
10 how much of a shift this could make at this point in
11 time.
12 **MS. DUNHAM:** I have to say, I actually don't think
13 it fundamentally makes a huge difference. Okay.
14 **DR. HUNTER:** But what does that is what do you
15 mean by "fundamentally"?
16 **MS. DUNHAM:** So is it still an audit program?
17 Absolutely. Is it still an alternative to the Tier 2
18 and Tier 3 report requirements? Absolutely. Is there
19 still a requirement that all farms that have been
20 audited within the term of the Order? Yes. Is there a
21 third-party that conducts that? Yes. Does it better
22 clarify that the audits are independent then what the
23 Attachment B did? It's part of our text to make sure
24 it's independent. Attachment B included requirements
25 for a Technical Advisory Committee, as well as a Public

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1 Advisory Committee. That's in here, as well. It does,
2 I think it probably puts a little bit more discretion
3 to the Executive Officer to approve a third-party, as
4 well as approving the work plan in the process of the
5 third-party for the Executive Officer of the Regional
6 Board? It does, within the original Attachment B
7 there's this whole uphill process for members of the
8 group. That is not specified in here because it seems
9 like it's more an internal issue for any third-party
10 and it's not necessarily a Board issue. Have we
11 clarified what the third-party requirements are to the
12 Board, that you get a list of those that are not of
13 good standing.
14 We've included some new reporting
15 requirements because it appeared that there was in
16 interest in that. We've included some new requirements
17 specific to nutrient management because of such
18 concerns associated with nutrient management. So
19 they're clear that nutrient management is a key
20 provision versus just a part the farm plan that was
21 original there. So we've tried to make some
22 clarifications to make it a little clearer as to what
23 that process would entail.
24 **DR. HUNTER:** Thank you.
25 **MR. YOUNG:** May I ask this: Is there any feeling

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1 by the rest of the Board that we should not entertain
2 the presentation of this Part B?
3 **MR. DELGADO:** Just in the sense of fairness, I'm
4 wondering if everyone knew this was allowable, might
5 other third-parties have brought forth new language,
6 number one.
7 And, number two, if we the Board or the Staff
8 had come up yesterday with a new copy of the Draft Ag
9 Order, that had new changes that no one had seen, what
10 would we have heard today? Would we have heard that
11 it's unfair because they didn't have a chance to
12 consider those changes in advance?
13 My last question is, could we have gotten
14 this a week ago or three days ago?
15 **MS. DUNHAM:** Well, I doubt that you could have
16 gotten it three days ago, because there wasn't any
17 allowance for additional written communication. So I
18 have only the opportunity to present it to you today.
19 And I believe there may be others that might
20 have alternate language that they could have presented
21 today. I know there are some folks in the
22 environmental community who were, for better term,
23 shopping around some alternate language that they
24 shared with folks that may be presented as well. So
25 there may be others that have language. I don't want

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1 to speak for them, and they would have the same
2 opportunity to present the same language today, as
3 well.
4 **MR. DELGADO:** Thank you.
5 **MR. YOUNG:** Mr. Johnston and Mr. Jeffries.
6 **MR. JOHNSTON:** I would point out that at our last
7 workshop in Salinas, I forget who it was, Mr. Ali or
8 Mr. Shimek, proposed some changes that they thought
9 would be appropriate to the Order. When talking about
10 their conditional support of it, I would also say that
11 frankly, I have some revisions in my back pocket, too,
12 that I haven't shared with the other Board members that
13 would not have been appropriate. So, yeah, I don't
14 have an issue with seeing what people think -- I think
15 the whole point of this discussion here today is for us
16 to listen to you folks, is to hear from stakeholders,
17 in general, not just yeah or nay, but if there were
18 changes that you believe should be made.
19 **MR. YOUNG:** Okay.
20 Mr. Jeffries.
21 **MR. JEFFRIES:** I'm going to go with Mr. Shimek
22 first and then I'll speak after he --
23 **MR. YOUNG:** Well --
24 **MR. SHIMEK:** My --
25 **MR. YOUNG:** You're going to have to come up to the

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1 podium and identify yourself.
2 **MR. SHIMEK:** Steve Shimek, with Monterey --
3 **THE REPORTER:** I can't hear you.
4 **MR. SHIMEK:** Okay. Thank you. The changes we
5 brought last time have be shown before, so there is
6 nothing new there.
7 **MR. JEFFRIES:** Mr. Chairman, just in response to
8 comments from Board member Delgado, and it's pretty
9 much what Board member Johnston said. It is
10 appropriate for Board members in deliberation to talk
11 about changes to the Order, to be responsive to
12 comments, and it's part of the delivery process. So
13 that's expected. It isn't a question of up or down on
14 one alternative or the other.
15 **MR. YOUNG:** Mr. Jeffries.
16 **MR. JEFFRIES:** This is a public hearing, and I
17 encourage the Board to listen to the rest of this
18 because I think it's important. In the changes, I
19 don't see, and I haven't looked at all of it in detail,
20 but it looks like there is some changes that may be
21 considered, but I would like to hear them all in
22 detail.
23 **MR. YOUNG:** Okay.
24 **MR. JEFFRIES:** And I encourage the Board to accept
25 these and let her present the rest of it.

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1 **MR. YOUNG:** Okay. I just want to make sure Staff
2 has an adequate amount of time to digest what's being
3 proposed, so we can have an educated discussion about
4 whatever you mean.
5 **MR. JEFFRIES:** I'm sure by the end of the day,
6 Mr. Chair, there will be a lots of things to consider,
7 other than that and for the Staff to digest and give us
8 their response.
9 **MR. YOUNG:** Okay. All right.
10 Mr. Thomas.
11 **MR. THOMAS:** Just a request of Ms. Dunham.
12 Do you have a red line strike out of your
13 former Attachment B that would help us see what the
14 changes are?
15 **MS. DUNHAM:** I do not. I'm sorry. I don't do it
16 that way.
17 **MR. YOUNG:** Okay.
18 Shall we proceed?
19 **MS. DUNHAM:** Okay.
20 **MR. YOUNG:** Okay. And just so you know, there is
21 21 and a half minutes left.
22 **MS. DUNHAM:** I will try.
23 Okay. So on this Part E. First, we
24 recognize that people have to have time in order to
25 indicate to the Board that they will select this

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1 option, so we have identified that they would have
2 basically 60 days, which I think is -- is matches the
3 complete the Notice of Intent time frame. If it
4 doesn't match exactly, we can change that, but that was
5 the intent.

6 The second part is that in order to continue
7 to fall and remain under the third-party program, all
8 of the conditions in the Subpart E must be met. And
9 those are condition requirements upon third-party as
10 well as the Discharger and also ultimately the
11 Discharger is the one responsible and which is one of
12 main concerns that the Staff report often had was,
13 well, who's responsible for the discharge of the
14 third-party. If a third-party doesn't do what it's
15 supposed to do, then the problem comes to the
16 Discharger and, therefore, they are responsible. And I
17 will just add that that is the process of how it works
18 with Region 5. I think it's important for this Board
19 to understand that coalition and third-party encroaches
20 have been going on in Region 5, since 2003. Those
21 approaches have been upheld by the State Water Board in
22 a Presidential Order, and they do not require an
23 individual reporting, so just keep that in mind, as we
24 go through this.

25 So first, within the first six months a

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1 third-party that is going to administer this program,
2 would basically need to provide an application to the
3 Executive Officer for approval, and there are some
4 criteria here in order for the third-party as to be
5 what they need to be -- meet.

6 First, they have to clearly show to the
7 Executive Officer, and this is Subdivision B1
8 of Roman Et1, that the ability -- that they have the
9 third-party to carry out these responsibilities. So
10 it's not any fly by night group. It's not just, you
11 know -- it's got to be a credible group or organization
12 that's going to be able to take on the
13 responsibilities. We believe that that is important.

14 That, two, this new third-party is some type
15 of either a legally defined entity or working towards a
16 legally defined entity. So there is some, you know,
17 obligations and professional obligations to assure
18 accountability, or that there is some type of
19 memorandum agreement to an organization.

20 Three, if there is any subsidiary group,
21 that's a part of this, then they need to comply with
22 all the same provisions, as well.

23 Next, the third-party has to show what their
24 government structure is -- and I will note these
25 requirements, I didn't make them up -- these come from

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1 a long-term Irrigated Lands Program Proposal for the
2 Central Valley Region. So these are basically
3 reflective of what the Central Valley is looking into
4 and doing in requirement of observed third-parties.

5 The next requirement, after the government
6 structure, is that you have to show that you have
7 developed a Technical Advisor Committee and that that
8 Technical Advisory is capable of helping the
9 third-party to develop the content of the auditable
10 program, and throughout the whole complete independent
11 audit process.

12 The third-party also has to develop a Public
13 Advisory Committee. It is something we have talked
14 about previously, in order to provide inputted feedback
15 to the third-party, and that's a key provision, and
16 that Public Advisory is Ag, its regulators, its
17 Monterey County Water Resources Agency, its Public
18 Health. It's whoever may be appropriate as another
19 stakeholder to ensure the transparency accountability
20 during the process.

21 Two, then in Subdivision t2, we actually give
22 the Executive Officer 30 days to approve the
23 application for the third-party. If -- you know, if
24 the Executive Officer of the Staff thinks 30 days is
25 too short, we will have no problem extending it, but we

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1 know we're on a vigorous time frame, and we wanted to
2 keep timing aggressive, in order for the third-party to
3 get formed and start to develop in as quickly a time
4 frame as possible.

5 Then, six months later, that third-party,
6 that's been approved by the EO, has to basically submit
7 their work plan, which was a part of the Attachment B,
8 but we have some more classifications as to what has to
9 be in that work plan. They have to have developed an
10 audible time plan. So they're going to create an
11 electronic template for growers to fill out all of it
12 to be audited for the independent audit program with
13 all the appropriate information. They have to
14 absolutely explain what that independent audit program
15 structure is, and how it would work. All this goes to
16 the Executive Officer for approval. They need to
17 propose here a new addition -- for those of you wanting
18 to know where the new addition goes -- that there is a
19 specific template for nutrient management. We
20 understand the Board's concern with respect to
21 nutrients and nitrates, and we think it's important
22 that we have our growers, specifically, in nutrient
23 management so included the fact that they need to
24 develop a template for nutrient management, that is
25 then reported to the third-party.

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1 That there is a process for prioritizing for
2 practice and practice evaluation. That means taking
3 the highest risk farms, as determined from the
4 templates in the nutrient management program and
5 determining which ones are at the highest risk, so we
6 can go forward and actually evaluate their practices on
7 their farm in order to determine if they're effective.
8 And with that, we are also, in a new addition, is that
9 with that, every farmer, would have to have one
10 representative soil sampled, in order to indicate with
11 respect to, you know, residual nutrient levels within
12 the soil, in order to help us determine risk.

13 Then there is, of course, the Practice
14 Effectiveness Evaluation Program. We think this is
15 absolutely key -- am I on the right slide? Sorry about
16 that -- that we think this is a key provision, because
17 it clearly, actually starts evaluating the programs the
18 third-party evaluates, the Effectiveness and Management
19 Practices, in order to determine which ones are working
20 and which ones aren't, so we can better help growers,
21 whether it's big growers or little growers, make
22 changes to their operations, in order so they can be
23 more effective.

24 And we will all learn from that. And with
25 that reporting, we also need to identify who are the

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1 enrolled growers so we can make sure your list at the
2 Water Board matches our list, so people aren't lost in
3 the shuffle, somewhere, saying that they notified you
4 60 days later, but they never enrolled as a
5 third-party. So it's important that we make sure that
6 we keep everybody on it.

7 We then have the end reporting requirements,
8 which we talked about previously, with some new
9 additions, in order to make it more robust. We, of
10 course, have that you have to continue to audit at
11 least 20 percent, and I want to say farms. There was
12 some discussion as far as auditing growers, auditing
13 farms. One grower may have three farms. We are not
14 saying that the grower may get one part out of three
15 farms get audited. All three farms have to be
16 audited. So it's an important distinction that in
17 order to know if it's 20 percent of the farms, at a
18 minimum, likely the program is going to have to be
19 doing 25 percent per year, in order to make sure to get
20 to every farm within the term of the Order.

21 Also, the end report with the summary of
22 independent auditor reports, and the summary report of
23 the number of growers and farms participating, the
24 number of growers and farms that fail the audit, and
25 the summary of corrective actions taken by growers.

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1 There would also be a risk self-assessment summary that
2 takes the data from the farms and tries to capture the
3 types of risks that we find within the farms, so the
4 Regional Board has more information, and we all have
5 more information.

6 There are Farm Water Policy Plan Summaries.
7 This would be taking up farm water quality from a
8 template and providing some summaries to the Regional
9 Board with respect to what actual practices were being
10 implemented on the farm and which ones aren't.

11 Most importantly, and each annual report, the
12 Regional Board receive a list of those participants who
13 are in good standing and those that are not. And I
14 have to be honest, this is something that the Central
15 Valley Board and their third-party program really
16 wishes they did have. They don't even have this much
17 of an individual reporting requirement. We do believe
18 that it's important, and we provide this so the
19 Regional Board knows who in the third-party continues
20 to be working in good faith and moving forward.

21 All of this would be spelled out in the work
22 plan to the Executive Officer and the Executive Officer
23 would make the determination. And I would imagine
24 there would be some collaboration back and forth as to
25 the robustness of the program being proposed, in order

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1 to approve this program as the third-party program.
2 There is, then, a subsequent report within
3 three years, with respect to the practice evaluations,
4 because we need more than one year to really determine
5 if the practices are effective. After three years of
6 doing it, there would be a practice evaluation.

7 So now, then, there is also -- here are some
8 new things, as well. Actually, I don't think this is
9 new, but anyway, the Discharger has to also continue to
10 comply with the monitoring requirements, which are
11 still within the Order, surface water, as well as
12 groundwater. Obviously, not the individual surface
13 water monitoring requirement, but the cooperative
14 surface water, receiving water monitoring, and the
15 groundwater. That is a condition of the maintaining
16 eligibility for the program.

17 The Discharger obviously has to make sure
18 that any information requested by the third-party, they
19 have to provide it. If they're not going to cooperate
20 with the third-party, then it doesn't do us any good,
21 and they will no longer be eligible for the
22 third-party. They would be told -- their name would
23 be -- a letter would be sent to the Regional Board
24 saying grower x, y, and z is no longer a participant in
25 the third-party or is not providing appropriate

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1 information subject to the Draft Order as proposed.
2 And here, Number E is probably one of the key
3 provisions changes with respect to trying to
4 acknowledge, or at least respond, to some concerns
5 expressed by Staff, and that's with the respect to the
6 confines of Water Policy Standards.
7 So we have drastically changed the language
8 here, and it basically now requires Dischargers to
9 implement Water Quality Management Practices, as
10 identified through the audit process or even, as
11 necessary, in order to improve and protect water
12 quality and to achieve compliance with the Water
13 Quality Standards.
14 Recognizing the time schedule for ten minutes
15 that we've been talking about, I'll make this short.
16 The next thing would be in the development of
17 the third-party, the Executive Officer denies a
18 third-party, we have built in a provision that would
19 allow the third-party to go to the Board, at the next
20 reasonably available meeting, to see if the Board
21 agrees with the Executive Officer's determination or
22 not.
23 And, finally D, failure by anybody, whether
24 it's the third-party or the Discharger, will cause
25 those Dischargers and that third-party to no longer be

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1 eligible. That's the catchall provision to make sure
2 that everybody does what they're supposed to be doing.
3 That's it. I tried to simplify it to make it easier to
4 understand.
5 Going forward. So on Paragraph 61, Page 25,
6 the changes here are, again, to recognize if there is a
7 party that the Board chooses to go that way, then we
8 need a termination provision in order to allow those
9 that if they want to terminate or if they decide they
10 no longer want to participate in the third-party, what
11 they need to do. So this is it.
12 So we have to Notice the Regional Board and
13 then be subject to Part G, unless they're no longer in
14 Tier 2 or 3, then they would be subject to Tier 1.
15 Paragraph -- new Paragraph 82. Um, this
16 would be new language that, basically, provides for
17 time schedules for water quality standards instead of
18 the absolute language that currently exists, we would
19 recommend that there be included time schedules that
20 may be extended, but at the first outset would require
21 that discharges from Agriculture and is broken up into
22 three categories: There's discharges to surface water,
23 excepting those to tile drains, Discharge from tile
24 drains, and then discharges to groundwater.
25 And, basically, we are proposing that Ag will

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1 try to meet one quality. Make sure that their
2 Dischargers do not cause Water Quality Standards to be
3 exceeded with an eight-year surface water, 15 years for
4 tile and drain, and 15 years for groundwater. Now, of
5 course, as we all develop more information with ADA, it
6 is better to find what the appropriate timelines are.
7 You know, we are all just kind of trying to go based
8 upon what we know, when, at this point in time, there's
9 a lot more to learn.
10 That is what we currently propose with
11 respect to time frames or time schedules.
12 And Paragraph 82 and paragraph -- is again a
13 continuation of those. I'm starting to run out of time
14 here, so I'm going to try to go right along without --
15 hopefully, not to lose the court reporter.
16 Paragraph 82 is your existing time schedule
17 language and, basically, it clarifies the application
18 of the time schedules that we proposed.
19 The last couple of changes, I do propose
20 deleting Paragraphs 84, 85, and 86 primary -- and
21 Paragraph 87, primarily because I don't know that
22 "effectively control" is a legal standard. Having the
23 requirement says that a Discharger must effectively
24 control individual waste discharges, to me, is not a
25 legal standard, is not a type of Water Quality

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1 Standard, it's not a type of management practice. It's
2 a statement that I'm not even sure how one would
3 continue or determine compliance. So I suggest
4 deleting this.
5 Table 4, as we talked earlier, we've got --
6 Table 4 really isn't a time schedule and, I believe in
7 the Staff Report, it says that Table 4 is not
8 enforceable. It would be used by Staff to determine
9 discretion and enforcement; however, even with that, we
10 think it's important to make important changes in order
11 to recognize the election opportunity with Part E,
12 should the Board decide to adopt it.
13 And lastly, this big, really long, long slide
14 and, again, my apologies. This is the groundwater
15 cooperative paragraph that appears in all three MRPs
16 and this language basically is Staff's language. We've
17 added some changes in order to allow it to be a
18 practical alternative. One, we have identified that
19 there may be other types of qualifying cooperative
20 programs that might want to try to see if it fits into
21 the Regional Board's program. All would still have to
22 be the objectives. All still subject to the Executive
23 Officer's approval.
24 The last parts in red, basically, put forward
25 a process in order to allow it to happen. It allows

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1 folks to elect this as an option and gives a year in
2 order for this option to be -- to come forward and
3 develop and approved by the Executive Officer. Without
4 these changes, we are concerned that the Staff
5 Alternative is an option with no limitation or with no
6 availability, so we were hoping that these changes
7 would make it a viable option for those who want to try
8 to put together a Cooperative Monitoring Groundwater in
9 lieu of the Individual Groundwater Monitoring
10 requirements that currently exists, but they would have
11 the option. We haven't made any other changes to the
12 groundwater monitoring requirements.

13 Those are the end of my suggestive changes.
14 In the interest of time, I'm going to skip over -- I
15 have some slides that have comparisons that we can go
16 into, but I'm going to go -- one is a timeline of
17 comparison. There's been some concerns that the Ag
18 Alternative is going to take too long and, I believe
19 there was some question and answer with respect -- that
20 went out yesterday talking about time frames. So we
21 wanted to provide just a side by side comparison of the
22 time frames within the Draft Order as compared to the
23 time frames if the Board was to adopt the Ag
24 Alternative. So, you know, obviously the requirements
25 are different, but the time frames show that we are

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1 trying to put forth an Ag Alternative that has a very
2 aggressive timeline and that's the first, you know,
3 there were 16 days from you making the election. Six
4 months you have the EO, hopefully, looking at an
5 application. You have, then, the EO approving it by
6 October of 2012. It's not very far from now. So we're
7 not talking a long time here trying to get this up and
8 running.

9 Next, we have a question, you know, we have
10 six months after the Notice of Applicability is issued,
11 assuming that the EO took 30 days, we are talking by
12 May of next year, you'd have the third-party up and
13 going, and the audits beginning. You, then, would have
14 your first set of audits by May 14th of 2014, which is
15 before you start getting reports as far as nutrient
16 balance ratios under the Draft Order. You would also
17 have your first Practice Effectiveness Evaluation
18 Summary by May of 2016, which is before you start
19 getting the Water Quality Buffer Plan. So we do think
20 that this is aggressive and we do think things are
21 going to happen on a very quick time frame.

22 I want to go quickly into the legality of the
23 Ag Alternative. So, you know, there's been a lot of
24 discussion, and I want to say that, and especially with
25 respect to individual reporting, there is nothing for

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1 the Water Code that requires individual reporting.
2 Water Code Section 13269 clearly discusses the fact
3 that waivers can be for a type of discharge and the
4 monitoring provisions of 13269 specifically say that
5 monitoring can be done individually or cooperatively.

6 The Central Valley Board Program that has
7 been going on since 2003, and as it's being proposed to
8 be changed here within the next year, would not require
9 individual reporting at the type that is discussed in
10 this Draft Order. It may be that Staff here decides
11 they found it the most effective way toward them, but
12 that is a completely different question as compared to
13 whether it is legal.

14 Summary reports are often done within this
15 type of a program. And, again, the State Water Board
16 has approved a coalition approach, the Nonpoint Source
17 Policy encourages a coalition approach, and therefore,
18 there's no legal impediment to adopting this -- our
19 Alternative today that would include summary reporting,
20 and not individual reporting.

21 I also want to remind you that I think
22 earlier there was a slide, with respect to the
23 legislative intent of Porter-Cologne. Well, there is
24 another provision in that same legislation that also
25 clearly says, it's the Regional Board's obligation to

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1 regulate to attain the highest water quality, which is
2 reasonable considering the law of demand. I think the
3 drafters of Porter-Cologne were, frankly, brilliant.

4 When you look at the policy, the statute as a whole, it
5 talks about balancing and reasonableness and when you
6 look back at all the legislative history that goes
7 along with it, and I read it all, everything was about
8 balancing all the different needs to be placed upon the
9 water. Not one goes over the other. It's balancing
10 all of them, and everything that we do, you do as the
11 Regional Board, you need to make a balancing
12 determination with respect to all the different needs.

13 So I would also say, to you, that, you know,
14 it is your job to determine the validity of the
15 third-party, and it's not determining whether, yes, our
16 proposal is different than the Draft Order. Yes, it
17 does remove some of the individual requirements, which
18 is why we're proposing it. There are, I think, some
19 unfair comparisons that say, but it has a different
20 standard for those under the third-party versus those
21 not under the third-party. That's the idea. That's
22 the purpose of it, is to create a different standard
23 that, frankly, we think provides and gets to better
24 water quality sooner than the program as proposed
25 within the Draft Order. And you have to ask, do you

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1 think it's consistent with the Water Code, the basic
2 plan, the Nonpoints Source Policy and State Board
3 Orders. I would absolutely contend that it does and
4 that it is consistent. As I noted, some of the State
5 Board Presidential Orders and other programs that are
6 very similar to what we've talked about.

7 And, again, this is -- it is a different
8 standard, it is not a less stringent standard. And,
9 again, one of the other criticism we talked about does
10 it required compliance for water quality standards?
11 Yes, it does. We actually made some significant
12 changes in trying to address that concern of the Staff,
13 and, of course, we are suggesting some time schedules
14 that don't currently exist.

15 Does it protect sources of drinking water?
16 Yes, we believe it does, or will start working in that
17 area by calling out the need for nutrient management,
18 working with the growers and technical advisory
19 committee to make sure that that occurs.

20 I will wrap it up, I'm on the last couple of
21 slides. We talk about all the reporting elements and
22 the time frames and the conclusions.

23 **MR. YOUNG:** Okay. Time is up.
24 **MS. DUNHAM:** Does that still leave me the five
25 minutes?

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1 **MR. YOUNG:** There is no five minutes left. Okay.
2 The question I have for you, Ms. Dunham, does the
3 current Region 5 Order allow for reporting to a
4 coalition and not directly to the Water Board? You
5 said something was being proposed, but I'd like you to
6 clarify that. Who is proposing what and what currently
7 exists?

8 **MS. DUNHAM:** What currently exists in Region 5,
9 actually is even less than what your 2004 Order has.

10 Under the Region 5 Orders, people don't even
11 file Notice of Intent with the Regional Board, they
12 file with the coalition, and the coalition then tells
13 the Regional Board what parcels are covered within that
14 program. There is no direct reporting currently
15 between the individuals and the Central Valley Regional
16 Board. And I will say that this has not hampered
17 Region 5's ability to bring enforcement actions. They
18 have brought several enforcement actions against
19 individual growers who have had excessive sediment
20 leaving their property. And a large part is
21 coalitions, but basically it had concerns with growers
22 within their coalition who have suggested the Regional
23 Board do something with respect to enforcement.

24 **MS. McCHESNEY:** Can I just add to that the Region
25 5 Order is.

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1 **MR. YOUNG:** Speak up.
2 **MS. McCHESNEY:** The Region 5 Order authorizes the
3 Executive Officer and the Board to request our plans
4 that are then turned into the Regional Board, so that
5 is a difference than the proposal of Ms. Dunham. The
6 plans are actually submitted to the Regional Board.

7 **MS. DUNHAM:** There is no generic requirement that
8 that be done. That is -- may be a discretionary
9 element --

10 **MS. McCHESNEY:** Yeah, I agree.
11 **MS. DUNHAM:** -- that each grower --
12 **MS. McCHESNEY:** I just wanted --
13 **MS. DUNHAM:** -- it isn't a requirement that each
14 grower report to the Regional Board.

15 **MS. McCHESNEY:** I just want to make sure that the
16 Board knows that there's one, but you proposed to
17 delete the requirement that farm Plans be submitted to
18 the Regional Board, Region 5's Order --

19 **THE REPORTER:** Can you hold on for a second. I
20 just need to change my paper. I just ran out of
21 paper. One second.
22 (Brief Interruption.)

23 **MS. McCHESNEY:** Okay. I just want to make sure
24 that it's clarified that Ms. Dunham proposes to delete
25 a requirement that people turn in their Farm Plans to

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1 the Regional Board, but the Region 5 Order allows the
2 Regional Board to --

3 **MS. DUNHAM:** But right now, Region 5 doesn't even
4 require the zone.

5 **MR. YOUNG:** Is this Region 5's first Ag Order?
6 **MS. DUNHAM:** It's a convoluted process, but they
7 started in 2003. It's been amended a few times, and
8 they are now in the process of going from their base
9 program that's been in place since 2003, with some
10 tweaks along the way, to what we're calling -- what
11 they call, the long-term Irrigative Lands Program, and
12 they're in the process of developing WDRs for different
13 coalitions at this moment in time.

14 They did a very long facilitated stakeholder
15 process with a professionally hired facilitator and
16 came out with a long-term Irrigated Lands Program.
17 They did an Environmental Impact Report that is now
18 just starting to come forward with those changes, and
19 there is no -- there is no farmland specific
20 requirement in Region 5, whether, you know, the Board
21 may request one of some individuals, which this Board,
22 anybody can do, any Board can do, under 13267
23 Authority. There is no specific requirement that says
24 every grower in Region 5 must prepare a Farm Plan and
25 submit it to the coalition or even the Regional Board.

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1 **MR. YOUNG:** Okay. All right.
2 Mr. Johnston.
3 **MR. JOHNSTON:** On the subject of Region 5 -- I
4 don't have it here, I tried to pull it up -- as I
5 recall, it does require the coalition to report to the
6 Board the management practices that are being
7 performed, and the specific areas where they're being
8 performed, the specific geographic areas, and then if
9 the Board then has questions about the adequacy, they
10 could request a management plan from the individual
11 Dischargers. Because it seems like there's a higher
12 level of reporting, and it seems like what's being
13 proposed here is summary reporting, further down the
14 road, later in the process, I think that's the little
15 difference between --
16 **MS. DUNHAM:** I actually --
17 **MR. JOHNSTON:** -- as long as we're citing
18 Region 5.
19 **MS. DUNHAM:** Well, I would disagree with that
20 characterization, I'm sure, and Mr. Thomas who
21 represents one of the specific coalitions could
22 probably help us download that as well, but how Region
23 5 Order works is first if there's trigger. And right
24 now, the Region 5 is surface water only and is specific
25 to surface water only. The coalitions conduct surface

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1 water monitoring. If there is an exceedance of a Water
2 Quality Standard, then the coalition, basically, might
3 be triggered, the EO says this is significant enough,
4 may be required to prepare a management plan. And part
5 of that management plan requires the coalition to go
6 out and discuss and survey the management practices
7 within that watershed or that subwatershed area. And
8 then the coalition has to develop and report back with
9 respect to this management practices in a summary
10 fashion. I don't believe they're parcel specific.
11 **MS. JOHNSTON:** No farm plans --
12 **MS. DUNHAM:** No farm plans -- not parcel
13 specific. The coalition does all of that. In fact,
14 individuals in the coalition that I work with, will go
15 in and greet and meet with every grower, but, again,
16 that's part of their management plan. That is done
17 within the development of the management plan. So an
18 all -- that report, again, is summary, if the
19 management plan has been triggered.
20 **DR. HUNTER:** Can I ask a quick follow-up?
21 **MR. YOUNG:** Go ahead.
22 **DR. HUNTER:** So if there is an exceedance, but the
23 data then, or the actions that are taken with the
24 watershed or subwatershed level, then how do you
25 connect the source and the hot spot with this broad

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1 approach?
2 **MS. DUNHAM:** The coalition actually -- and my --
3 the coalition that I work with actually, especially the
4 pesticide exceedance. They'll go to the county, the
5 County Ag Commissioner. They will find out who filed
6 pesticide use reports for that specific pesticide, and
7 applied it at that time period, and they'll go focus
8 and talk to that individual and say, "Hey, what are you
9 doing? Did you do it right? Did you do this? Did you
10 control this?" To make sure that next time, you know,
11 to see if they might be the person, or to make sure
12 their implementing appropriate management practices.
13 So they kind of specific, with respect to use of
14 pesticide use reports in order to get at that. To go
15 to the watershed in order to keep -- point in on the
16 individuals that it might be.
17 **DR. HUNTER:** So, in the context of looking at
18 subwatershed area with four growers, would all four
19 growers be approached and asked to do the same
20 process?
21 **MS. DUNHAM:** Yes, yes.
22 Well, if all four growers had applied
23 pesticide concern at that point in time, yes, all four
24 growers would receive a visit and would be talked to
25 about this with respect to --

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1 **DR. HUNTER:** And what if all four growers said,
2 gee, I don't think I'm doing anything that's
3 contributing to that? Is that the end of it, or --
4 **MS. DUNHAM:** Well, once a management plan is
5 developed, there's continued follow-up monitoring, and
6 more specific monitoring to that management plan, so
7 you can see whether people are actually doing what
8 they're supposed to be doing and eventually there would
9 be -- if you think someone is in complete violation of
10 the coalition they would probably say something to the
11 Regional Board, hey, you know, we've got some folks
12 here that aren't necessarily implementing management
13 practices.
14 **MR. YOUNG:** Mr. Johnston, were you done with your
15 questions?
16 **MR. JOHNSTON:** For the moment.
17 **MR. YOUNG:** Okay.
18 Mr. Jordan.
19 **MR. JORDAN:** Gentlemen, I'm just curious, I don't
20 know about heating time either, so if we used one of
21 these color coded maps that you've put up there, would
22 it be apples to apples in comparison to the nitrate
23 issues here and the toxicity issues?
24 **MS. DUNHAM:** You know, I'm sure that there might
25 be some apples to apples in different hot spots,

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1 right. You know, I think you've got to look at
2 everything on a constituent by constituent basis, and
3 there are definitely some areas in Region 5 that have
4 higher issues with respect to toxicity and some that
5 have higher issues with respect to nitrates. I don't
6 know. I can't answer that directly, but there are
7 areas in the Valley that have serious concerns.
8 **MR. JORDAN:** While you're saying that, as a
9 credible alternative, that might be a reference point
10 to provide in the future, just because, you may say, I
11 want to look at it side by side, but the visual picture
12 of all the impaired sites up on a PowerPoint
13 presentation is a pretty chilling factor in this
14 region.
15 **MS. DUNHAM:** Thank you.
16 **MR. YOUNG:** Okay. Thank you very much.
17 All right.
18 **MS. DUNHAM:** And I believe we do have some extra
19 copies, thanks to our colleagues.
20 **MR. YOUNG:** Wonderful. Is there anybody else in
21 the audience that wishes a copy of Ms. Dunham's
22 presentation?
23 Okay. Dr. Barbeau, you are up next. And if
24 anybody doesn't get a copy that wishes one, would you
25 please let us know, and I'll make sure that a copy gets

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1 to you.
2 Dr. Barbeau, go ahead.
3 **MR. BARBEAU:** Okay. My name is Brad Barbeau. I'm
4 a member of the faculty of Cal State University
5 Monterey Bay, and one of authors of the Barbeau and
6 Mercer Cost Study.
7 I'll try to make this brief.
8 There are three costs studies, if you will,
9 sitting out there right now. There is an Appendix
10 document, a Waiver document that was done by the Staff,
11 there's the Barbeau & Mercer study of the cost of the
12 Ag Waiver, and then there are some numbers out there
13 also about the Ag Alternative. And primarily, what I
14 want to say about those is first of all the purpose of
15 our cost estimate was to give growers an estimate of
16 the cost of the proposed Ag Waiver and the Ag
17 Alternative. It was not intended to be compared
18 directly with the Staff Study. There are major
19 differences between the objectives of those studies and
20 major differences in the data sources for those
21 studies. So I think the work has been done trying to
22 compare those two. It may be not the right way to
23 approach them. And I would say the same thing with the
24 Ag Alternative. Rather than viewing them as competing,
25 we would suggest that each of these reveals different

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1 parts of the elephant, so to speak, and provides
2 additional information that can be used and should be
3 used in understanding what the whole elephant looks
4 like.
5 Our study tried to estimate the cost of
6 compliance, and, by the way, this was a very definite
7 moving target, as we were looking at it. We started
8 with the March documents, and in the middle of our data
9 collection, the May document came out. We tried to
10 adjust as best we could, but were not able to entirely
11 incorporate and there have been changes since then,
12 also.
13 Our data source was primarily grower
14 interviews, so that's -- that's where we got our
15 information from. So there's a good deal of
16 uncertainty in these cost estimates, and the
17 uncertainty is coming from several places, one big --
18 one being that we were all working with a moving
19 target, as Staff was working to adjust the -- their
20 proposal. And, also with the Ag Alternative, we were
21 working with a very early version of the Ag
22 Alternative. As you know, a lot of work has been done
23 since then.
24 So it is our feeling that doing responsible
25 regulation requires that a complete economic impact

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1 report, that would include cost and losses to the
2 growers, to the taxpayers, and looking at the indirect
3 and induced impacts -- economic impacts of the
4 regulation, and it would also look at, in a systematic
5 way -- this has not been done in any systematic way, at
6 all, and it's not easy to do -- the gains and benefits
7 of the regulation. That would be a complete economic
8 impact study, and as Kaye suggested to me in a
9 conversation earlier today, if you're interested, we
10 would be very interested in working on that, if you
11 would like that study to be done. That's in the
12 future.
13 I think the conclusion that I would want to
14 say and leave you with here is that I believe that this
15 regulation absolutely has the potential to be a game
16 changer. It changes the rules of the game and it's
17 going to cause an adaptive response, the outcome of
18 which we do not know.
19 The questions about will growers go out of
20 business or not? This is going to impact growers.
21 It's going to impact what crops get produced. It's
22 going to impact land use in ways that I don't think
23 anybody has a crystal ball to exactly know what the
24 ultimate outcomes are going to be.
25 So if we wish to preserve agriculture in the

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1 region and also, also achieve our desired water
2 quality, this requires cooperative solutions, with
3 cooperative implementation.

4 **MR. YOUNG:** Thank you. Okay.

5 **THE REPORTER:** Mr. Chairman, can we have a quick,
6 little break?

7 **MR. YOUNG:** Sure.

8 **THE REPORTER:** Just five minutes.

9 **MR. YOUNG:** Five minutes is fine.
10 (Brief recess.)

11 **MR. YOUNG:** Anyone locally who needs to get out of
12 here at a certain time, I'll give those people two
13 minutes each to address us now.

14 Greg Pepping gave me his card. He can come
15 forward now. And he did say he submitted a speaker
16 card. Okay.

17 **THE REPORTER:** Mr. Chairman.

18 **MR. YOUNG:** Yes.

19 **THE REPORTER:** If you could have them, for me --
20 the people that are coming up there, if they could
21 please state their name and spell their last name, for
22 me, so that I have it on the record. I would
23 appreciate it.

24 **MR. YOUNG:** Okay. Dr. Hunter, what we are doing
25 is that there are some people that need to leave so in

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1 exchange for going down, they have two minutes.

2 **DR. HUNTER:** Okay.

3 **MR. YOUNG:** All right, Kent Hibben, Ethan Allan,
4 Charles Whitney, George Cutman. Okay. Let's go.

5 **MR. PEPPING:** My name is Greg Pepping.
6 P-e-p-p-i-n-g. Executive Director of The Coastal
7 Watershed Counsel. Thank you for taking my comments.

8 The Coastal Watershed Counsel is a nonprofit
9 based in Santa Cruz. We've been around since 1995.
10 Our mission is to preserve and protect coastal
11 watersheds through stewardship, education, and
12 monitoring. Our monitoring work includes Snapshot
13 Dave, First Flush, Urban Wash, effectiveness assessment
14 on restored and constructed wetlands, as well as
15 organic and sustainable current practices. Now for the
16 contacts so that you have background from which my
17 comments on coming.

18 We acknowledge that the Water Board Staff has
19 exercised due diligence in the process to date and the
20 net result of that process is what you're considering
21 voting on today, that seemed to polarize many people,
22 whether one considers themselves, a environmentalist, a
23 grower, or neither, you folks have a tough one today,
24 and if you pass this Draft Order, the way I understand
25 it, it likely will be appealed, litigated, and go to

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1 the State Water Board, perhaps, maybe to the Supreme
2 Court, and does not result in water quality
3 improvement. You do nothing, and you're accused of
4 kicking a can down the road and, obviously, that is not
5 improvement to water quality.

6 In my opinion, one middle ground that would
7 avoid litigation, more likely, and likely have one of
8 the best chances of improving water quality is so
9 middle ground, that is, approval of the Draft Ag Waiver
10 Order as is, with 90 days for Staff to incorporate
11 alternative proposals such as Marc De Los Huertos and
12 some other alternative approaches.

13 That's what I recommend that you do. I
14 encourage you to make a vote today, because I think
15 that's important. And I thank you for your work, I
16 know it's a challenging decision.

17 Thank you.

18 **MR. YOUNG:** Thank you for your comments.

19 Kent Hibbin -- have I pronounced the last
20 name correctly? Is he coming back?

21 Nathan Allen.

22 **MR. ALLEN:** Thank you, Mr. Chair. I actually got
23 someone to cover my evening commitment, so I'll stick
24 around and go when it's my turn later.

25 Thank you so much.

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1 **MR. YOUNG:** Charles Whitney? He left?
2 Okay. George Gutman? Mr. Gutman?
3 Okay. Mr. Martin.

4 **MR. MARTIN:** Thank you. My name is Bob Martin,
5 M-a-r-t-i-n.

6 Actually, I'm here today representing
7 Western Growers Association. They asked me to speak
8 for them today. And Western Growers is an association
9 of about 500 growers in the Central Coast Region,
10 including me, to express the comments made today by
11 Farmers for Water Quality, for The California Farm
12 Growers and Dr. Marc Los Huertos.

13 Instead of talking about the Valley of
14 Central Coast Ag Region, given the fact that I only
15 have two minutes, I decided to focus more on the Q and
16 A response that the Board had for Staff, in yesterday's
17 email that I saw, in particular Question Number 5
18 and is regarding groundwater.

19 And, Chairman, you mentioned something
20 earlier, kind of took a little wind out of my sails and
21 I wanted to maybe sure that everyone was on the same
22 plane with this.

23 In recent documents much emphasis is placed
24 by Staff's proposal needs to monitor nitrates in
25 groundwater. The Staff realized that monitoring these

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1 levels in the coming years, is problematic and places
2 all farmers on a noncompliance mode.
3 How does the Regional Board intend on dealing
4 with this topic down the road?
5 Many farmers like myself are attempting to
6 tackle this problem, and fully intend on minimizing the
7 nutrient input to increase or eliminate nitrates in the
8 groundwater. Immediate implementation is possible, but
9 the ensuing results although inevitable are extremely
10 slow in coming. In other words, it's going to get
11 worse before it gets better. And even a Staff member,
12 Matt Keeling, acknowledged several decades, possibly.
13 I believe it would be more effective to
14 measure the documentative efforts of these farmers,
15 rather than just the nitrates in the groundwater. That
16 will be the only true measure of what will occur in the
17 far future, not just the next few years.
18 I also take serious offense to the way the
19 Staff opted to classify farmers in a Tiering systems,
20 stating that large operations have the potential to
21 pollute as the leading criteria for selection. The
22 sheer size of our operation is the only thing that
23 allows us to spend the needed resources on accurate,
24 scientific equipment to accomplish goals of improving
25 the quality of groundwater.

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1 **MR. YOUNG:** Mr. Martin your time is a up.
2 **MR. MARTIN:** If I was a small farm those resources
3 would be extremely limited or nonexistent.
4 **MR. YOUNG:** Thank you for your comments.
5 Okay. Dr. Jean-Pierre Wolff.
6 **MR. WOLFF:** I feel funny being on this side.
7 I am Jean-Pierre Wolff, W-o-l-f-f, and I'm
8 here representing myself as an agriculturist, a
9 Certified Sustainable Vineyard, and I have a few
10 observations and suggestions that I'd like to make.
11 I'll start with a little caption here that says, "It is
12 much harder to break old habits than it is to learn new
13 skills." And I think part of the discussions that
14 we're hearing and seeing in this is the fear of
15 changes.
16 My comments are going to be both on a macro
17 level and a micro level, so I'm going to give you some
18 20,000 foot observation, and some that are very
19 specific.
20 Firstly, I suggest that we really try hard to
21 keep the reporting as simple as possible. Efforts are
22 being made with the Notice of Intent to streamline it.
23 But I really feel we need to avoid using the analogy of
24 the tax code, because it's so complex that you have to
25 have a CPA to do your taxes. And I think it's so

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1 similar on all three Tiers to work in streamlining,
2 making it a little more simple, the process.
3 For example, I suggest, in addition to the
4 regulatory document, that we develop more templates
5 which are user friendly, and add to the regulatory
6 document a user friendly version, because, yes, a
7 regulatory document has to be written in a certain
8 legalese language, but it doesn't necessarily make it a
9 very easy document for a farmer. So I suggest that you
10 translate, a little bit, some of the regulatory
11 language into something that's a little more user
12 friendly.
13 The Cooperative Monitoring Program, I
14 think is very beneficial. Third-party groups, I think,
15 will inherently add some costs to the program, and I
16 think what you want to be cautious is not to add
17 another layer of administrative body, and further
18 distance yourself from the agriculturist.
19 Tier 1, 2 and 3, if I take the reporting of
20 data, I think you probably have close to 80,000 data
21 points between Tier 1, 2 and 3. And you've got about
22 2,000 in Tier 1. That's 15 points per. Tier 2 you
23 have 1500, um, that's -- that was 25 points per, and
24 then the balance is Tier 3. Well, that gets you right
25 to 80,000.

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1 Now, I know we talked about geotrack, but,
2 you know, geotrack is not a smart system. Geotrack
3 takes data, and it doesn't have a very sophisticated
4 problematic software, trendy program, monte carlo
5 equations, et cetera. And I think the big question is,
6 it is very important to measure and get the
7 information, but what are we going to do with it? And
8 I think what we got to do with the information is make
9 progress in water quality.
10 So that brings me to the concern about
11 availability of Staff. Mr. Jeffries you asked the
12 question, do you have adequate Staff. The answer was,
13 yes. But we heard earlier, a recommendation to move on
14 with the Ag Order, and then we can start working on
15 other important issues. Well, the fact of the matter,
16 is that I do believe that administrating this Ag Order
17 is requiring a fair amount of Staff time, and you need
18 to assure yourself that you do have the Staff
19 available. That's not a criticism, at all, to Staff.
20 I think the Staff has done a very good job delving into
21 the issue. In fact, some people who argue too good of
22 a job, and others not enough, that's neither here nor
23 there. I think you have done a great job. And I think
24 Mr. Briggs, likewise, in managing the program, but if
25 we look at over 175 pages of the regulatory document,

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1 you know, the EO is peppered all over the place. In
2 fact, if you do a word search, you will find probably
3 100 times EO, in terms of alternatives and other
4 proposals, et cetera. That's going to take time and
5 resources.

6 So my big concern is under the current budget
7 cuts and limited Staff, you do not want to set yourself
8 up for failure. As a Board, you know, the analogy is
9 that you're impacting a multi-billion dollar business.
10 So put yourself in the shoes of being the CEO and Board
11 member of a publicly operated company. And I don't
12 think as a Board member you would say, "Oh, Staff is
13 adequate." Okay. All right. Let's move on.

14 I think you would want to have a plan. So my
15 suggestion is you have, currently, a plan that is
16 basically a management plan, showing what resources
17 will be allocated to administer and implement this
18 program. And , therefore, assure that the
19 environmental side and water quality side and also for
20 the agriculturist, that we do have a successful story
21 at the end.

22 A couple additional comments is that the
23 water quality degradation has taken place over a long
24 period of time. Now I think we all agree there's a
25 legacy associated with it. And surface water probably

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1 can be mitigated, a lot quicker than groundwater, and
2 what I would suggest is that you consider the deadlines
3 that we have issued, and maybe have some deadlines and
4 milestones that are slightly extended. I'm not
5 suggesting 8 years and 15 years, as I heard earlier
6 with some of the improvements, but, you know, you do
7 have deadlines of 2014, for example, and we're in 2012,
8 first quarter is over. So I think, you want to give
9 yourself a little more elasticity there.

10 I think, concurrently, with the Ag Order and
11 the regulatory side, you need to take a holistic
12 approach to this. Regulation, by itself, will not
13 solve our problem. It's going to require regulation
14 collaboration, education, innovation, research and
15 trust. But with a caveat on trust and I'll paraphrase
16 President Reagan, "trust but verified."

17 I think education was originally a
18 requirement in the Ag Waiver, and now, it is
19 voluntary. There is a missed golden opportunity to
20 bring together a little bit more of the Ag community
21 here with some program. Comments that I heard, the
22 reason why education has been dropped, it was not very
23 successful in the Ag Waiver. Well, that's because
24 there was not a whole lot of effort put into developing
25 a good curriculum involving all parties. It's a missed

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1 opportunity to promulgate best management practice,
2 innovation, technology, new science, collaboration,
3 including environmental communities. So if we leave
4 the educational as voluntary, it's going to be a
5 hodgepodge of different parties having their own
6 interpretation.

7 Another point to make pertaining to the
8 importance of assuring that you have provided the right
9 amount of staff. Item 4, Figure 1, Page 7, which you
10 showed earlier on the slide, shows irrigated Ag having
11 the highest degree of water quality we have.

12 We got landfill, municipal and urban
13 stormwater, way to the right. That would tell me that
14 we need -- you need, pardon me, to put a lot more
15 effort in that area. And so there has been not
16 billions of dollars of grants that have been provided
17 to help agriculture, and so I think in this case it
18 would behoove you to consider committing the Regional
19 Water Board to allocating resources. Add up analogous
20 to Central Coast hydro modification control and low
21 impact development, when you have a whole specific set
22 up program to help assure or support the success of
23 these proposed Ag Waivers.

24 So, in summary, I think that parallel to the
25 regulatory language, there is a need to have a plan on

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1 how you're going to roll this ensure success, and I
2 would think -- and I can't speak for my colleague
3 agriculturists -- but you're going to have a lot of
4 help if people see this is not just about regulation,
5 it's also about working together to make progress.

6 One little item that I think perhaps should
7 be modified, is currently there is a requirement for
8 Tier 1 and 2 and 3, for groundwater sampling, to hire a
9 registered professional engineer, such an a hydrologist
10 or geologist to take the sample and take it to a lab.
11 You know, agriculturists routinely take water samples.
12 We know how to take water samples. We knew how to take
13 a sample in a cook bottle and take it to a lab. I
14 don't quite understand the logic in making that
15 requirement. Particularly since with your MPS permit
16 holders you allow them to take samples themselves. You
17 allow technicians in water treatment plants to take
18 samples. It doesn't have to be done by a
19 four-year degreed engineer. So I'm kind of missing
20 that requirement, and if you are concerned about the
21 chain of custody and proper protocol to take the
22 sample, well, there is your golden opportunity of
23 continued education, a short course on water sampling.
24 You get it done.

25 So I don't want to abuse the generosity you

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1 gave me with the red light here, but I wanted to give
2 you a few views, and I apologize for my lateness in
3 giving you feedback, but as you know, this has been a
4 difficult position for me, under the current laws of
5 not having recused myself from speaking.
6 Thank you very much for your attention.
7 **MR. YOUNG:** Thank you. Okay.
8 Dr. Los Huertos.
9 **DR. LOS HUERTOS:** Thanks for being able to say my
10 name.
11 **MR. YOUNG:** I grew up in California. A little bit
12 of an easy thing to do. Well, no comment,
13 Mr. Jeffries.
14 **DR. LOS HUERTOS:** So my name is Marc Los Huertos,
15 L-o-s H-u-e-r-t-o-s. I'm a faculty member at
16 California State University Monterey Bay. I've been
17 working on water quality issues since 1992, in
18 particular, I've been working on the Penn State Buffer
19 strips and nitrogen removal of the buffer strips and
20 see how effective they work.
21 Then, recently, I just finished, almost
22 finished the contract manager looking at bioassessment,
23 bringing algae to the merit standards, which is a
24 really hard thing to do, and we just completed that
25 last year and -- or this year. And I think, I will

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1 have to say that after 15, 20 years of talking about
2 the problems of nitrogen, that I am actually quite
3 impressed that farmers that I interviewed during the
4 summer, to help them with all the things that they need
5 to do to improve water quality, I think it speaks to
6 the risk they've taken by hiring someone that's been
7 critical of them for a long time, and on some level
8 getting ready to propose a very scientific background
9 why nitrates standard may need to be met. They don't
10 like hearing that.
11 They also don't enjoy a lot of the
12 conversations we have with them, but it's been, I
13 think, one of the most provocative conversations I've
14 had with farmers in 20 years. I think it says a lot to
15 the seriousness of the region and the attention they
16 have to this issue with regard to water quality.
17 I also want to back up a little bit, on
18 another key experience that I've had, and although I
19 was not directly involved, a group of growers in Quail
20 Creek decided or worked with Mark at Restoration, Inc.
21 They did an independent and anonymous reporting of the
22 water quality coming off their farms. They had,
23 actually, a court Staff inspecting the farms and going
24 through their farm plans at the same time, and they had
25 a dramatic reduction in pollutants loads.

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1 To me, this was probably one of those
2 take-home messages of the 2004 Ag Waiver, was a
3 profound and successful program that could engage
4 growers in a way that had both a stick and a carrot, in
5 a way that allowed the growers to respond, in a way
6 that they could feel as if their laundry was hanging
7 out for everybody, in a way that they could address
8 water quality issues by installing, testing, various
9 management practices.
10 And, hopefully, you could see that I tried to
11 use that model to continue to develop and refine the Ag
12 Alternative Proposal with more detail. So my initial
13 proposal was to create a collaborative constant for
14 growers and technical advisor resources to improve
15 water quality based on reliable risk assessment.
16 And I will have to diverge here slightly. I
17 was actually quite surprised after Karen Worcester
18 talked for five minutes about the importance of the
19 Santa Maria Basin with serious water quality issues and
20 then to see Tier 3 growers the "most risk causing
21 growers" to be almost absent in that base of only three
22 or four points. I'm not sure how many, but
23 somewhere -- that's a very small number and, to me,
24 that speaks to the lack of reliability of the insuring
25 system. I think it's problematic and I spoke to that

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1 last year. I think it's based on assumptions about how
2 water quality moves, and, for me, as a scientist, I
3 find that that approach is not only turning into
4 superlative vice of this program, but it also sets a
5 target on some of potentially the most innovative and
6 capable growers that we have in our region, so I don't
7 want to belabor that point, but I think that, though,
8 the Staff presentation on that contrast of those few
9 things is a little bit symptomatic of the way the
10 Tiering system has been developed.
11 Second, I want to provide a public and
12 Regional Board evidence that growers are effectively
13 implementing management practices. I really like the
14 term, trust and verify. I think that's a key -- I
15 think that's a central component of what farmers need
16 to do and I have worked very hard with the growers,
17 driving up and down the coast, talking and meeting with
18 them to find out how far I could push or how far they
19 would be willing to go, in terms of verifying their
20 activity. And I think you'll see that they've come
21 very far, and I will say that they have created, on
22 some level -- I mostly facilitated conversation.
23 They've created, I think, one of the most provocative,
24 but progressive, water quality protection programs in
25 the country.

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1 And, finally, to meet the California Water
2 Code, so it's -- on some level, it's a question of law
3 and a question of water quality. I believe that the
4 proposed third-party option is a robust mechanism to
5 improve and to promote water quality improvement.
6 I don't think that the Draft Order, as
7 currently written, will address and make tangible water
8 quality improvements. I do not believe that Draft
9 Order -- I do think the Draft Order and associated
10 reports are confusing. I think there are a lot of
11 internal conflicts, and, frankly, they're very hard to
12 figure out how to implement.
13 I think Kaye and Brad don't have the time to
14 talk about this at times, but trying to work with
15 growers and figure out what Tier they're in, was
16 extraordinarily difficult. It was confusing. It was
17 very hard to figure out. Especially when you're
18 talking about growers that are changing land tenancies
19 from small to large farms, their rents are changing,
20 and the structure of their actual properties of where
21 they are. Now, that is a subset of the growers, and I
22 understand that that's not consistent throughout all
23 growers.
24 Finally, the Draft Order, I think, does not
25 reflect the state forward engagement for the high-risk

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1 growers. So I'm going to go on. We're not going to go
2 there.
3 So the bulb growers begin by submitting a
4 farm plan. The idea of a farm plan is. It's
5 auditable. This is not the same as the farm plan that
6 was, historically used, that was very hard to figure
7 out what compliance meant.
8 The bulb growers, both, do a practice
9 effectiveness and an action plan on their farm that
10 independently audited 20 percent per year, minimum, a
11 third-party group or rank that prioritized growers, and
12 the idea is that -- I'm going to go through the report
13 here. There is no way I'm going to figure -- there is
14 a report on each one of these little steps. I want
15 to thank you for your circle -- I could copyright this
16 before you guys got there -- but that each step there's
17 a reporting, and I'm going to hustle here because I
18 think this is really important. That this is not
19 aggregate reporting in the way that the Staff
20 characterized it. That the most important thing that
21 you need to see as a Board member is -- are the
22 practices working, in terms of water quality?
23 And so, what I tried to do here is give you
24 an idea of what the reporting would look like. This is
25 slide 12 or something. Grower one, two, three, four,

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1 five and eight, you have all the raw data. It would
2 not be masked into some kind of average. You would
3 have the potential for risk, in terms of pollution
4 load, and hard, yucky colors, red is bad, white is not
5 so bad. And then at the bottom, an actual measurement
6 of the practice effectiveness. And the practice
7 effectiveness would basically be used to demonstrate
8 how well farms are doing. There would be associated
9 reports, in terms of lessons learned, what we could do
10 to implement better strategies, what we could do to
11 implementation, and probably the most important part of
12 this is that this is actually going to create a
13 capacity for farm and farmers to develop a program to
14 look at what research areas need to be developed to
15 promote water quality.
16 One of the fundamental problems in
17 agricultural research over the last, probably, 50 years
18 is they have been focused on yield, to the exclusion of
19 environmental quality. And this is -- even if the
20 University of California, they still have trouble with
21 this, and that's because their mandate is to make sure
22 growers are productive and making money and so the
23 growers are really stuck.
24 They don't have a dedicated fund to look at
25 research to test different management practices and so

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1 this program by collecting fees -- and the growers are
2 not excited about this -- it's 8 and 10 bucks an acre.
3 And half of those fees, approximately, will be use to
4 make sure that we develop a program that actually
5 improved water quality by testing the practices on the
6 ground, a regular yearly test. So things like, if we
7 wanted to focus priorities for one year or next, we can
8 focus on groundwater, for example, and look at leaching
9 and try to come up with practices that are really
10 better at preventing groundwater leaching. We can
11 prioritize by watershed. We can prioritize by some
12 groundwater basin. We can prioritize a specific toxic
13 or pesticide. We can even prioritize by repairing
14 restoration. And, at some level, I would be interested
15 in having a Staff helping us prioritize different kinds
16 of things to do every couple of years. I think that
17 would be a reasonable thing. I think there is -- and
18 we've spoken about this in the past.
19 There's a fair amount of distrust, and it's
20 going to take some time to build that trust back up and
21 I'm hoping that that's going to happen. I'd love to
22 see that happen.
23 **MR. YOUNG:** Mr. Jeffries.
24 **MR. JEFFRIES:** Well, you went through that pretty
25 fast.

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1 **DR. LOS HUERTOS:** Yeah. I have 80 more.
2 **MR. JEFFRIES:** On your handout, you talked about
3 Draft Order will not be sold some Tangible Water
4 Quality equivalent. Can you expand on that a little
5 bit?
6 **DR. LOS HUERTOS:** Yeah. So it relies on a couple
7 of things. The assumption -- and I'm going to jump
8 right into the shoes of the Draft Order, because it
9 doesn't say what the assumptions are, per se. The
10 assumption is that we can use on-farm monitoring to
11 characterize water quality, and then use that to
12 prioritize which farms to visit and then, maybe, make
13 some enforcements of the problem areas.
14 The problem is that the on-farm monitoring,
15 four samples per year, cannot adequately describe water
16 quality on the farm. It doesn't describe water
17 quality. It doesn't describe practice effectiveness
18 and it doesn't describe any kind of trend analysis.
19 To do those things, it's a very different
20 kind of sample. A sampling that kind of -- I like to
21 use the student, it costs 30- or 40,000 dollars a
22 year. You have your APs, and you have your statistics,
23 anthem program, et cetera, et cetera.
24 So, um, and I can do the same thing with the
25 nitrate management plan. The nitrate management plan

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1 in the Draft Order is so vague. It's so hard to
2 interpret what it means, that the implementation of
3 those two things alone will create an avalanche of
4 reports that the Staff are not one -- they are very
5 qualified in a lot of areas, but interpreting agronomic
6 use of agricultural products, like fertilizer, and
7 making a reasonable assessment that the pollution load,
8 based on the reports is impossible. I cannot do it. I
9 don't know anyone that can do it from the academic
10 standpoint, and I know, in terms of a regulatory
11 context, you're going to generate a lot of paperwork to
12 prioritize a lot of farms, people are going to make a
13 lot of visits and they're going to say, what happened?
14 These reports didn't tell us anything. And I'm
15 absolutely sure of that.
16 I'm also sure that you can sample a farm
17 almost a dozen different ways and get different kinds
18 of water quality. Again, I don't know how improved
19 water quality, if we're getting data from a farm that
20 doesn't mean anything.
21 **MR. JEFFRIES:** A few months ago, you gave us
22 presentation. You gave us a lot of boxes, but you
23 didn't give us much information within those boxes, and
24 there was a question of funding, at that point in
25 time. Has the agricultural community -- are they

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1 continuing to fund you in this program.
2 **DR. LOS HUERTOS:** No. No, I'm an idiot. I guess
3 they hired me in the summer to write a report and meet
4 with growers and I kind of fell in love with my idea
5 and I've kind of been working on my own since. I also
6 stopped for various reasons. One of the reasons, I
7 don't have a contract with Quality Restoration either
8 anymore because I felt that was a conflict of interest.
9 **MR. JEFFRIES:** And if you to do an analysis for
10 this whole Ag Order, how much time would it take and
11 what kind of dollars are you looking at?
12 **DR. LOS HUERTOS:** In terms of, from a scientific
13 perspective or policy perspective?
14 **MR. JEFFRIES:** Well, you're looking at scientific
15 as well as policy because you're integrating both ways.
16 **DR. LOS HUERTOS:** It's a little hard to predict.
17 For example, many of the findings I have trouble with.
18 So, for example, the idea that we are having Water
19 Quality problems and they're getting worse, that may
20 be, but trend analysis is extremely hard to do,
21 especially when you have improper data. What
22 environmental science is really good at is finding a
23 better way to measure pollution and detect pollution as
24 a problem. So I can say, for sure, we are getting
25 better at detecting pollution in the last ten years

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1 than ever before. Granted. I also know, starting in
2 1910 to now, we've got a significant -- a lot more
3 agricultural chemicals and a lot more pollution. I
4 can't say that between 1995 and 2005, that when you
5 decide that time zero is, makes a huge difference in
6 trend analysis, so a lot of findings are -- would have
7 specific trends in mind, but it's not clear how those
8 are generated, so analysis that far back, could take
9 six months and \$300,000 and -- sorry.
10 **MR. JEFFRIES:** No, that's all right. Finish your
11 sentence.
12 **DR. LOS HUERTOS:** If it was more on an
13 implementation of a grant -- here, I'm already writing
14 the grant. Um, I'm hoping someone will stand up and
15 say, I'll fund the grant.
16 In terms of the scientific capacity of Water
17 Quality to pick -- let's say, if we implement the Water
18 Quality Ag Order right now, and we spend a year
19 collecting data to see how that would do, so about
20 probably \$100,000. So go around, collect a bunch of
21 water quality data on farms, measure the water falling
22 the growers get, and then compare that to what you
23 might get with a more standardized approach. There may
24 be 30 parcels or so you could do that and then compare
25 what they get versus what you get. My guess is it

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1 would be about -- 50 percent would be right on. And
2 the other 50 percent would be, God, that's way off.
3 But what it wouldn't do is tell you about practice
4 effectiveness. And that would really have to be on
5 each farm separate, and that's a huge project.
6 Probably \$50,000 per farm, per practice.
7 **MR. YOUNG:** Per practice?
8 **DR. LOS HUERTOS:** Because you have to have
9 controls, right? You have to have practice and
10 control, which is -- you know, science sucks. It's a
11 lot of money. And, well --
12 **MR. JEFFRIES:** Well, talking about funding. How
13 much would you anticipate, if you took all acreage, how
14 much would each farmer have to contribute to do all
15 this if you're saying \$50,000?
16 **DR. LOS HUERTOS:** For the research itself?
17 **MR. JEFFRIES:** Well, the practice.
18 **DR. LOS HUERTOS:** So per farm?
19 **MR. JEFFRIES:** For one farm is --
20 **DR. LOS HUERTOS:** 50k or so.
21 **MR. JEFFRIES:** So if it was 1,000 acres, I didn't
22 bringing my calculator.
23 **DR. LOS HUERTOS:** I can't do math standing up.
24 **MR. JEFFRIES:** I'll go on to my next question.
25 **DR. LOS HUERTOS:** Let me say that was part of why

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1 I created this \$500,000 budget, within this program, is
2 that we would be able to do these kinds of on-farm
3 tests, and I actually forced myself to say, you know,
4 what we are going to need? We're going to get the
5 PCA's involved, we're going to get the fertilizer
6 companies, we're going to get the pesticide companies,
7 we're going to get a lot of them, we're going to have
8 to force them, get a lot of match money. Get UC on
9 board, get a ton of research we need from them not the
10 utility trials and really create a collaborative
11 project that the growers can get behind and trust. And
12 I will say, people like Bobby Martin. He spent a fair
13 amount of money. He's testing a whole lot of
14 lysimeters on his farm. He spent probably 20- or
15 \$30,000 of his money testing. I think we can leverage
16 a lot of that.
17 **MR. JEFFRIES:** I think that's the reason he left
18 before you spoke so you couldn't ask about his wallet.
19 But my next question is in the Staff Report,
20 they talked about five key elements. Do you remember
21 what these are?
22 **DR. LOS HUERTOS:** Yeah, they were really good.
23 I'd like to address them, one at a time, with more time
24 and sophistication. I think those are key. I think I
25 address them, but they said them fast enough I couldn't

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1 jot them down to address at the time.
2 **MR. JEFFRIES:** And I'm just wondering what your
3 opinion was of those five key elements.
4 **DR. LOS HUERTOS:** I think they were fine. I don't
5 remember the details. I think they set the bar at a
6 bar that I thought was reasonable and important and
7 worthy of consideration. Nothing. I don't remember
8 anything jumping out of at me.
9 **MR. JEFFRIES:** So I think they're all attainable,
10 then?
11 **DR. LOS HUERTOS:** Yeah. I wish -- I didn't write
12 them down.
13 **MR. JEFFRIES:** I know.
14 **DR. LOS HUERTOS:** I thought they were pretty
15 cool.
16 **MR. JEFFRIES:** Well, I don't want to go too far
17 into this.
18 **DR. LOS HUERTOS:** Do you want me to pull it up and
19 we can look at it, if that will help?
20 **MR. JEFFRIES:** Yeah, please.
21 **MS. McCHESNEY:** Well, Mr. Jeffries. I just want
22 to say that those five key elements are the key
23 elements in the State Board 9-point source documents
24 and are required to be --
25 **MR. JEFFRIES:** I understand.

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1 **DR. LOS HUERTOS:** They're nice bullets to talk
2 about, yeah.
3 **MR. JEFFRIES:** Let's just get his analogy of it
4 I'm not disputing the elements.
5 **DR. LOS HUERTOS:** Okay. So are you ready?
6 **MR. JEFFRIES:** Yep.
7 **DR. LOS HUERTOS:** Practice management
8 implementation verification. The verification process
9 is the audit process and that creating the audit
10 process is having the external independent was the
11 idea, and tell you the truth half of this, the major
12 portion of this project could create a context where
13 verification can take place. And the growers are
14 actually very sophisticated in thinking about this in a
15 way that surprised me. When I said well, how do you
16 want to do the audit? They said it has to be
17 independent, has to stand alone, it's got to be
18 completely transparent in terms of the criteria, that
19 people have to be able to evaluate that. We talked
20 about maybe having staff help and involved in
21 developing the audit. They were queasy about that, but
22 I think if they didn't have a choice they could go
23 there.
24 **MR. JEFFRIES:** Transparent to who, the public?
25 **DR. LOS HUERTOS:** I want to make sure I'm not

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1 overstepping here, the results wouldn't necessarily be
2 transparent, but the audit criteria standards.
3 **MR. JEFFRIES:** That's what I was referring to the
4 transparent at all stages to the public.
5 **DR. LOS HUERTOS:** Yeah, so the way we talked about
6 it, in terms of the audit, was it could change. These
7 are proposals that I'm negotiating with Farmers for a
8 three-month period. The way we talked about it was
9 that those audit results would basically be sort of a
10 pass fail, but then that would be passed on to the
11 Water Board in terms of -- well, yeah to show that they
12 have actually met their criteria to meet the auditing
13 and frankly, I will say, coming back to the issue of
14 the Staff time I thought -- frankly, I thought two
15 things: One, it would lead to the amount of Staff time
16 to try to figure out what's going on, on all of these
17 farms. Two, and I don't think the growers are
18 appreciating us very much, but on some level, now you
19 have someone that speaks for the growers for the
20 ongoing issue in terms of negotiation for the Ag
21 Waiver.
22 Every time he talks to the growers, we have a
23 different group of growers saying, well, that's not
24 us. And here you have a group of growers that are in a
25 group that actually have the capacity to negotiate. If

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1 there's still problems and the capacity to come to the
2 table when the staff are seeing problems and continue
3 to exist which I think has been really -- says
4 something strong about our region, because the growers
5 in this region are very, very vested and very
6 thoughtful about maintaining a professional
7 organization.
8 I think Water Quality Preservation, Inc., is
9 an outstanding example that I think, in most cases,
10 it's extremely professional.
11 **MR. JEFFRIES:** That ought to be worth a few
12 bucks.
13 **MR. YOUNG:** Any other questions for Mr. Jeffries?
14 **MR. JEFFRIES:** I had one more question, but I'm
15 sure it will take a couple hours.
16 **MR. YOUNG:** Mr. Johnston.
17 **MR. JOHNSTON:** Mr. Los Huertos, you know, trust
18 but verify. And I think that's a lot of what the whole
19 conundrum is coming down to.
20 I mean, that's one of the big issues. It's
21 not the biggest in this whole back and forth and back
22 and forth between the Staff Draft and the Ag
23 Alternative, and it's kind of funny because usually
24 farmers and business people in general are protective
25 of proprietary information because they don't want

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1 their competitors to see it and here it's because they
2 don't want us, the Board, and the public to see it.
3 And it certainly does give us a queasy feeling, you
4 know, in terms of how do we do the verify part of the
5 Trust but verify. And I'm looking at those key
6 elements over there and management practice
7 implementation and verification. And I understand
8 you're saying the audits would verify, but what of any
9 the folks who swore an oath to actually uphold the law
10 and to make sure that this stuff is getting done, and
11 there's -- so I have questions about what we can
12 delegate about that. Similarly the -- and it has a
13 little bit to do with all five of those, but similarly
14 in Number 5 consequences for failure to achieve
15 objectives and individual Dischargers really having the
16 responsibility and being accountable. And so, I mean,
17 I really get the concept that we can accomplish some
18 things collaboratively that we can not accomplish with
19 a straight stick approach. I get that. But I'm just
20 wondering and I understand that you don't speak for
21 agriculture, that you're simply speaking as, in a
22 sense, an expert because you, as an outsider, have done
23 a lot of interviewing, so I'm just looking for your
24 opinion here and hoping I don't mess you up on your
25 future bid to contract with some farmers, but, I mean,

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1 do you see some creative ways to deal with that
2 conundrum? Because right now, we've got really got,
3 kind of, an immovable object and unstoppable force on
4 this question. Is it having Staff that can review the
5 audits, but the audits aren't turned in? I mean, that
6 answers one piece of it. It doesn't answer the
7 public's piece of it. Is it having the audits
8 published, but -- and, maybe, Staff on a farm basis
9 looked at them, and know where their applicable, but
10 they're published without an identity. I don't know,
11 but if we can't work through that one, it's not clear
12 to me how we come to resolution on this. And I've
13 heard the legal arguments from agriculture as to why
14 that's not necessary and I've heard the legal arguments
15 from our counsel as to why it is, and personally, I
16 can't speak for any of the Board members, but it's a
17 pretty high threshold for me to simply discount our
18 counsel's argument and say, okay. Fine. I'm going to
19 go with what they say. They have an interest.
20 Well, you know, that's another -- there's a
21 lot in here. Let me begin with something that I was
22 reflecting on with Daniel Perez, two nights ago, about
23 this issue, for a couple of hours and he talked about
24 that really Porter-Cologne and Green Water Agri Policy
25 failures, they're ambient Water Quality Programs with

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1 quick source regulatory rules and, on some level, Don
2 Poins got stuck in the middle. It is an awkward,
3 uncharted territory and, I thought, that's pretty
4 compelling. I didn't know what to do with it, but I
5 thought it was compelling. When I thought about it, it
6 turns out that when you think about the sort of land
7 that we don't know what to do with yet, we're -- really
8 need to step back and look at, sort of, the long-term
9 goals of what we're trying to accomplish. We have a
10 huge number of people that are managing a lot of land
11 in our region and, on some level, we're looking for two
12 things to happen besides Water Quality improvement. To
13 get there, we need cooperation from them. So I have to
14 admit, it seems to me, that on some level, this is not
15 necessarily a regulatory issue, but a political issue.
16 And as a political issue, we probably need to think in
17 terms of long-term goals. So I would say the 2004 was
18 a very good start. It got people regulated, used to
19 being regulated, and it put them in a place where they
20 understood Water Quality problems were in the region.
21 When they start paying the bill to see Sara Daphnia die
22 from their water, they don't know what to do with it
23 yet. We do not have the practices available to make
24 the water nontoxic. I don't know how to farm and
25 fertilize a field without nitrate leaving the soil.

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1 That's how Ag works. You have to -- the salts don't
2 get taken up, the nitrogen does. You can't get
3 100 percent usually it's around -- at the best, we can
4 get about 80 percent. It's a -- US EPA studies are not
5 80 percent, in that context. We are in a very stuck
6 place. We want agriculture to remain present and
7 productive and we want very high water quality that we
8 are, frankly, not just deserve, I think we have a right
9 to. Getting there is going to take some creativity
10 and, I would say, that the creativity that we're trying
11 that we are trying to create some space for, is it
12 creativity to say, let's work on practices that really
13 are getting there and I want that stick of the Regional
14 Board Staff to enforce the Waiver in the Alternative
15 Proposal in the way they have and can, and enforce even
16 the 2004 Waiver.

17 I think the most effective enforcement is
18 random inspections on farms wherever you are. I think
19 it sends a message to Tiers 1, 2, and 3, you don't get
20 a pass at any level. You only have to do a few in
21 every watershed, and believe me, the word gets out.

22 **MR. YOUNG:** Dr. Los Huertos, could you quickly
23 conclude? We can go on and on.

24 **DR. LOS HUERTOS:** I think I'm done. I think I'm
25 there.

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1 **MR. YOUNG:** I don't know if that answers your
2 question.

3 **MR. JOHNSTON:** It didn't answer my question at
4 all, but it was interesting.

5 **MR. JEFFRIES:** It sounds good.

6 **MR. YOUNG:** Dr. Hunter, did you have any
7 questions.

8 **DR. HUNTER:** No.

9 **MR. YOUNG:** Okay. All right. Thank you very
10 much.

11 Ross Clark and then Ms. Cleary. And then
12 Mr. Hamid. Mr. Stoker, I see you in the back. You
13 don't want to speak, but I do have a card.

14 **MR. STOKER:** I turned that in because I had to
15 leave early.

16 **MR. YOUNG:** Did you want to speak?

17 **MR. STOKER:** Yeah. I wanted -- yeah. I had to
18 leave early and I gave it for the purpose of leaving
19 early when you had asked for people.

20 **MR. YOUNG:** Maybe after the speaker, if you want
21 to come up, you can have two minutes, okay?

22 Go ahead. All right.

23 **MR. CLARK:** Good afternoon. My name is Ross
24 Clark, C-l-a-r-k. And I'm the Director of the Central
25 Coast Wetlands Group at Moss Landing Marine Labs.

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1 Thank you very much for this opportunity to
2 present some of our work to you today and discuss how
3 it may be integrated into the Agri process. The
4 Central Coast Wetlands Group has worked with
5 landowners, local agencies, the Monterey Bay National
6 Marine Sanctuary, the California Coastal Commission,
7 and the Regional Board to restore over 150 acres of
8 coastal wetlands and creek habitat in the Salinas
9 Valley.

10 **THE REPORTER:** Can you slow down just a touch?

11 **MR. CLARK:** Slower?

12 **THE REPORTER:** Just a little bit. Thanks.

13 **MR. CLARK:** Our partners have also documented the
14 improvements to Water Quality and the reductions in
15 nutrient and pollutant loads associated with those
16 projects. Today, I am here to introduce to an effort
17 supported by the DWR to integrate the construction of
18 treatment wetlands as a component of agricultural
19 water management strategies and provide input from the
20 farmers on the possibilities of using these strategies
21 as a component of their water quality management
22 strategies for on farm practices.

23 The Greater Monterey County Irrigated
24 Regional Water Management Program was established in
25 2009 to support integrated water source planning and

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1 address the multiple water resource objectives of the
 2 region.
 3 In 2005, the Central Coast Wetlands Group and
 4 Cal State Monterey Bay constructed the Molera Road
 5 Treatment Wetland here on the slide at the Confluence
 6 of the Tembladero Slough and the Old Salinas River
 7 Channel to evaluate the water quality value of
 8 constructed wetlands in unison with on field farming
 9 management practices. The results of these studies
 10 document the nutrient load reductions and overall water
 11 quality improvements provided by the combination of
 12 sound farm management practices and constructed
 13 wetlands. Dr. Fred Watson, at CSUMB, calculated that
 14 approximately 450 acres of restored creek wetland,
 15 within the lower Salinas Valley, in combination with
 16 sound farm practices, would be significant in reducing
 17 pollutant loads within the Gabilan Watershed, to a
 18 point where we should see a response in water quality
 19 data collected by the Central Coast Ambient Water
 20 Quality Program.
 21 We are using the results of these studies and
 22 our relationship with local farmers to identify
 23 opportunity sites for the construction of additional
 24 treatment wetlands. I provided a handout for an
 25 example of one of those projects.

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1 To achieve our achieve our combined
 2 objectives of improving water quality and wetland
 3 habitat, we rely on the support of the regulatory
 4 agencies to develop policies that highlight the
 5 importance of wetland construction as a management
 6 strategy. Similarly we rely on the interest of the
 7 landowners to provide us access to areas on their
 8 properties appropriate for wetland creation.
 9 We hope that the end product of the Ag waiver
 10 process provides the flexibility to adopt Watershed
 11 Specific Strategies that integrate off site management
 12 strategies including the construction of these
 13 treatment wetlands.
 14 Through the Irrigated Water Management Claim
 15 process and its funding, we are developing a watershed
 16 strategy that supports the construction of treatment
 17 wetlands as a component of individual and multiple
 18 landowner water quality management strategies within
 19 the lower Salinas Valley.
 20 We have identified multiple opportunity areas
 21 within the Tembladero/Blanco Drain area, including a
 22 9-acre project that you have a handout for, where
 23 treatment wetlands of various designs could be
 24 constructed to provide water quality benefits as well
 25 as increase the amount of freshwater wetland habitat.

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1 Farmers are very enthusiastic and interested in
 2 integrating this type of off farm treatment into their
 3 programs, because it could being very cost effective,
 4 but they need the assurance that such actions will
 5 provide a benefit to permit compliance.
 6 Before we'll be able to implement such
 7 strategies, we will need to identify the value of this
 8 business strategy. A critical component of a
 9 Agricultural Business Plan is the identification of the
 10 costs and risks of proposed actions as well as the
 11 estimated value of these actions to the business.
 12 We've identified some of the cost and benefits for
 13 treatment right here, including a cost and liability
 14 fees, conversion of some of their lands to wetlands,
 15 implications of having wetlands on their property, the
 16 cost of construction, maintenance, and monitoring the
 17 implementation of these measures as well as liabilities
 18 of other regulatory programs, including threatening of
 19 endangered species, 401 permits, et cetera. They have
 20 identified numerous benefits to adopting this into
 21 their farming plans, including priority issues at
 22 superior cost benefits of taking these actions. Many
 23 farmers are very interested in spending money to fix
 24 the problems and improve water quality instead of
 25 additional costs associated with reporting and

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1 monitoring. The other benefits are that,
 2 hypothetically, this will reduce all permit compliance
 3 costs. There will be an effective use of opportunity
 4 sites on underused portions of their properties. They
 5 will be seen as environmental leaders in the industry.
 6 There's a collaborative opportunity to partner with
 7 neighboring landowners on these projects and it
 8 instills a watershed approach to addressing water
 9 quality issues.
 10 Key issues to address, though, through this
 11 planning process before we can create these types of
 12 treatment wetlands include a mechanisms to ensure that
 13 participating landowners sufficient regulatory credit
 14 for these actions to offset the costs and liabilities
 15 of these unique approaches. We need to identify
 16 adaptive management processes for projects that miss
 17 interim or quality objectives. We need to allocate
 18 costs among landowners. We need to establish safe
 19 Harbor agreements and maintenance plans so these
 20 treatment plans can be maintained over time. We have a
 21 need to address other food safety concerns and we'll
 22 need to integrate these projects with the best of our
 23 ability.
 24 All issues that we were prepared to address
 25 and, hopefully, can use this forum and working with

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1 Staff to accomplish this.
2 Farmers have raised several issues that I
3 have brought up here and we must work to address them
4 before we can get access to and create these wetlands,
5 but we are very encouraged by their current interest in
6 working with us to the fact that they have reached out
7 to us to talk about and take us out to the opportunity
8 sites on their land. It's an extreme change in the way
9 that we have been interacting with farmers in the last
10 few years. If we can minimize the liabilities and make
11 treatment wetlands a cost effective business strategy
12 for sustainable agriculture, we will be better prepared
13 to meet our region's Water Quality and wetland
14 management objectives. In conversations with Regional
15 Board Staff, we have been insured that the current Ag
16 Waiver process can -- does provide avenues to integrate
17 this type of off site wetland treatment into the Ag
18 permit process, but there are lots of questions
19 outstanding on how that compliance can be achieved and
20 how we can address these other costs and liabilities
21 that the farmers have identified. They hope to work
22 with Staff over the next year to identify opportunities
23 to integrate these practices.
24 **MR. YOUNG:** Thank you for your comments.
25 Mr. Jeffries.

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1 **DR. HUNTER:** Just quickly, Ross. Thank you,
2 today, for coming --
3 **MR. YOUNG:** Speak up.
4 **DR. HUNTER:** -- in and helping us to gain a
5 perspective on the work of the Central Coast Water
6 Project and how you might fit in to contributing to
7 technical solutions we need. So just so I'm clear,
8 your second to the last slide was referring to the
9 IRWMP planning process. Does that reflect the
10 possibility that IRWMP monies are going to go into
11 supporting this or what is the connection to IRWMP?
12 **MR. CLARK:** We do have planning funds currently
13 through greater Monterey IRWMP to provide technical
14 support to design treatment wetlands identified
15 opportunity sites and use some of those resources to
16 help address some of these outstanding questions on how
17 these types of wetland projects can be integrated into
18 whatever type of regulatory process is adopted.
19 **DR. HUNTER:** Okay. So this is still a pilot
20 program level or is it more of a -- the ability to go
21 and assess unique, you know, one site does not fill all
22 kind of approach.
23 **MR. CLARK:** We are going to address that at some
24 watershed level, looking at the lower Salinas Valley,
25 and found this a significant opportunity place to work

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1 especially since many of the landowners are very
2 interested to work with us.
3 **DR. HUNTER:** Okay. Good.
4 **MR. YOUNG:** Okay. Mr. Jeffries?
5 **MR. JEFFRIES:** Yes. Well, I had a question, but
6 some of us Board members did tour the Molera site,
7 approximately a year or so ago, and was very interested
8 and was very productive. My question to you is that it
9 appears to me, for this to work, you're going to have
10 to take the land out of production, is that correct, in
11 some areas?
12 **MR. CLARK:** In some areas if we can address the
13 cost issues, some farmers have said that they would be
14 willing to do that.
15 **MR. JEFFRIES:** Oh.
16 **MR. CLARK:** We have identified many locations
17 where the land is too wet to farm and it's currently
18 just destined for weed management. We are going to
19 focus primarily on those as part of the pilot project.
20 **MR. JEFFRIES:** My next question if you can set
21 more of these up in wetlands, this will create more of
22 a Riparian corridors. How does this work with the food
23 safety issue?
24 **MR. CLARK:** We have funding within the IRWMP to
25 ask that question and utilize some of our partner

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1 organizations that are at the forefront of the food
2 safety process to identify the appropriate management
3 strategies to ensure that farmers aren't, in some way,
4 penalized for having this type of treatment done on
5 their sites. We have identified woven and bunny
6 fences, use of certain types of plants over others, but
7 we are going to work through that process to ensure
8 that the systems we put out will not post additional
9 food safety liabilities.
10 **MR. JEFFRIES:** Are you only looking to do this at
11 the lower Salinas Valley or are you looking to do
12 throughout Salinas, Santa Maria and throughout the
13 whole region?
14 **MR. CLARK:** We have money to do it in the lower
15 Salinas Valley, but we have addressed Staff questions
16 and we would be happy to partner with other areas
17 that want to incorporate the same ideas and we'll look
18 for opportunity funding or do as much as we can to help
19 move this idea forward throughout the region.
20 **MR. JEFFRIES:** Thank you.
21 **MR. YOUNG:** Thank you for your comments.
22 **MR. CLARK:** Thank you very much.
23 **MR. YOUNG:** I'm taking two people out of order,
24 Mr. Stoker, come up if you would, and then Ms. Lopez.
25 **MR. STOKER:** Thank you, Mr. Chair.

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1 Mr. Chair, honorable members of the Board. My
2 name is Mike Stoker, S-t-o-k-e-r. I'm here today
3 representing the United Agribusiness League. The
4 United Agribusiness League is an agricultural
5 association that provides multiple employer benefits
6 through its over 1400 employer members. The League
7 provides health insurance for over 42,000 agriculture
8 employees. On behalf of those employers and employees,
9 the League strongly urges the Board to reject Staff's
10 recommendation. The fact is that California is grossly
11 overregulated which impacts were recently documented in
12 the Barsney report.

13 In that report, Professor Barsney, the Dean
14 of Business School for Cal State Sacramento with
15 empirical data demonstrated that California since 2000
16 has lost over 4,000 jobs due to overregulation.
17 Regulations that were passed by regulatory agencies,
18 like this Board, regulations that are not on the books
19 in any other states or any other countries.
20 Regulations as as the report proves cost the state over
21 \$17 billion dollars in lost revenues last year alone.
22 Today, we have another example of a proposed
23 legislation that is not on the books in any other state
24 or any other country. A regulation that will cost
25 Agribusiness more money to operate and a regulation

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1 that will cost more jobs to be lost and a regulation
2 that will cost California to most likely lose more
3 money in revenues. In trying economic times like
4 these, for all California businesses, but especially
5 Agri businesses, the more and more finds itself on the
6 threshold of not being able to compete in the global
7 market where the foreign competition has very little,
8 if any, of regulatory burdens like California farmers
9 face.

10 United Agribusiness League would ask the
11 Board to move in a direction and adopt the coalition's
12 Agricultural Alternative previously presented to this
13 Board. The alternative is based on the successful
14 mileages of sure foot safety, that alternative, while
15 still imposing additional regulatory burdens on
16 agriculture, that agriculture in other states will not
17 face, provides a win-win to help this Board meet its
18 goals, but also help agriculture help meet your goals,
19 in a less costly and offensive manner.

20 And finally, I would just like to point out
21 to the Board, I called Senator Strickland after lunch
22 and I told him, Tony, Congressman Farr and State
23 Legislators, Alejo, yourself, Blakely, Cannella have
24 all recommended the same recommendation of moving force
25 in one form or another of the Agricultural

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1 Alternative. And Senator Strickland wanted me to
2 communicate to this Board, when you have that group of
3 representatives, all agree on the same thing, which
4 varies -- I can't remember a time that you would see
5 that group agreeing on something. That's pretty
6 telling testimony of a perhaps a win-win direction in
7 terms of how to deal with this situation. And I agree
8 with the Senator and would urge you to direct Staff to
9 try to pursue the Agriculture Alternative and I'm
10 completely convinced as Congressman Farr said earlier
11 today, you're going to be able to work out those
12 issues.

13 Mr. Chairman, I want to thank you again for
14 allowing me some time so I can make an obligation in
15 Santa Barbara this evening.

16 **MR. YOUNG:** Thank you for your comments.

17 Okay. Sara Lopez. Oh, I should have known
18 we have two Lopezes; right? Sara Lopez, Preservation,
19 Inc. Okay. Do you need to leave early? Well, that's
20 a good one.

21 **MR. JOHNSTON:** It may last until midnight.

22 **MR. YOUNG:** Do you need to leave today early?
23 That's what I thought this was about. Okay. You need
24 to leave early. Go ahead. You have two minutes.

25 **MS. LOPEZ:** Thank you. Okay.

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1 Good afternoon, Chairman Young and members of
2 the Board. My name is Sara Lopez and I am the program
3 manager of Preservation, Inc.

4 **MR. YOUNG:** Speak into the mike.

5 **THE REPORTER:** Yeah, you need to speak a little
6 bit louder.

7 **MR. YOUNG:** Real loud, project. Something I don't
8 do.

9 **MS. LOPEZ:** My name is Sara Lopez.

10 **MR. YOUNG:** Speak into the mike.

11 **MS. LOPEZ:** My name is Sara Lopez --

12 **THE REPORTER:** Much better.

13 **MS. LOPEZ:** -- and I'm going to sing a song.

14 **MR. YOUNG:** You've got one minute left.

15 **MS. LOPEZ:** I'm the technical program manager for
16 Preservation, Inc. We manage the Cooperative
17 Monitoring Program on behalf of the agricultural
18 industry. I wanted to talk quickly about one of our
19 cooperative monitoring sites which is Quail Creek,
20 that's just south of Salinas. It's a tributary to
21 Salinas River. This monitoring site has shown
22 significant reductions of nitrogen to the Salinas
23 River. By significant, I mean that, at the beginning
24 of the waiver period 2005, -06, and -07, the
25 instantaneous nitrogen loads at that monitoring site

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1 were 4.2, 12.8, and 5.5 pounds of nitrogen per hour.
2 In 2009, -10, and -11, the nitrogen levels were 0.00,
3 0.9, and 0.00 pounds of nitrogen per hour. The load
4 reductions are the direct result of actions taken by
5 farmers on the watershed for tail water run-off. These
6 efforts began when Water Board Staff began focusing
7 inspections on the watershed.

8 The growers received confidential edge a
9 field Water Quality information from Preservation,
10 Inc., and coordination from Monterey County Farm
11 Bureau. All involved received an award from the
12 Monterey Bay National Marine Sanctuary.

13 Water Quality issues in the creek remain and
14 this is but one of 50 monitoring sites. I think this
15 is an example of the Ag Waiver and the cooperative
16 monitoring programs doing their jobs. The Water Board
17 Staff used CIP data to prioritize inspection. The
18 growers used water quality data to format agronomic
19 practices. We had a measurable change at the
20 cooperative monitoring point.

21 I think change will look a little different
22 on every watershed, but I hope to have more data like
23 this to share in the future. All right.

24 **MR. YOUNG:** Mr. Jeffries.
25 **MR. JEFFRIES:** Yes. Can you tell me where your

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1 monitoring location was? Is it up, far up Quail Creek
2 or is it below the greenhouses? Where is it located?

3 **MS. LOPEZ:** It's below the greenhouses. It's
4 where the -- just before the Creek crosses under
5 Highway 101.

6 **MR. JEFFRIES:** Way down? Okay.
7 **MS. LOPEZ:** It's not quite --
8 **MR. JEFFRIES:** And did you determine the type of
9 nitrates that you had back in the original monitoring.
10 **MS. LOPEZ:** The type of nitrate?
11 **MR. JEFFRIES:** Because the upper portion of Quail
12 Creek is a cattle ranch. Was the nitrates from nature
13 manure or was it from manufactured fertilizer.
14 **MS. LOPEZ:** I, so in the absence of a major storm
15 event, there's no water in Quail Creek except for
16 irrigated agriculture discharges. The discharges start
17 just above Old Stage Road, so up in the portion of
18 watershed is the cattle ranch, and absent a storm there
19 is actually no water.
20 **MR. JEFFRIES:** So your measurement was during the
21 dry period?
22 **MS. LOPEZ:** We measure once per month. So it's
23 12, um, it's measurements per year.
24 **MR. JEFFRIES:** But the Quail Creek does runs
25 probably until March/April normal rainfall period; is

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1 that correct.
2 **MS. LOPEZ:** At the beginning of the Waiver periods
3 there was flow roughly 12 months a year. In more
4 recent years, many months have no flow at all.
5 **MR. JEFFRIES:** Okay. I was more interested in
6 where the marking was, above the greenhouses, below the
7 greenhouses.
8 **MS. LOPEZ:** Below the greenhouses.
9 **MR. YOUNG:** Okay. Thank you for your comments.
10 All right. Back to the list I have in front
11 of me.
12 Is Jennifer Cleary, Clean Water Action.
13 **MS. CLEARY:** While I'm waiting for my presentation
14 to come up, I'd just like to thank Sara Lopez for
15 taking care of the microphone.
16 So my name is Jennifer Cleary. I am program
17 associated at Clean Water Action. I've been working on
18 irrigated Ag Programs in the Central Valley for several
19 years.
20 I'm also a member of -- our organization is
21 also a member of Environment Justice Coalition for
22 Water, and so they asked us to step in here, and since
23 they don't have a staff, we've taken a larger role.
24 And I do want to thank the Board, and the staff for
25 being so helpful in allowing me time to speak, I'll do

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1 my best to take as little time as possible, because
2 it's getting very late, and I know there's a lot of
3 problems to cover. ;.
4 I'd also like to thank the members of the Ag
5 Community that met with me and have been very
6 sympathetic and respectful of the communities I'm
7 trying to represent, so it's very important to me.
8 So at this moment, so first the Environment
9 Justice Coalition for Water and they brought people to
10 meetings since 2009, and just to say these are some of
11 the community members we brought. We've got poor
12 turnout today, and I have to tell you that this has
13 been a very difficult process. I know it's been a
14 difficult process for everyone, but when you're working
15 on farms you have work whenever you're scheduled, to
16 come to a meeting, you're not going to get paid, you
17 already got issues of poverty, this has been very
18 difficult, and I would just say that process is an
19 environmental justice issue, as well, and I think that
20 this process has not been kind to some of these
21 communities.
22 Then, just to move on from that, just to give
23 you a map that you may already have, some existing
24 information. A disadvantaged communities in Monterey
25 County, it's a pretty significant chunk of the County,

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1 I do want to talk about San Jerardo.
2 San Jerardo is a fellow member of The
3 Environmental Justice Coalition for Water, and I want
4 to say one of the silver linings about doing this kind
5 of work, there's a lot of problems with it, but you get
6 to meet amazing people and work with them for many
7 years, like Horacio and Mesquita, who sent me a bunch
8 of texts today. The most recent of which said, "Take a
9 deep breath and talk slowly." And he also said to ask
10 the Water Board to please vote for the program today.
11 But I want to stop a minute on this slide,
12 and I'm not an agricultural expert, and I don't pretend
13 to be, but I work on water quality a lot, and I work on
14 drinking water a lot, and the cost to communities is a
15 lot.
16 So using San Jerardo as an example,
17 San Jerardo had wells one after another go out of
18 commission. And, you know, the first thing you try to
19 do when your well goes out is dig a deeper well,
20 because that's the cheapest alternative, and if you can
21 get clean water, and you don't have to treat it, you're
22 in good shape.
23 And so San Jerardo tried that in 2001 when
24 their last well went bad and so until 2006 they didn't
25 have safe drinking water. And they were on the

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1 priority list for the drinking water State Revolving
2 Fund, on the priority list for funding, for about six
3 years. And, somehow, they never got funded, and that's
4 a whole other story.
5 The county very kindly stepped in and they
6 had paid \$15,000 a month to filter that well water for
7 the community. And I really give them kudos for that
8 because a lot of communities couldn't match that cost.
9 So finally with Prop 84 we were able to get
10 funding to get the well, and get a new well for
11 San Jerardo.
12 Unfortunately, it's two miles away, so you
13 have the cost of pumping. It's a deeper well. And
14 also, you know, the reason why you have groundwater is
15 because in a good world it's cheaper. Surface water
16 you always have to filter and disinfect. Groundwater,
17 if it's clean, you just pump and serve it. But the
18 minute something goes wrong, you're entire economic
19 model goes out the window, because the state comes in
20 and says before we give you money, you have to prove
21 you have the capacity to use it. So your budget has to
22 be enough to cover half of what you serve.
23 So for the first time these communities have
24 to, if you add treatment, they have to pay for
25 treatment. If you have a deeper well, you have

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1 increased costs. So the costs go up and up and up. So
2 what I want to point out is you might think these
3 communities get a free ride, but San Jerardo is paying
4 about 120 to 130 dollars a month for their water.
5 They US EPA says that affordable water rate
6 is about 1 and a half percent of median household
7 income. The median household income in San Jerardo is
8 \$32,000 a year. And so their affordable water rate is
9 \$37.50, so just so you understand the difference
10 between the water, what they should be paying, and what
11 they want to pay -- and just moving on from that, this
12 is what I know. When you sit down with the community
13 and you say, we can't drink our water, we're paying \$35
14 a month for our tap water, we can't drink it, and your
15 choice is okay for \$100 a month you can have safe
16 drinking water. I mean try sitting down and telling
17 someone that. It really is a tough conversation.
18 And Horacio wanted me to let you know it's
19 not just San Jerardo because we, after all, have safe
20 drinking water, and he specifically mentioned the
21 communities of Tulare, San Lucas and Prunedale. And,
22 in fact, if you look at the gamma database over the
23 past year, 62 public supply wells in Central Coast are
24 over the nitrate standard. And so this is what Horacio
25 told me in a very short form of a text. It makes for a

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1 shorter presentation. But, basically, they support the
2 Staff. This slide is a little out of order. That's
3 what happens when you do think at 5:00 in the morning.
4 Basically, the Staff has told you the health threats.
5 There are a lot of serious health effects in the
6 nitrates, and that's why we need to change it.
7 Now I understand that folks don't want to
8 talk about the report that was released yesterday and
9 that's the good and the bad news is that we don't have
10 to, because there are plenty of reports over many
11 decades showing that agriculture impacts groundwater,
12 and so I'm referring you one that was published in
13 1989, by the Health Department of Gunenad identified
14 several problems areas for nitrates on the Central
15 Coast that showed that 48 percent of all monitored
16 wells in the unconfined ocifers of the Salinas Valley
17 exceed the nitrate NCL and that the 154 wells in
18 Prunedale, 27 percent exceeded the NCLs. So this is
19 nothing new and one difficulty with this is there was
20 some recommendations in 1989, and they didn't go
21 anywhere. All these recommendations for voluntary
22 BMPs, and as far as I know, if anything happened, we
23 didn't know about since they were voluntary.
24 The Board chose to adopt the waiver in 2004,
25 with no groundwater, and of course the Central Valley

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1 doesn't require any groundwater monitoring at this
2 point.
3 So now it's now 2012. So you adopted a
4 five-year waiver in 2004 that didn't cover
5 groundwater. Now you've extended it for three more
6 years. So you've had eight years in which you've had
7 the opportunity to at least collect information, and it
8 hasn't happened.
9 So now, if you start today, it's going to
10 take you five years to get it. So while I'm not
11 thrilled with the proposal, I just think you have to
12 start somewhere. And the fact that we've figured
13 another way to push it off, it just isn't in the best
14 interest of the communities in the Central Coast. Just
15 get more information. The Monterey County
16 Environmental Health Department 2001, 2002 sampling
17 found eight water systems over the limit of salt water,
18 16 percent of the wells tested and, you know, a lot of
19 these exceedances are marked water systems, so Morro
20 Bay, Salinas, Santa Maria, and so they have the ability
21 to treat their water, so it's an expense, not
22 necessarily a health issue. And so if you look at this
23 you're looking at small systems with nitrate
24 exceedances and you can pretty much see how serious the
25 problem is. If you go down the scale those are higher

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1 and higher nitrate concentrations. So the first one,
2 only the first bar, is under the legal limit. All the
3 other communities, if you go to the right they aren't.
4 So, basically what we're asking is take action now.
5 Some of the things we like about the proposal, just
6 pulling out a few items, honestly I'm not absolutely
7 certain I can pull them out of the right order because
8 there are so many now I'm having a hard time keeping
9 track of them, but basically, you have finding that I
10 agree with that fertilizer from irrigated agriculture
11 is the largest primary source of nitrate pollution in
12 the Central Coast. Existing and potential water
13 quality impairment takes on added significance and
14 urgency, my emphasis added it impacts the public
15 health. More information on public health, but there
16 are a lot of health defects that have been uncovered
17 through research.
18 Something that we think is very important is
19 the protection of private wells, because significant
20 populations along the Central Coast are relying on
21 private wells, and there is virtually no regulation on
22 them, so those people don't know their problems, and
23 that shallow groundwater is susceptible to
24 contamination.
25 And one of the things we like about the

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1 Order, where unfortunately once more I differ from
2 tests, is the idea of having a replacement water charge
3 inside the Order. It just makes things cleaner and
4 easier and you have less process to go through because,
5 you know, there's going to be a lot. And for all I
6 know, I don't understand how difficult it is going to
7 be to implement that requirement, but having it in
8 there, gives you a chance to address the most trivial
9 issues.
10 Groundwater monitoring is another big issue,
11 and one I have already stated. We really need to start
12 getting data, particularly on Channel ocifer, which is
13 one of the -- which we would think would be the more
14 vulnerable area, and also an area that would be more
15 likely to show changes over time. We strongly agree
16 with the proposal that over the first year every --
17 every farm is going to be testing at the irrigation
18 well, and this will be history breaking.
19 And I understand that one of your experts
20 told you that that wasn't going to be useful data, but
21 I have to tell you that no data isn't very useful,
22 either.
23 So we have concerns just like the Ag folks
24 do. We're concerned that relegating our requirement
25 for Nutrient Management Plan to Tier 3, may not be

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1 sufficient. We're concerned -- we think that all
2 fertilizer applications should be monitored. We think
3 there should be a requirement that you report
4 fertilizer application, just like you report pesticide
5 application. That would allow the Board to focus their
6 enforcement efforts because, frankly, it's -- you know,
7 I know there's a lot of difficult things about nitrate
8 contamination, but, you know, simple math is simple
9 math. If you're applying a lot of fertilizer, there is
10 more likely to be leaching.
11 Also, the Board says only about 100
12 operations would -- as currently applied under Tier 3,
13 and that number could go down under -- if you had
14 different cooperative arrangements, developed a
15 sustainability plan. There's limited pesticide
16 requirements and enforcements, and I'm not there on the
17 reinforcement program. But having said all that,
18 inaction is worse, and the longer you wait, the more
19 problems you'll have.
20 And the Human Rights for Water says that
21 every person has a right to a reasonable supply of
22 water for their personal and consumable uses.
23 And I just have to say the silver lining of
24 your not acting on this program is that I'll get to
25 know a lot more community members, because,

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1 unfortunately, we know that the drinking water is going
2 to get worse, whatever you do. If you don't take
3 action, it's going to get worse longer. You're going
4 to have more problems, you going to have more
5 communities, and we are going to get more sick people.
6 So maybe -- if that's what it takes, that's what it
7 takes, but I hope that we don't have to do that. What
8 I hope is that you'll adopt something today, and we can
9 start moving towards implementation, talk about
10 adaptive management, and we can start thinking of still
11 moving forward, because we can't just go from here. I
12 did want to -- I'm not sure what my time is. I want to
13 quickly --

14 **MR. JEFFRIES:** How about 11 minutes.

15 **MS. LOPEZ:** I'm doing my best. I hope I didn't
16 reach high enough and I talk a little too fast, but
17 don't tell Horacio.

18 I've had a chance and my attorney had a
19 chance to scan the Ag Alternative and there -- I have a
20 few comments on it, but in general, the important thing
21 to remember is this: The idea behind a third-party
22 system, which is something that they are currently
23 using and also considering for the long-term for the
24 Central Valley, is you don't want them to hide. You
25 don't use them as a barrier between enforcement and

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1 individual grower. They should be a means to assist a
2 grower in complying with the Order, and I think the
3 difficulty that I continue to have with the Ag Proposal
4 is that it reduces monitoring requirements, it reduces
5 reporting requirements, so we'll have less
6 understanding of what's going on.

7 Delays in implementation of groundwater
8 monitoring, so you're not going to get that first list
9 of things in five years, and I think I had one other --
10 oh, yeah, a little bit of tape, then the other -- then
11 I have a specific issue with -- so under the idea of
12 meeting Water Quality Objectives and the idea of doing
13 that in 8 or 16 years, I just have a little legal
14 finding that Rose wrote up, and if you'll forgive me,
15 it says, An unnecessarily prolonged time schedule for
16 compliance effectively constitutes the de facto change
17 in water quality standards. If that interim period
18 extends beyond what is reasonable and necessary, this
19 effectively authorizes ongoing violation of Water
20 Quality Objectives. The clear force of such a program
21 is to alter the Water Quality Standards in this
22 region."

23 This is an unpublished judgment.

24 At the lower bound, the EPA as interpreted
25 three years as a reasonable compliance period. At the

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1 upper bound, the Central Valley Regional Water Quality
2 Control Board has interpreted ten years as a reasonable
3 compliance period.

4 These terms are counted from the date that a
5 water quality standard is adopted; however, not from
6 the commencement date of a program implementing those
7 standards, such as the IRWMP. Thus, for long-standing
8 Water Quality Objectives, such as that of nitrate, even
9 with a ten -- even a ten-year -- even with ten years
10 compliance period, it should probably be immediate, and
11 I don't think I have this written out for you, because
12 I didn't know you'd have to have it.

13 If you have any questions about my
14 presentation, I'm open for questions or we can move on
15 to the next.

16 **MR. YOUNG:** Mr. Jeffries?

17 **MR. JEFFRIES:** I agree with you about the
18 San Jerardo issues and problems that they've had out
19 there and, of course, I noticed Camp McClellan built
20 back in the '40s for World War II, and historically
21 they have had water problems there throughout.

22 You mentioned Prunedale in your slides
23 there. Are you inferring that the nitrate problem in
24 Prunedale is from chemical fertilizers or is it from
25 nitrates from septic tanks in the Prunedale area?

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1 **MS. LOPEZ:** As I think I told you earlier, I'm a
2 carpetbagger, so I can't tell you specific information
3 about a specific community. I will say it was a
4 community that was specifically listed as being --
5 having problems for nitrates in 1989 nitrate report.
6 It continues to be in violation of the nitrate
7 standards. I notice they have a well over the NCL on
8 the most recent report I read.

9 **MR. JEFFRIES:** Most of the wells in Prunedale are
10 not meeting the standards, but most of it's to do with
11 septic tanks in that specific area.

12 **MS. LOPEZ:** Well, you can say that, and I can't
13 prove you wrong with this specific answers, and I'm
14 sure, in some cases, that is the case. However,
15 overwhelmingly, the problem is due to agriculture, and
16 I think the idea that you keep saying it's septic is
17 disingenuous, and I think that we have septic
18 regulations coming down. I wish they were stronger,
19 but we are going to have septic regulations. And I
20 think what we need to do is not -- is not say we're not
21 going to do anything, because they have a problem. I
22 think we have to make everything work.

23 **MR. JEFFRIES:** I wasn't questioning whether it
24 should work or not. I'm just trying to clarify what
25 you were proposing, and to clarify what type of

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1 nitrates contamination was apt to occur.
2 **MS. LOPEZ:** And if you think that, I could
3 probably find out if someone has done an analysis, if
4 they thought I suspected anything.
5 **MR. JEFFRIES:** Yeah, I'm already counting water
6 resources agencies.
7 **MS. LOPEZ:** I'm not sure that I contributed to
8 that, though.
9 **MR. YOUNG:** Okay. Any other -- more questions?
10 Okay. Thank you very much for your
11 comments.
12 **MR. YOUNG:** I think I've been handed another card
13 to speak out of order. Robert Johnson.
14 **MR. JOHNSON:** Thank you Chair Young and Board
15 members, my name is Rob Johnson, Assistant
16 General Manager with Monterey County Resource Agency
17 so to answer the question of a good deal of data has
18 been collected in Prunedale, has you know from the
19 environmental health has been from septic, at least in
20 that area. That data was also included along with some
21 other studies that was released yesterday.
22 **THE REPORTER:** Can you speak up a little, please.
23 **MR. JOHNSON:** Sure. I'm trying to move this
24 close.
25 **THE REPORTER:** Okay.

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1 **MR. YOUNG:** The clock is stopped, I just wanted to
2 let you know you have two minutes.
3 **MR. JOHNSON:** No problem. Two minutes is fine.
4 Your Board and our agency have similar mission
5 statements. Both focus on preserving water resources
6 for future and present generations our agency is a bit
7 different, though, we're not regulatory however our
8 strength is working with the community, ag and urban to
9 find solutions. I understand nitrate and groundwater
10 is an issue. Nitrate take a long time to show up in
11 the water systems, so what we're seeing now could be
12 the result of something in the water system for many
13 decades I agree with Mr. Thomas' slide that solutions
14 are available the agency has done a lot of work with
15 nitrates over the years and basically when I think
16 about this Ag Order I think about the three r's,
17 reading, writing, arithmetic. The three r's here is to
18 rely. To rely on good unbiased signs be wary of gross
19 overgeneralizations that come from comparing and using
20 data that may not be apples to apples, if you will.
21 Also be careful not to add more to this order than you
22 really should have. Or that can impinge on routine
23 flood control activities, for example. So the first is
24 to rely.
25 The second is to remember. Remember what has

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1 gone on in the past related to nitrate information and
2 the third, I'll rap it up, is to recognize. Recognize
3 the strength, power and value of collaboration. I'll
4 just stop there.
5 Thank you very much.
6 **MR. YOUNG:** Any questions? Thank you for your
7 time.
8 We're going to have a break for ten minutes.
9 (Brief recess.)
10 **MR. YOUNG:** Mr. Shimek, you're up next.
11 **MR. SHIMEK:** All right.
12 My name is Steve Shimek, S-h-i-m-e-k. And
13 I'm with Monterey Coast Keeper and the Otter Project,
14 and I'm also up here with several other environmental
15 groups that I'm working together with.
16 Before I kind of begin and start rolling into
17 the slides, I want to address that issue of, you know,
18 gosh, why couldn't we all come together like 2004 and
19 sing Kumbaya?
20 And, you know, I think the reason for that is
21 because that group, that was the first Waiver, and I
22 have knowledge of this because Kaitlin Gafney's
23 probably my best friend in the whole wide world, and
24 she was on that group, and one of things that she
25 mentioned was we put things aside. We deliberately

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1 said, you know, this is too difficult. We're gonna set
2 it aside. It's easy to sing Kumbaya if you set the
3 hardest issues aside. And we've decided to take those
4 issues up in this Board. So that's a little
5 background.
6 So, first of all, let's see. Let me clear
7 up -- what's this? You've seen many of these slides
8 before. I'm not a Restorationist, as some people have
9 said, you know, wanting to go in the way back machine
10 and get back here, but I do want to say that this is
11 the Lower Salinas River many years ago, water, riparian
12 vegetation, and fish.
13 **MR. JEFFRIES:** That was me, fishing.
14 **MR. SHIMEK:** I just turned 60, Russ, so I'm right
15 up there.
16 **MR. JEFFRIES:** I'm a couple days ahead of you.
17 **MR. SHIMEK:** And here's some of the water that we
18 have today. It is bad. It's really bad. And the
19 practices that we have out there today, some of them
20 are just atrocious. Some of them are really good, but
21 some of them are really bad.
22 This is runoff from, you know, into a ditch
23 and the water is just gone, you know, I mean, it's got
24 a ton of nitrate in it, it's blooming, and we're just
25 not respecting the range of beneficial uses that we

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1 once respected for water.
2 And I think, that has led us to the problem
3 that we have today. It was in many of the agricultural
4 areas, the only beneficial use that has been respected
5 for water has been use for agriculture. And I think
6 that part of the push back right now is that many of
7 the groups that I'm talking to, are seeing that there
8 are other beneficial uses, habitat, recreation,
9 drinking water. Those are values that are important,
10 and those are values this Board protects.
11 We also have problems with sedimentation.
12 We've heard some stuff about, oh, your numbers as far
13 as stormwater are really bad, and you've got to do
14 something different. You've got to do something.
15 You've got it do something, because we've got serious
16 sedimentation problems that are flowing into our rivers
17 and streams, clogging them, choking them, making them
18 unusable for other beneficial uses. We haven't valued
19 our riparian and wetland habitats. This is Winds River
20 Channel. This was done -- I don't know if this was
21 done with or without a permit. I was told it was done
22 with a permit, but, you know, there's people that say,
23 defer to the other agencies. Well, this was apparently
24 a permitted bulldozing of a river channel. Our water
25 is suffering because of it. This is that same

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1 statewide report that was referred to earlier and,
2 Mr. Johnston, I do believe that it is skewed toward the
3 problem areas. I don't believe that it's a sampling of
4 just the problem areas, though. Big Sur is part of the
5 sample, Carmel, many rivers that are clean.
6 In other words, it's a snapshot with a little
7 bit of extra emphasis on the problem areas, but when
8 you look at this, 22 percent of our waters are highly
9 toxic. 22 percent of those samples. Many of those
10 sites are toxic every single time that they are
11 sampled.
12 Mr. Los Huertos said, well, you know, you
13 can -- the water quality will change over time. We're
14 talking places that are sampled and every single time,
15 they are toxic. It doesn't get much more cut and dried
16 than that, I agree with Ms. Cleary when she says, well,
17 the alternative is that we have no deal.
18 This is, again, you've seen this. I think,
19 Karen Worcester, actually put this up. This is
20 toxicity in the Lower Salinas. This is toxicity in the
21 Lower Santa Maria. I haven't seen many arrows pointing
22 up. It's getting worse. I don't see many arrows
23 pointing down. This is nitrate in the Lower Salinas
24 and this is nitrate in the Lower Santa Maria. We've
25 got problems.

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1 When we talked about the Tiering system, I
2 mean, I know, that this was wishful thinking, but my
3 thought was, you know, we've gone through all this kind
4 of machination to try to figure out who's in Tier 1,
5 who's in Tier 2, and who's in Tier 3. Let's just draw
6 a circle around the Lower Salinas and the Lower Santa
7 Maria and throw them all into Tier 3. That's our
8 problem area. We know it.
9 Frankly, that would be the most fair
10 approach, but we made some decisions through this
11 process whether it be to protect the small grower or
12 whatever that it led us to this Tiering structure,
13 which makes us rely on the larger operations. That was
14 a decision made long ago. We're living with it now.
15 Before now, the same people that agreed to that are now
16 calling it arbitrary. Yesterday, when the court came
17 out and it was a Harter report --
18 **MS. McCHESNEY:** Excuse me?
19 **MR. SHIMEK:** Yes.
20 **MS. McCHESNEY:** Are you reporting on a ruling of
21 the Harter report?
22 **MR. SHIMEK:** Mr. Barbeau's Harter report, and,
23 excuse me, but are you suggesting that this is not new
24 information?
25 **MS. McCHESNEY:** It's not.

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1 **MR. SHIMEK:** You actually said in the record that
2 if some of things that were in this report were based
3 upon the Los Huertos report, which wasn't in the record
4 at all.
5 **MS. McCHESNEY:** And the Los Huertos' oral comments
6 were in the February workshop, so it appears that
7 Mr. Shimek wants to discuss the report. And I don't
8 know how much you want to discuss it.
9 **MR. SHIMEK:** I think I have three or four slides.
10 **MR. YOUNG:** I prefer that you don't.
11 **MR. SHIMEK:** I guess I --
12 **MR. YOUNG:** So that's it. I mean, it's just best
13 that we avoid it.
14 **MR. SHIMEK:** So the most recent information you
15 don't want to allow into the record?
16 **MR. YOUNG:** It's not that. It's what is in the
17 record is in the records, so you just have to stick
18 with that.
19 **MR. SHIMEK:** One more sentence?
20 **MR. YOUNG:** Sure.
21 **MR. SHIMEK:** My one more sentence would be that,
22 to me, and I think what Mr. Jeffries was alluding to is
23 that the fact that the entire intent of public content
24 is to bring you, in essence, new information. What is
25 the point of having public comment, if -- I'm not

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1 bringing in --
2 **MR. YOUNG:** I would say, it's not to bring us new
3 information, it's to comment on what's in the record,
4 and what's been provided.
5 **MS. McCHESNEY:** Well, Mr. Young, what I had said
6 earlier, was that I agreed with Ms. Dunham the report
7 itself should not be in the record, because it was not
8 provided before the cutoff date, but there is also, in
9 the provision of the Water Code that governs this kind
10 of procedure, that parties can provide rebuttal
11 information and can provide, um, you know, information
12 to support their statements, so it kind of depends on
13 what Mr. Shimek wants to talk about, but he is not the
14 person to put it in the record. But there is, you
15 know, discussions about Mr. Farr, Congressman Farr, and
16 his report, and it seems reasonable to at least talk
17 about it a little bit, but I don't know how much you
18 want to talk about it.
19 **MR. YOUNG:** Where do you draw the line?
20 **MS. McCHESNEY:** Um --
21 **MR. YOUNG:** Maybe to the extent you're proposing
22 to show some slides that are actually from the report
23 would be actually introducing part of the report, so it
24 would be better to talk about the report without
25 showing pages from the report.

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1 **MR. SHIMEK:** I would be -- I'm looking to the
2 chair.
3 **MR. YOUNG:** I think that's reasonable.
4 **MR. SHIMEK:** Okay. Maybe, how are we going to do
5 this? Click through them? I'm asking for solutions.
6 **MS. McCHESNEY:** Yes, just click through them. My
7 suggestion is that we will make sure that the record
8 does not include those slides, as well, and you can say
9 whatever you want to say.
10 **MR. SHIMEK:** Okay.
11 **MR. YOUNG:** Do you really need them?
12 **MR. SHIMEK:** I think I need them to rebut some of
13 the things that have been said. In other words, some
14 things that have been said are things, such as, it's
15 not agriculture. That's the problem.
16 And some of the things that have been said is
17 that, you know, that the nitrate problem is the legacy
18 and it's not getting worse, that we don't have data,
19 you know, and some of the things said are that, you
20 know, that water systems, and things like that, and
21 there's been -- not clarity on which water systems and
22 stuff. And I think we can talk about the -- what I
23 want to talk about is the trends. I want to talk about
24 where it's coming from. I want to talk about the fact
25 that it is impacting many, many hundreds of thousands

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1 of people.
2 **MS. DUNHAM:** May I make a comment?
3 **MR. SHIMEK:** Sure.
4 **MS. DUNHAM:** Thank you.
5 Tess Dunham for the record. With respect to
6 our objection, I would contend that what, as Mr. Shimek
7 has just described, what he intends to discuss is new
8 evidence, and to me, that is a huge demarkation between
9 what we had done and what he is looking to put into the
10 record. And because this is new evidence, technical
11 information, and evidentiary, you know, being used in
12 the matter of evidence in order to rebut and that is
13 why we would have an objection to its inclusion even in
14 an oral format. This is a huge report. It's just been
15 released, and no one has had the opportunity to review
16 it in its entirety in order to actually rebut any of
17 the information in it.
18 Thank you.
19 **MS. McCHESNEY:** I just want to add if you will let
20 me read from the regulations that apply to this type of
21 proceeding.
22 **MR. YOUNG:** Go ahead.
23 **THE REPORTER:** Can you speak up a little bit?
24 **MS. McCHESNEY:** Sorry. Rebuttal testimony
25 generally --

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1 **MR. YOUNG:** What are you reading from?
2 **MS. McCHESNEY:** I'm reading from the State Board
3 Meeting Regulations that apply to adjudicative
4 proceedings at the Regional Water Quality Control
5 Board.
6 **MR. YOUNG:** Which number, which section number?
7 **McCHESNEY:** Section 684.4 (f).
8 **MR. YOUNG:** (f)?
9 **MS. McCHESNEY:** Yes.
10 "Rebuttal testimony generally will
11 not be required to be submitted in writing,
12 nor will rebuttal testimony and exhibits be
13 required to be submitted prior to the start
14 of the hearing."
15 So Mr. Shimek describes the purpose of his
16 wanting to talk about that as making a decision whether
17 that is a reasonable rebuttal.
18 **MR. YOUNG:** Well, I think rebuttal testimony, he
19 can come in, but still, I think, the details of the
20 report should not come in. I think, if you want to
21 draw a conclusion to the report to support your
22 position, I think that's fine and likewise, if you're
23 done, you have another five minutes of rebuttal time if
24 you're going to be able to do what you want to in
25 rebuttal, however you want to attack this report or use

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1 it. I don't know.
2 **MS. DUNHAM:** Okay.
3 **MR. YOUNG:** I'm just trying to call the balls and
4 strikes here. All right. It's not easy.
5 Okay. So the details I'd like to just leave
6 out, but if you want to draw or want to tell us about
7 the conclusion in the report to support your position,
8 I think that's fair game.
9 **MR. SHIMEK:** All right. Now I'm trying to force
10 through, I truly am.
11 **MR. YOUNG:** I don't want to see tables from the
12 report and that kind of evidence in detail, but if you
13 want to give us conclusions from the report that
14 support your rebuttal testimony, to counter what has
15 been said, okay.
16 **MR. SHIMEK:** Okay. I'll avert your eyes. I
17 don't -- I mean, how am I supposed to do it?
18 **MR. YOUNG:** Just go through it.
19 **MR. SHIMEK:** You want me to go through it?
20 **MR. YOUNG:** No. No.
21 **MR. SHIMEK:** I'm trying to figure out what --
22 **MS. McCHESNEY:** Now summarize your --
23 **MR. SHIMEK:** Okay. Thank you.
24 My summary of what I had hoped to show you
25 and illustrate to you was that nitrate pollution in

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1 groundwells and in wells, both drinking water wells and
2 in irrigation wells is widespread and supported by many
3 studies, including recent studies.
4 Um, the other thing that I want to suggest to
5 you is that there are -- there's information out there
6 about inputs and outputs. And that material, the
7 inputs, is by far the vast majority is agricultural
8 irrigated, not cattle not -- it's irrigated ag inputs.
9 There is information, both recent and old that shows
10 that agriculture is the problem when it comes to
11 nutrient loading into surface waters and into
12 groundwaters.
13 We have seen this slide. This slide is of
14 what's happening in our environment. In our
15 environment, there are animals that are dying, and they
16 are dying because nutrient-rich water is blooming in
17 fresh water systems, washing out to sea and killing
18 those animals. These are problems in our environment.
19 One of big changes that has happened within me, as a
20 result of this process, is a greater appreciation,
21 frankly, for the human impacts of this pollution.
22 This was a study that was done earlier, and
23 this study basically talked about -- and I have used
24 this slide before, and this has been in the record --
25 that what we've got is -- this is about the San Joaquin

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1 Valley, but the same information is essentially true,
2 and we all know it, for the Salinas and Santa Maria
3 Valleys.
4 People are getting hurt while you delay. The
5 environment is degrading while you delay. I truly
6 believe that. This a problem, and it's got to be
7 addressed.
8 I'll be quick through one more slide.
9 The Central Coast Regional Water Quality
10 Control Board sent us a letter back in 2008 and said,
11 "Here are the things that we want to do with this
12 Order." And it was a -- and I just want -- I won't
13 read it, I want everyone to read it here: And it is my
14 belief that we can all stand back and we can, kind of,
15 salute the flag and say that these are all good things
16 and yet when I was part of the panel discuss, just last
17 week, I think it was, an agricultural representative
18 said, "These are the things that got us mad." This is
19 apple pie. This is what you are sworn to protect:
20 Aquatic habitats, toxicity, nutrients, people's
21 health. This is important stuff. This is what we
22 should be about. But I guess, we can't agree on this.
23 While Congressman Farr's comments -- he stood up and
24 talked about how important this it, and while I respect
25 his comments and take them to heart, this process is

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1 happening under Porter-Cologne. It's not happening
2 under the Clean Water Act. And he's just another guy,
3 once it turns into this process. And I know he's not,
4 but he should be. This is not a Federal process. This
5 is what we should be focusing on.
6 I've also shown this before. This is in a
7 staff report This was September. And this, basically
8 says, so in other words, if you stand back and you say,
9 okay, that previous slide was apple pie, then the only
10 conclusion that you could come to is if the only
11 proposals that serve up that apple pie are the
12 environmental proposal that I was a part of, and Staff
13 Proposal. Those the only ones that do. The other
14 proposals do not.
15 There was an opinion, I assume Frances wrote
16 it. I'm not sure, but that was in the Staff report of
17 which was a legal analysis of the Ag Alternative and,
18 basically, it says that it's not legal for a couple of
19 different reasons. One reason was it creates disparity
20 in group and in equities. The other reason that it,
21 basically, says is because it doesn't comply with Water
22 Code, which was one of the things that we are
23 talking -- that we were discussing earlier.
24 Monitoring is required, and monitoring must
25 be reported. It says that in Code. Ms. Dunham left

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1 that half of the sentence out. It also says that
2 monitoring must be appropriate, and I'm using plain
3 language here, it must be appropriate to actually
4 assign, you know, who's responsible. It does talk
5 about cooperative monitoring, but it addresses
6 cooperative monitoring in a sense that it still must be
7 scaled in a way that you can assign who is the
8 problem. But she left that out, that's important
9 stuff.

10 Many growers -- Bob Horn has become a good
11 friend of mine -- and many growers are committed to
12 good water quality and he's one of them, but Farmers
13 for Water Quality is doing a number of things that I
14 think is important.

15 First of all, they have actually said that
16 their strategy -- some of them have actually said that
17 their strategy is to get the 2004 Order back. I
18 maintain, yes. And on their websites, it actually says
19 their petition and ask for a stay. It says that.

20 So my point being, if the end game here is to
21 go back to 2004, how are you going to get the good
22 ideas of Marc Los Huertos and Ross Porter? There will
23 be no incentive for those ideas under the 2004 Order.

24 If we have good projects stripped out of the
25 frame of that, you know, thing that says, okay, you're

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1 not going to have to report, I think we'll have
2 success. That is encapsulated in the current Order.
3 It allows for these projects to come forward, and be
4 proposed, be evaluated, and be approved. It's in
5 there. I want Ross Port's wetlands. Frankly, I want
6 Mr. Los Huertos' to have some successful projects.
7 They need to be monitored. They need to be written
8 down. They need to be properly scaled. They need to
9 be properly submitted to. But I want those projects --
10 the Staff Proposal allows those projects. The two most
11 important letters that have been submitted so far, in
12 my opinion, are the Monterey City letter, which
13 basically says, why in the heck should we do stuff
14 if -- stormwater stuff, when Ag is getting a free
15 pass? I think that's an important question, and I hear
16 that from ASPS people as well.

17 It makes it impossible for you to govern and
18 regulate if you do not regulate the biggest
19 discharger.

20 The second most important letter, I think, is
21 the GPR letter, not the GPR -- The California
22 Department of Public Health where they said, they think
23 that this is good idea. They think the problem is
24 serious. They think you need to go ahead and pass this
25 Order.

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1 So you have a municipality that's standing
2 back and saying, why are you picking on us when you're
3 giving somebody else a free pass? And that letter is
4 in my slides, so you can read it. And you've got
5 California Department of Public Health saying the
6 problem is serious, and you need to go ahead.

7 The environment is suffering, people are
8 at-risk, and you need to pass this Order. You need to
9 pass it at this meeting. I just -- I can't stress that
10 enough. I've got a ton of passion for this, but this
11 has gone on long enough. If you think that between now
12 and September, the political system, it's going to get
13 easier for you to pass something in September, you're
14 crazy. I have been called in to departments and
15 agencies that I've never been called in before to talk
16 about this. It's going to get harder in September.
17 This is your moment. The time is now. The Staff
18 Proposal has been watered down enough. The Staff
19 Proposal allows Mr. Los Huertos and Mr. Clark to do
20 their projects. Their projects are good. They can be
21 allowed in the Staff Proposal. Let's move ahead.
22 Let's start protecting the environment. Let's start
23 protecting people.

24 Does anyone have any questions?
25 **MR. YOUNG:** Mr. Delgado and then Mr. Johnston.

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1 **MR. DELGADO:** Steve. That's you, Steve.
2 The point on the monitoring, you said
3 monitoring has to be recorded, and it has to be
4 reported, and it has to be appropriate to assign who is
5 responsible. And is that specified in the Water Code
6 sections that, or in the MPS Policy that it has to be
7 reported to an individual basis?

8 **MR. SHIMEK:** No. So, first of all, I'm not a
9 lawyer, Mr. Delgado, and I think Mr. Ali comes up and
10 speaks in a few minutes, and will cover this directly,
11 but I read the letterhead, and at least the way I read
12 it, is it says that "Water Quality Monitoring results
13 will be recorded." And I think that's an important
14 distinction. And I just take it as plain face.

15 The second thing is that I think that it does
16 say, and again I'm offering plain English kind of
17 reading of, and the way I read it, it basically says
18 that, yes, third-party monitoring is appropriate, and
19 that's how they got the third-party monitoring. Water
20 Quality Preservation Inc., is a third party. They did
21 the monitoring program and they reported the results to
22 the public and the Regional Board. And it's -- and I
23 think it's that transparency that leads to
24 accountability. It's my belief that the only way that
25 what Mr. Clark and what Mr. Los Huertos wants to do,

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1 what they want to do, the only way they get to do it is
2 if there's the back stop of good regulation.
3 Now, the point of, is there a way around
4 individual reporting? I believe that if a project
5 comes forward, and let's just say it's an engineered
6 wetland, because that's easy to think of.
7 Let's just say an engineered wetland comes
8 forward and says, we are going to take care of the
9 discharge of these eight farms. And so you've
10 identified the eight farms, and those people have
11 signed on, I think you can water quality monitoring
12 that moves off the edge of the farm and becomes
13 ethicacy of the project.
14 You still have accountability because those
15 eight farms, you know, have signed on the dotted line.
16 You're still doing monitoring that's measuring how well
17 they're performing. That's my solution to moving off
18 of the farm.
19 **MR. DELGADO:** And in that example the monitoring
20 would be above, inside, and below the wetland
21 treatment?
22 **MR. SHIMEK:** You know, I think inside is so -- I
23 think above and below. I don't know about inside.
24 **MR. DELGADO:** Okay.
25 **MR. YOUNG:** Mr. Johnston.

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1 **MR. JOHNSTON:** I was actually curious about what
2 you were saying about monitoring, too. And were you
3 applying that groundwater monitoring, as well? The
4 groundwater monitoring need to be reported it needs to
5 be reportee to individual operations?
6 **MR. SHIMEK:** I think that there's additional --
7 so, again, I'm going to throw in the caveat again, that
8 I'm not a lawyer. But, I think, that there is
9 additional law on water quality monitoring, basically,
10 the location of the well cannot be reported and so --
11 and I agree that the individual people, um, that could
12 lead to the location, so in other words, as I
13 understand it, what that's moved to is a
14 quarter-by-quarter mile square, and you have to refer
15 to it within the square somehow. That's the way it's
16 been interpreted so there is additional law about that.
17 **MR. JOHNSTON:** As a practical matter, not a legal
18 matter, one of the things I've been thinking about is
19 aggregated groundwater monitoring, as long as it's what
20 we need -- we, the Regional Water Quality Control
21 Board, from groundwater monitoring, is to really
22 understand what's going on down there and knowing the
23 results from underneath an individual farmer's farm
24 doesn't necessarily assign accountability, because that
25 could have be from a lot of different sources because

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1 that stuff moves sideways, when we're doing
2 groundwater.
3 **MR. SHIMEK:** I agree.
4 **MR. JOHNSTON:** So one of the concepts that I was
5 thinking about and talking about with Staff is
6 aggregated groundwater monitoring, as not necessarily
7 every single well, not necessarily every single farmer,
8 as long as it gives us a fine enough detail,
9 geographic, and it's really a three-dimensional
10 geographic detail, to understand what's going on down
11 there in terms of nitrates and sets some baselines.
12 Do you see a problem with that?
13 **MR. SHIMEK:** Not in the way you've described it.
14 There are cautions that I would have.
15 One caution is that I don't think that all
16 groundwater is old groundwater. I think some of it
17 responds -- some groundwater responds very quickly.
18 The San Jerardo experience taught us that --
19 San Jerardo, as I've heard it called, is when the field
20 went fallow above it and this could have been about the
21 well, you know, back flows in the well or something.
22 But when the field went fallow, the water quality
23 improved. It was just that fast. So I think that as
24 an approach, I agree with you. I think that there are
25 instances where you're going to want to know the

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1 ethicacy of what's going on with them.
2 **MR. JOHNSTON:** I just have to say, it could well
3 have been at San Jerardo that it was a field four farms
4 over going fallow that did that, too. I mean, I
5 understand there was a time connection to the fallow
6 season.
7 **MR. YOUNG:** Okay.
8 **MR. JOHNSTON:** Done.
9 **MR. SHIMEK:** So Water Code section?
10 **MR. YOUNG:** Okay. You're done.
11 **MR. SHIMEK:** Unless there are any other questions
12 for me.
13 **MR. YOUNG:** There aren't any.
14 **MR. DELGADO:** You want to ask him about the Water
15 Code?
16 **MR. YOUNG:** I'm going to call him next. Now let
17 him give us the Water Code presentation, okay.
18 **MR. DELGADO:** Thank you.
19 **MR. YOUNG:** I'm trying to retain one set. What
20 good would it do you now?
21 All right. So that concludes the
22 presentations that asked for additional time, with
23 people mixed in who had to leave early.
24 What we are going to do now is -- I think, I
25 have about 50 cards at two minutes each. That's, you

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1 know, 100 minutes. We figured two hours to complete
2 this portion. We're going to probably end tonight at
3 that point. It's just too much, I think, for us to sit
4 up here and be able to have staff take some time to
5 review Ms. Dunham's presentation, which they're going
6 to want to do, so we could have a discussion about it.
7 I would propose to you, we continue this
8 first thing in the morning and we would go right to the
9 Staff's presentation and recommendations on what they
10 heard. Ms. Dunham will have her five-minute rebuttal.
11 Then the Board --
12 **MS. McCHESNEY:** She has to rebuttal first, and
13 then Staff's recommendations.
14 **MS. DUNHAM:** Staff always gets the last word,
15 Chair.
16 **MR. JEFFRIES:** Get used to it.
17 **MR. YOUNG:** Okay.
18 **MS. DUNHAM:** But I like your process, Sir.
19 **MR. YOUNG:** All right. So that's what we are
20 going to do.
21 Everyone that's still here is going to speak,
22 unless someone is are going to leave at the break. And
23 then just going to have dinner and that's it for
24 tonight.
25 So we will now proceed with our guest

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1 speakers.
2 **MR. JEFFRIES:** I have a request here.
3 **MR. YOUNG:** Yes?
4 **MS. WHITAKER:** I have to leave for another meeting
5 So if you wouldn't mind pulling my card out of there.
6 **MR. YOUNG:** Okay. And your name?
7 **MS. WHITAKER:** Gina Whitaker.
8 **MR. YOUNG:** Okay.
9 **MR. JOHNSTON:** Mr. Chairman --
10 **MR. YOUNG:** Yes?
11 **MR. JOHNSTON:** -- you may want to state where the
12 meeting is going to be tomorrow.
13 **MR. YOUNG:** That's a great question.
14 **MR. JOHNSTON:** It's Hector Hernandez' question.
15 I can't take credit.
16 And to clarify I was suggesting that we take
17 care of our action items tomorrow first, because we
18 will have people showing up for that, as a noticed
19 meeting. And then the Board would take up those issues
20 at our office conference room, which is 895 Aerovista,
21 the address is in the Agenda, but notice for
22 continuation for tomorrow's meeting, regular meeting,
23 starts at 8:30. Like I said, we'll take care of the
24 action items tomorrow first.
25 Do we have an approximate sense, then, when

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1 the Ag Folks can expect to be back? I don't
2 particularly want to get people here at 9:00, if we are
3 not going to get to them until 1:00 in the afternoon.
4 **MR. KEELING:** Right. Um, I'm the optimist. I'd
5 say there wouldn't be need to show up, say, until
6 10:30.
7 **MR. YOUNG:** Yeah. It's a guess. And if you --
8 **MR. KEELING:** Show up at 10:30, and we may have
9 already started.
10 **MR. YOUNG:** It's just a guess. That's --
11 **MR. KEELING:** At least 10:00.
12 **MR. YOUNG:** It's a reasonable guess.
13 **MR. KEELING:** And the hope, Mr. Chairman, again,
14 would be that we conclude the public comments tonight.
15 **MR. YOUNG:** That's what we're going to do.
16 **MR. BRIGGS:** All right.
17 **MR. YOUNG:** All right.
18 Mr. Schmidt?
19 **MR. SCHMIDT:** It makes a larger difference whether
20 you take this up early tomorrow morning and we book a
21 hotel room, or you take it up tomorrow afternoon and we
22 go home and come back. Because while I truly enjoy
23 San Luis Obispo, and it's a wonderful tourist town, I
24 didn't come prepared to enjoy the sites while you take
25 up your action, if you're not going to get to this

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1 until 4:00 in the afternoon, tomorrow.
2 **MR. YOUNG:** We are not going to start this at
3 4:00 o'clock tomorrow. I'll tell you that.
4 **MS. McCHESNEY:** Well, you could pick a time
5 certain that it wouldn't start before, you know.
6 **MR. BRIGGS:** Not before 10:00.
7 **MR. YOUNG:** Not before 10:00, but the action item
8 will take around --
9 **MR. KEELING:** Actually, Roger is in a better
10 position to answer that than me.
11 **MR. BRIGGS:** Initially, I said 10:30, to make sure
12 we don't start before. I would say 10:00, then. We
13 wouldn't start before then. But I think 10:30 is more
14 realistic.
15 **MR. YOUNG:** Okay.
16 10:30.
17 **MS. McCHESNEY:** We can say we won't begin before
18 10:30.
19 **MR. YOUNG:** Okay. All right. Come on up,
20 Ms. Whitaker. And then Nathan Ali.
21 Is Mr. Merkley still here? He'll be next,
22 and then Kay Mercer.
23 Go ahead. Gina Whitaker; right?
24 **MS. WHITAKER:** Yes. Thank you very much.
25 Pleasure to address the Board.

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1 My name is Gina Whitaker. I represent a
2 voice from the faith community Unitary Universalism, in
3 particular. I'm not a farmer. I'm not a regulator.
4 I'm -- but I believe the most important voice the
5 religious community can bring to this discussion is
6 that safe, affordable and accessible water is a basic
7 right for everyone.

8 Much of the population that will be affected
9 by your decision today is made up poor Latino and
10 immigrant agriculture workers. I'm not sure they're
11 represented here today.

12 Traditionally, these populations have been
13 marginalized in many ways, but their health is as
14 important as the health of any population in the
15 Central Coast or in the Central Valley.

16 As Unitarian Universalists it's our moral
17 imperative to support clean, safe water, as a basic
18 right for any community, regardless of its social or
19 economic status or ethnicity.

20 The responsibility to protect water safety
21 does not lie with health departments or
22 municipalities. It lies squarely on the shoulders of
23 this Board. This past weekend, I had the privilege of
24 attending a moving film about The Life and Work of
25 Aldo Leopold, American Conservationist.

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1 Dr. Leopold wrote about developing a land
2 ethic, living with the land, rather than merely on it.
3 In this dilemma, I believe we need to carefully examine
4 our land ethic, as that relates to our use and abuse of
5 our drinking water supplies.

6 Please do the right thing today for tomorrow
7 in voting for the most effective and protected way
8 possible and avoid further delays.

9 Thank you.

10 **MR. YOUNG:** Thank you for your comments.

11 Okay. Nathan Ali, Danny Merkley, Kay Mercer
12 Darlene Din.

13 **MR. ALI:** Thank you, Mr. Chair. I'm going to
14 scoot down a little bit.

15 My name is Nathan Ali -- thank you so much.
16 That will be better for my posture.

17 My name is Nathan Ali. I'm an attorney with
18 The Environmental Defense Center. I've been working on
19 this issue for quite some time, and looking for a
20 potential resolution tomorrow.

21 We're here for two reasons. The old Waiver
22 has expired. It did so almost three years ago. And as
23 your Staff and others have pointed out, the old Waiver
24 is no longer adequate to protect waterfall, and we need
25 to improve it. So with those two things in mind, I

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1 once again urge you to take some action tomorrow, to
2 vote, specifically, for the Staff Proposal, but at the
3 very least, please keep the ball moving forward.

4 One thing, I think, we can all agree on is we
5 want to improve water quality. One thing we haven't
6 agreed on, is all the talk we've done, in the last
7 three years, hasn't gone anywhere to directly improving
8 water quality, and it's time for the rubber to meet the
9 road.

10 That being said, as I mentioned in my
11 comments in February, once you make a decision, we're
12 very happy to look forward to the next Waiver. It's
13 three or four or five years down the road. We might as
14 well start getting working on it immediately and we
15 stand ready to do that. There are a lot of good ideas
16 in this room, a lot of good proposals that may have
17 some merit and we'd like to see them potentially moved
18 forward. We didn't want to spend the next six to nine
19 months talking about them, we want to do something
20 now.

21 That's really my message. I will very
22 briefly address the questions that were raised
23 earlier. I'll just quote the Water Code. What I
24 believe that Mr. Shimek was referring to earlier. That
25 first thing is simply that, I'm going to

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1 quote, "monitoring requirements shall be designed to
2 verify the adequacy and effectiveness of the Waiver
3 conditions" and that's what he was getting at.

4 Monitoring conditions must be such to actually verify.
5 And if I may take just one more second --

6 **MR. YOUNG:** One second. Tell us.

7 **MR. ALI:** -- to answer the previous question. So
8 we agree with counsel's analysis of the legality --
9 full legality of the Ag Proposal, but I think one of
10 our biggest sticking points is this, again, requirement
11 monitoring results shall be made available to the
12 public and it's the best scenario where you are
13 aggregating the margin results, and then reporting
14 them, that we feel runs into legal problems.

15 Monitoring the aggregate, as Mr. Johnson mentioned
16 earlier, might be a different scenario. But, in
17 specific, the idea of monitoring, collecting those
18 results, messing around with them, and then presenting
19 them as a whole, we believe does not follow the letter
20 of the law.

21 Thank you very much.

22 **MR. YOUNG:** Thank you.

23 Danny Merkley, Kay Mercer, Darlene Din and
24 Norm Groot.

25 **MR. JEFFRIES:** Before we go forward, can I have a

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1 point of clarification with counsel?
2 **MR. YOUNG:** Yes.
3 **MR. JEFFRIES:** The gentleman just mentioned that
4 the 2004 Order is expired. It has been continued. Is
5 that correct?
6 **MS. McCHESNEY:** Yes. The board continued --
7 renewed it for a certain period of time and the
8 Executive Officer renewed it and Mr. Ali and his
9 clients have filed a petition with the State Board of
10 Resources Control Board challenging the Executive
11 Officer's Extension of Waiver, so I think he's just
12 stating his legal opinion about that.
13 **MR. JEFFRIES:** Well, I didn't want to focus things
14 if the Order had expired.
15 **MS. McCHESNEY:** No. It's still in effect.
16 **MR. JEFFRIES:** Okay. Thank you.
17 **MR. YOUNG:** Okay. Mr. Merkley.
18 **MR. MERKLEY:** With the exception of -- oh, Danny
19 Merkley, California Farm Bureau.
20 With the exception of moustaches, I believe
21 less is more, so I will be extremely brief, and just
22 comment on the fact that all the Staff's time, all the
23 time that has been expended to get us to here is simply
24 a result of a thought process. Not necessarily any one
25 person's thought, but it is a thought process that has

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1 caused us all to bump around like a bunch of blind dogs
2 in a meat house. And this is why, every single day,
3 I'm -- in legislature, I'm hearing criticism and snide
4 remarks about the Regional Water Quality Control Board
5 and those legislators and legislative Staff, and that
6 concerns me.
7 Thank you.
8 **MR. YOUNG:** Thank you for your comments.
9 Kay Mercer, Darlene Din.
10 **MS. MERCER:** Before I begin, I had a request from
11 a member of the audience, if we can remove photos of
12 Mr. Shimek's presentation.
13 **MR. YOUNG:** I haven't looked at it in 20 minutes
14 until you mentioned that. Now I'm looking at it
15 again.
16 **MS. MERCER:** Sorry. Okay.
17 Hello, my name is Kay Mercer and I am
18 Kern Finance. I was reviewing past letters from the
19 past three years.
20 In my letter of April 10th, I identified 2
21 categories for program deficiencies. I found the
22 monitoring requirement in six areas of data
23 deficiencies with the proposed Draft Order.
24 Since then, Staff has addressed only one of
25 the program deficiencies, and that was to scale back

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1 the Tier requirements. Now, granted, scaling back on
2 the number of Tier 3 growers did reduce the acute
3 impact, but the number of the Tier 3 growers cannot be
4 verified, and there is considerable Staff discretion to
5 add more growers during the Tier.
6 Hence, my criticism stands. It is assumed
7 that the growers, with infinite practices, Marc
8 Los Huertos talked about how we don't have sufficient
9 practices.
10 Um, March 9th, 2011, I sent a letter to the
11 Board, basically, quantifying the positive things that
12 growers have done, and that was -- I used three files
13 of evidence to collaborate that information.
14 I also identified the 11 barriers to a
15 management practices, implementation, and development.
16 This information was considered to be credible enough
17 that it formed a basis for a good chapter that was
18 published by the American Chemical Society.
19 As you move forward, you may want to go back
20 to that and talk about, why are we having so much
21 difficulty matching management practices with our
22 problems?
23 The bottom line to my review was that in
24 spite of presentations, the State quarter input has not
25 necessarily been reflected in the changes in the

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1 Order.
2 So the last thing I want to say is what if
3 the waiver process was improperly implemented, the
4 point source approach fails to deliver, there's not
5 enough technical capacity, what then is the Board's
6 legacy? Please consider Marc De Los Huertos'
7 presentation and proposal, as you make your decision.
8 Thank you.
9 **MR. YOUNG:** Thank you.
10 Darlene Din and Norm Groot, and Kirk Schmidt,
11 Michael Marsh.
12 **MS. DIN:** Sorry, Good afternoon, Board members.
13 First of all, I'd like to open my comments
14 with, everyone deserves the right to an access of safe
15 and clean drinking water, and no one in agriculture has
16 ever made any other statement than that. Why the
17 coalition approach will meet water quality improvement,
18 from my point of view is there's been a lot of
19 discussion on on-farm monitoring, meaning water quality
20 improvements. And I just want to hit one point that
21 really hits to the heart of some of this challenge.
22 Farming is fluid, and we have multiple master
23 leases, and then we have subleasing, we flip and rotate
24 with berries and vegetables and some will be Tier 2,
25 some will be Tier 1 and some will be Tier 3 growers.

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1 Part of why Dr. Los Huertos' work is so
2 important, because it's an approach in which you'll
3 have print analysis, and you'll apply it to a systems
4 approach, where the Staff's approach while they were
5 dealing with issues, the Tiering system inherently is
6 flawed.

7 If you have a strawberry grower that's maybe
8 a Tier 2, and flips in with a vegetable grower the next
9 year that's 3, that has different, maybe you follow one
10 here, maybe you do another crop, had a Tier 1 in
11 there. Over a ten-year period, you may have one or two
12 years sporadically by two different operators of
13 monitoring. Explain to me why that data has value?
14 It's in a vacuum. It has no basis to cause and effect,
15 and actually do roots on the ground improvement.

16 The other issue I want you -- to let you know
17 I personally spent a lot of time with the environmental
18 community, in different aspects of conservation,
19 community and whatnot, and I think working in teams is
20 really helpful. I appreciate, I learned from them, I
21 appreciate work with labor.

22 I'm sorry that at this stage I learned that
23 one of my best allied partners advocate on the other
24 side, I can't sit at the table with, and that would be
25 helpful to make it happen. Make the legacy to improve,

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1 please consider the Marc Los Huertos recommendation.
2 And thank you all.

3 **MR. YOUNG:** Thank you, Ms. Din.
4 Norm Groot.

5 **MR. GROOT:** Good morning.
6 My name is Norm Groot, G-r-o-o-t. I'm the
7 Executive Director for Monterey County Farm Bureau, and
8 I think we all want the same thing, and we're all
9 trying to get to that point.

10 There are so many issues involved in this
11 Ag Order that remain in question, and I just want to
12 point a few of those.

13 There is conflicting data sets that
14 mischaracterize water quality, particularly in Salinas
15 Valley, in particularly the groundwater. There's
16 widely varying estimates as to costs, as to how farmers
17 will be impacted and how much it will cost them.

18 There's unachievable targets for compliance
19 not based on size or sound, or proven BMPs. There is
20 prescribed buffers that are interpreted as the only
21 option that Farmers will have, and operators that have
22 been the most proactive in the last ten years and have
23 improved water quality will be penalized the most,
24 simply because of their size, and they'll end up in
25 Tier 3.

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1 And, obviously, creativity is being stifled
2 through this process. The regulated community is here
3 telling you that this won't work, and set us up for
4 failure. We have a proposal that is widely supported
5 within our community and will achieve water quality
6 improvement. Instead of regulating water quality and
7 every ditch and retention on them, let's presume that
8 there's a larger picture here, that of watershed water
9 quality that could be achieved through growers
10 cooperatively working together to manage solutions,
11 individual monitoring and reporting and reporting does
12 not achieve cooperative solutions.

13 Please consider the Ag Alternative and
14 included in the agricultural Order so that -- with that
15 language, so that growers can have a choice in how they
16 manage their water quality improvements. Thank you.

17 **MR. YOUNG:** Thank you, Mr. Groot.
18 Kirk Schmidt.

19 **MR. SCHMIDT:** Thank you. I'm Kirk Schmidt,
20 S-c-h-m-i-d-t. I'm the director of the Central Coast
21 Water Quality Preservation -- Preservation, Inc.
22 That's the cooperative monitoring program on behalf of
23 the agriculture for the present waiver and the future
24 waiver, and we have been working with the Staff in
25 detail and repeatedly since 2005.

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1 Starting in August of last year, we started
2 working with Staff to see if we can get the adoption of
3 the MRP for the Cooperative Monitoring Program to be
4 inactive, so we could start that program this January.
5 If took us six months, between August and January, to
6 work out the details so we can get it started in time.

7 We have not commented on the scope of the present
8 Draft, but we have commented on monitoring issues and
9 you have a very difficult monitoring program envisioned
10 in Tier 2 and Tier 3. It's difficult to apply if you
11 have a 200-acre farm, you may have 20 10-acre plus,
12 each farm two and a half times per season, that's 50
13 plus. It's difficult to see how the farmers will have
14 time between now and October, which is when the Waiver
15 calls for the MRP, which is a monitoring program for
16 individual monitoring to be enacted.

17 If you adopt the Waiver now, the dilemma is
18 that no matter how farmers read this, they still have
19 to interact with Staff to come up with a monitoring
20 program that is consistent with what Staff envisions.
21 This means that they're asking for lots of
22 communication. This has been difficult during this
23 period of time because there's been an inability for
24 anyone to communicate, in writing, with Staff because
25 of the prohibition of writing about the Waiver,

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1 however, that also puts the farmers behind the curve as
2 far as the ability to develop a monitoring program that
3 could be in place in October. It's very important that
4 Staff and growers have an opportunity to consult with
5 each other on the scope of the Tier 2 and Tier 3
6 monitoring in time to get this rolled out so there is
7 certainty about what they're expected to do.
8 Thank you very much.
9 **MR. YOUNG:** Thank you for your comments.
10 Michael March.
11 **MR. JOHNSTON:** Can I ask a question, is everybody
12 getting two minutes now or do they --
13 **MR. YOUNG:** Yes. No, they're getting two minutes.
14 **MR. JOHNSTON:** Oh, okay. I had thought the early
15 people were getting two minutes and everybody else was
16 getting three.
17 **MR. YOUNG:** Not with the number of cards we ended
18 up with and those are people that had to leave.
19 **MR. JOHNSTON:** All right. You're the chair.
20 **MR. YOUNG:** Yes. Go ahead.
21 **MR. MARSH:** Hi. My name is Michael Marsh,
22 M-a-r-s-h. I'm directing attorney of California Rural
23 Legal Assistants in Salinas. We represent farm workers
24 and other low income people.
25 Most of clients earn between 12- to \$15,000 a

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1 year. They are in a very vulnerable, precarious
2 position in terms of their housing, in terms of their
3 employment, in terms of their educational
4 opportunities, and really, they're innocent victims in
5 this water battle. They're the people who have the
6 most at risk. They are the people that will suffer the
7 most because they have very, very limited options.
8 They can't afford bottled water. They can't afford
9 home filtration systems, water testing, and most of
10 them can't move anywhere unless it's to chase a crop
11 from one county to the next.
12 So those are the people who see this as a
13 very urgent issue. And I've sat here all day long.
14 This is the first time I have been a part of this
15 process. My organization can get a lot more involved
16 in this process. And I just don't hear the urgency in
17 people's voices and I really expected to hear a lot
18 more urgency. I think this is something that we have
19 to do and we have to do it now. And I urge the Board
20 to pass the proposal by the Staff.
21 And then just on a personal front, I live
22 very close to Upper Carr Lake. I run around it two or
23 three times a week. I run along with my boys on
24 Gabilan Creek and Navidad Creek, and it's very, very
25 hard for me, as a father, with a six- and

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1 eight-year-old to explain to them why they can't touch
2 the water. Don't go in it. Don't touch that. Don't
3 splash in it. And it's very difficult, and I look
4 forward to the day that I can let my boys play in those
5 two water bodies.
6 Thank you very much.
7 **MR. YOUNG:** Thank you, Mr. Marsh.
8 Amy Hill, Andy Caldwell, Lisa Bucher, Tom
9 MacPhearson.
10 **MS. HILL:** Hello. My name is Amy Petre Hill.
11 That's P-e-t-r-e, space, H-i-l-l. Thank you.
12 I appreciate the opportunity to speak with
13 you today. I'm on the Board of Trustees of the
14 Unitarian Universalists Legislative Ministry. We even
15 have a cool shirt.
16 We are a state-wide organization of Unitarian
17 Universalists congregations, bringing our voices to
18 public issues we feel strongly about and this is one
19 that our members particularly the Central Coast have
20 told us to fight. So I've driven down here to give
21 testimony on behalf of another Board member, who is a
22 pastor in Santa Barbara, who can't be here because of a
23 pastoral issue. She needed to do what she needed to
24 do. So I'm going to go ahead and read this, and then
25 I'm going to provide it to the secretary so they have

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1 this. This is from Reverend Julie Hamilton. She's a
2 minister at Santa Barbara Church, which has a very
3 large meeting congregation.
4 To the members of the Central Coast Water
5 Board. Water has been an important issue in the lives
6 of those of us on the Central Coast. Every so often,
7 we have the opportunity to take action in such a way
8 that insures future generations will continue to have
9 access to this precious resource that we all must
10 share.
11 Right now, there are people in our
12 communities that have no clean drinking water through
13 contamination of local wells from agricultural run-off,
14 particularly nitrates. There are people spending 10
15 percent of their income on safe water. The present
16 health risks are bad enough, but the situation will
17 only get worse unless some reasonable action is taken
18 quickly.
19 Soon you'll be deciding on whether or not to
20 require the monitoring and protecting of groundwater
21 quality in our communities. Currently, those who create
22 this pollution are not required to pay the costs.
23 Farmers do not have to monitor the levels of nitrates
24 in our run-off from their fields and if a well is found
25 to be contaminated the community members, often

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1 low-wage workers in the same fields that produce the
2 pollution are required to bear the brunt of the cost of
3 a new well --
4 **MR. YOUNG:** Ms. Hill --
5 **MS. HILL:** -- to the West --
6 **MR. YOUNG:** -- give us your conclusion --
7 **MS. HILL:** Sure.
8 **MR. YOUNG:** -- Sentence.
9 **MS. HILL:** As communities of faith, we want to be
10 able to purchase produce and not feel bad that other
11 people that are in our community are being harmed in
12 its production. Thank you.
13 **MR. YOUNG:** Thank you.
14 Andy Caldwell.
15 **MR. CALDWELL:** Chairman Young Caldwell is spelled,
16 C-a-l-d-w-e-l-l. I represent the Coalition of
17 Agriculture Business of Santa Barbara and San Luis
18 Obispo County. There are currently 1800 members who
19 probably employ about 60,000 people who represent most
20 of the farmers in their region as part of our
21 coalition.
22 I want to get back to the beginning. The
23 charges, the highest reasonable water quality, and
24 certainly, in the areas where people's health is being
25 threatened should be the priority of this Board. And

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1 it's hard for us, in the public, to understand if
2 hundreds of millions of dollars of expended grants
3 where that didn't go to those vulnerable populations in
4 terms of -- if your Staff knows what needs to be done,
5 how come they haven't been doing it for the last 10 to
6 15 years?
7 The question is to how to do this. The
8 question is how do you accomplish this. It's one thing
9 to promulgate. It's another thing to figure how to do
10 it. If it was easy, it would have been done already.
11 If it was easy, it would be being done all over the
12 State of California and you wouldn't be the first. The
13 question is what's reasonable. What's achievable and
14 how do we accomplish that. The Ag community has hired
15 an expert that's actually been doing this kind of work
16 and he was here to tell you, it's not easy, but we are
17 willing to try. But your Staff has pushed the Ag
18 community in different ways and closed the record.
19 When in reality, the community was trying to respond to
20 questions from your Board as to what we need more
21 detail and to provide the details, and just the record
22 is closed. Work with us. What is reasonable? What is
23 achievable? Focus on those areas that are the highest
24 threat first. Capture the rest later. Ask your Staff
25 how they can prove what they want is achievable. It's

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1 easier to talk.
2 Thank you.
3 **MR. YOUNG:** Thank you, Mr. Caldwell.
4 Lisa Lurie, Thomas Virsik, Marilee Hyman,
5 Richard Quandt.
6 **MS. LURIE:** Good afternoon. I'm Lisa Lurie.
7 That's L-u-r-i-e, with the Monterey Bay National Marine
8 Sanctuary. Sanctuary Staff appreciate the time and
9 energy that all parties have committed to solving the
10 challenge of improving water quality. We believe there
11 are examples in the proposed Order that allow for the
12 Regional Board and industry to work together.
13 Specifically, the Staff Proposal allows approved
14 third-party certification programs as a means for
15 demonstrating Tier 1 low-risk status. Additionally,
16 dischargers can comply with the Order by participating
17 in third-party groups approved by the Water Board. Ag
18 industry groups have proposed a similar coalition
19 approach using third-party audits to verify practice
20 implementation and effectiveness. We are pleased to
21 see flexibility in for a verification base, coalition
22 approach in the Staff Proposal as it offers a means of
23 resolving many issues.
24 We encourage the Board to provide clear
25 guidance, either within the Order, or through other

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1 means, as to the standards that such coalitions and
2 certification programs must achieve in order to be
3 approved. There are existing examples to draw from,
4 such as the SIP program, Protective Harvest Standards,
5 the Sustainability Index and Specialty Crops, and the
6 Fields to Ocean Program.
7 Both the Staff Proposal and the Ag proposed
8 coalition approach point towards a potential role for
9 third-party audit certification programs. We encourage
10 agreement to employ such programs and the Monterey Bay
11 National Marine Sanctuary stands ready to help in the
12 collaborative development of an Ag Water Quality
13 Certification Program as a tool to strengthen
14 accountability and demonstrating transparency in
15 demonstrating regulatory compliance.
16 The Staff Proposal provides an opportunity
17 for certification programs to incentivize water quality
18 improvement and Board innovation. Clear guidance to
19 define what constitutes an acceptable program will
20 provide the assurance that the Regional Board is
21 committed to a successful outcome.
22 This is critical for industry and interested
23 parties to move forward in confidence to develop a
24 meaningful certification program.
25 **MR. YOUNG:** Thank you for your comments.

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1 Thomas Virsik, Marilee Hyman, Richard Quandt.
2 **MR. VIRSIK:** Thomas Virsik, V-i-r-s-i-k.
3 **THE REPORTER:** I can't hear you. Can you speak
4 up?
5 **MR. VIRSIK:** Thomas Virsik, V-i-r -- is this
6 better?
7 **THE REPORTER:** Yes.
8 **MR. VIRSIK:** V-i-r-s-i-k, from the Law Office of
9 Patrick Maloney.
10 Chair and members of the Board and Staff, I'm
11 going to cut to the chase. It would be wrong for you
12 to ignore the report from UC Davis issued last night.
13 I'm going to give you two independent reasons and I'm
14 going to do it two minutes.
15 The first independent reason is on Page 11 of
16 that report. We submitted a letter on this, but I
17 understand you don't have it at this point because your
18 Staff needs to make a determination whether you're
19 allowed to look at it.
20 On Page 11, Dr. Harter, the author recites
21 the purpose of SBX2, and it includes a report for you
22 guys, for this purpose being quoted in our letter your
23 Board, by name, the other, it's a gift. The
24 legislator, the governor, is giving you a gift. It's
25 giving you a whole, separate analysis to use. You get

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1 to use your Staff, and Davis, so you could lose
2 credibility or you could take it.
3 The second reason because we -- this has come
4 up, you have every legal reason to accept this and I'll
5 give you a citation, Western States Petroleum
6 Association vs. The Superior Court 9CAL 4th 559. If
7 you'll look at the last page, there is two factors,
8 only two. Timeliness and diligent. I'm timely.
9 The report came out last night. I'm
10 diligent. I'm here, so the Court is going to make you
11 take a look at this or you could do it yourself, I have
12 about five seconds. It's a wonderful. Sorry to be so
13 short, but you gave me two minutes, I'll take them.
14 Thank you.
15 **MR. YOUNG:** Marilee Hyman.
16 **MS. HYMAN:** Honorable Board. I'm Marilee Hyman,
17 H-y-m-a-n, speaking as a concerned citizen.
18 Mr. Chairman, I'm not sure how we got here, but
19 it's shameful that you brand all of our valued farmers
20 as polluters, guilty until they prove themselves
21 innocent at their own time and expense. Further, you
22 impose an unfounded mandate for information that can be
23 used against them.
24 The only data we struggle to get, but
25 previously your own Staff admitted, in writing, that

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1 they cannot analyze the data that you already have,
2 with the health department data, much less this new
3 mountain of data that you've acquired.
4 I carry three comments from Mike Rockhurst, a
5 farmer, and a rarity.
6 First, your Staff still insists on a one size
7 fits all, in that it punishes farmers in nonpolluted
8 watersheds. Growers would have been more receptive if
9 the proposed regulations concentrated on the areas with
10 problems. We growers cannot easily pass on these
11 increased costs. Food companies will just go
12 elsewhere.
13 Second, the amount of paperwork your Staff
14 generates is hard on individual farmers, like me. I
15 don't want to hear, well, it's in the last Draft. I'm
16 sorry, but I have a job producing food and it takes
17 pretty much all of my time, seven days a week and
18 there's a long chain of responsibility for what ends up
19 in the water, but farmers are easy pickings. I think
20 the vast majority of us do follow label directions and
21 minimize the use of fertilizer and pesticides.
22 In closing, I urge you to consider your
23 impact on a local farmer and Ag economy. Heavy-handed
24 costly relations created in a vacuum of theory should
25 not be the approach of the governing bodies.

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1 To be effective, your Order should be
2 realistic, obtainable, and affordable. Farmers do want
3 to help out. Figure out how to best use it
4 cooperatively. Thank you.
5 **MR. YOUNG:** Thank you for your comments.
6 Mr. Quandt and then John Tessario, Kevin
7 Merrill, Bill Thomas.
8 **MR. YOUNG:** Thank you.
9 **MR. QUANDT:** My name is Richard Quandt,
10 Q-u-a-n-d-t. I'm testifying today on behalf of the
11 Growers Shippers Association, Santa Barbara to San Luis
12 Obispo Counties. ;.
13 Our organization represents Strawberry and
14 vegetables growers, some will be in Tier 1, others will
15 be in Tier 2, and others will be in Tier 3, the
16 underpinnings of your entire Order is basically the
17 criteria that's been established to established the
18 Tiers whether or not the requirements are substantive
19 requirements, proportional to the threat of water
20 quality.
21 And I'm here to submit that I don't think
22 that process has taken place. I think the Tiers are no
23 more than a fortunate tool to direct enforcement
24 against larger growers and don't necessarily reflect
25 the threat to water quality.

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1 Earlier today the highest priority, in terms
2 of addressing water quality, was nitrates in the
3 groundwater, is what I heard. To achieve that goal,
4 Farmers will need to develop Irrigation Nutrient
5 Management Plans under the Staff Proposal, based on the
6 estimates, I heard today, there would be a total of 61
7 farms in the region that would require to develop
8 Irrigation Nutrient Management Programs.

9 The good news is under the Los Huertos Ag
10 Alternative 70 percent enrollment of Tiers 2 and 3
11 would have 1,300 farms working to develop irrigation
12 Nutrient Management Programs, effect actually 176,000
13 irrigated acres in this region.

14 **MR. YOUNG:** Thank you for your comments.
15 Joy Fitzhugh.

16 **MS. FITZHUGH:** Good morning. Joy, F-i-t-z as in,
17 zebra, h-u-g-h.

18 And I am a very small orchardist, but more
19 importantly, I am the legislative analyst for the San
20 Luis Obispo Farm Bureau, and I really liked following
21 Mr. Quandt, because he pretty much said what I want to
22 say.

23 It is the base on -- we need to deal with the
24 base on threat to water quality, not size. And
25 obviously, my buddy, Chris Borchard, is not in sight,

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1 but I also feel that I want to let you know that our Ag
2 members, well over a thousand in our County, are
3 supporting the Ag Alternative with the Los Huertos, and
4 we feel very sure this system.

5 We need the cooperative system and this
6 system is the one that will be able to help get our
7 water quality back to where it should be.

8 Thank you.

9 **MR. YOUNG:** Thank you for your comments.
10 Is Mr. Merrill still here? Kevin Merrill?
11 Bill Thomas, and then Lisa Bodrogi? She's here?
12 Go ahead.

13 **MR. THOMAS:** Bill Thomas, T-h-o-m-a-s.
14 Mr. Chair and members. I represent
15 Ocean Mist Farms and R & C Farms, two of the largest
16 vegetable operations in the Lower Salinas Valley,
17 Casterville areas.

18 We've been frustrated for some time that --
19 we have been squandering this time period this Order --
20 this Order has been before us. We've had meetings
21 with Mr. Briggs and Staff. Those meetings had showed
22 that there was real opportunity to find some middle
23 ground.

24 More recently, the Marc's study, even some
25 things that Steve Shimek has advised in Sacramento.

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1 There's lots of promising things out there, and I think
2 we all share responsibility to work now, in front of
3 the Board, where you have a very tough decision. I was
4 going to say today, but I guess tomorrow, and to adopt
5 this severe Staff Proposal, which will just kick this
6 to the State Board, or find a way to find some last
7 minute opportunity here.

8 The problems in the Staff Report, with
9 Tiering -- we know what Tiers we're in. We're large
10 vegetable growers. There is no way to get out of the
11 Tier 3. The monitoring the field water, right when it
12 leaves the field, within the prescribed period of time
13 of the use of your insecticides is just a way to target
14 the insecticide.

15 The tile drains, which were supposed to come
16 out of this Order at one time, keep getting back in
17 it. That's a major problem. The nutrient limit, the
18 encircled nutrient management plans are appropriate.
19 You should know the amount of nitrate in the water, in
20 the soil and make the determination of your need.
21 That's appropriate. That's asking for proper
22 management, but this goes beyond that and puts a limit
23 on the amount of nitrogen you could use. That's making
24 a management decision. That's beyond your capability.
25 The Ag Alternative can easily be merged in here.

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1 Thank you.

2 **MR. YOUNG:** Thank you.
3 Yes, Dr. Hunter.

4 **MS. HUNTER:** Question to Staff. That's second
5 time today we've heard the reference to tile drains
6 being included, and I saw in the Staff Report that it,
7 that these issues or tile drains, specifically, have
8 been removed.

9 Can you clear that up for me, please?

10 **MS. SCHROETER:** You could see it's late in the
11 day. I've got to get my head wrapped around this.
12 So tile drains. There's a couple of things
13 to be clarified. One in the misconception session of
14 the Staff Report as well was in the Order.

15 So first, let me go to the Staff report.
16 We've received many, many comments that stated that the
17 Draft Order, um, states that growers can no longer use
18 tile drains. That is incorrect, inaccurate, there's no
19 place in the Order where it says you can no longer use
20 tile drain.

21 What the Order does, specifically, say about
22 tile drains, um, one, it states the intent that the
23 need to make improvements in tile drains, in the
24 future, we're not prioritizing, addressing impairments
25 caused by tile drains immediately.

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1 What it does also say is that we have to
2 start better understanding, um, how tile drains
3 contribute to our water quality impairment, so there
4 are two places where we put requirements related tile
5 drains.
6 One stated the sampling analysis design had
7 to be such that we can evaluate the contribution of
8 water quality impairment on tile drains, and, two, if a
9 tile drain exists at discharge on a particular
10 property, that would be included as part of the
11 individual discharge monitoring for a tear Discharger.
12 But there is no stated requirement that you
13 could not. That would effect the use of the tile
14 drain.
15 **DR. HUNTER:** Thank you.
16 **MR. YOUNG:** Okay.
17 **MR. DELGADO:** Can I ask a follow-up to that?
18 **MR. YOUNG:** Sure.
19 **MR. DELGADO:** Very briefly. To me, in simple
20 English, what you just said was tile drains are allowed
21 just like they always have been and like any other
22 discharging mechanism, they need to be monitored.
23 Is that approximately what you said?
24 **MS. SCHROETER:** That's correct.
25 **MR. DELGADO:** Okay. Thank you.

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1 **MR. YOUNG:** Lisa Bodrogi.
2 **MS. BODROGI:** Thank you, Chairman Young.
3 Lisa Bodrogi. I'm the Government Affairs
4 Coordinator for the Paso Robles Wine Country Alliance.
5 We represent 500 members, comprised of
6 wineries and growers, hospitality partners and related
7 businesses. We are all stakeholders and drink water
8 and eat food and we do consider wine as food. The wine
9 industry here in San Luis Obispo contributes \$1.8
10 billion locally and pays more than 86 million in local
11 and state taxes.
12 The wine grapes are the highest economic
13 contributor agricultural crop in San Luis Obispo
14 County. And for this reason, our organization has made
15 a concerted effort to work our local government,
16 neighbors and communities to expand education awareness
17 and collaboration on matters that affect our industry.
18 While we appreciate the recognition of the SIP
19 Certification Program developed by the Central Coast
20 Vineyard Team.
21 We remind the Board that there are programs
22 including California Association of Wine Grape Growers
23 of Sustainable Wine Grape Practices UC Extension,
24 University Research and Development Programs and
25 Resource Conservation Districts who all play a vital

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1 role in Water Quality Management.
2 We do support the Ag Alternative and question
3 why this third-party audits concept is not as better
4 received because it is basically a grower-based
5 approach, which as are these other certification
6 programs.
7 I see my light is on, so I will conclude with
8 my last sentence which is, if you eat food or drink
9 water, you have an interest in creating common ground
10 and public private partnerships, based on sound,
11 science and to obtain long-term results.
12 **MR. YOUNG:** Thank you.
13 Randy Share, Gail Pratt, Richard Sadowski
14 Jeanette Watson.
15 **MR. SHARE:** Randy Share, Share Brothers Farms,
16 Santa Maria.
17 I'm also the stipulating landowner
18 representative on the Kutchell Management Agency.
19 Santa Maria is the adjudicated basin.
20 We do monitoring of groundwater, which we put
21 in our annual report, which in a few -- six weeks,
22 we'll be having public hearing on our health, quality
23 and quantity sector base, so we do already monitor
24 groundwater and make it public in Santa Maria.
25 Thank you.

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1 **MR. YOUNG:** Thank you for your comments.
2 Gail Pratt, Richard Sadowski, Jeannette
3 Watson, Bob Campbell.
4 **MR. SADOWSKI:** Richard Sadowski. That's
5 S-a-d-o-w-s-k-i.
6 I'm a concerned citizen in Morro Bay,
7 certified waste water production operator. I'm a first
8 responder of sewage spillage emergencies.
9 One of the things that I think that should be
10 considered is that we have urban areas near outlying Ag
11 labs. Um, taking very careful look at the waste water
12 collection systems, um, as a nitrate source.
13 For instance, in our Morrow Bay Basin
14 Aquafur, a predetermined conclusion by local city staff
15 was, kind of, blaming farmers about a mile away while
16 we have huge sewage collection nights, totalling 15- to
17 20 inch collection nights, leaking sewage right into
18 the Morrow Bay Basin Aquifer.
19 I did a report that I submitted to your Staff
20 years ago and follow-up data has shown that our
21 conclusions are more likely that it's from sewage than
22 it is from Ag lands.
23 So, and regarding staffing, I think, that the
24 Regional Board should really consider Staffing and
25 having sectors closely -- have protocol on how they're

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1 going to be doing their water samples. There are some
2 issues on regarding how samples are taken.
3 Thank you.
4 **MR. YOUNG:** Thank you for your comments.
5 Jeanette Watson. Bob Campbell. This close
6 enough?
7 **MR. CAMPBELL:** Good afternoon. My name is
8 Bob Campbell and I am a third generation grower in the
9 Central Coast here, small family operation.
10 And I raised my kids and now our grandkids go
11 on the ranch and drink tap water out of the well, so, I
12 too, am interested in clean groundwater, so that's not
13 the issue. I think it's how we approach it and how we
14 get there, that's the problem.
15 And I think if I were a Board member today,
16 after hearing some of speakers talk about the
17 cooperative efforts that are taking place around the
18 state with agriculturists and government agencies, some
19 of the environmental groups, I guess I'd be asking why
20 aren't the farmers and the growers wanting to work with
21 our Staff. And the answer is your Staff, it's about
22 mistrust.
23 I heard them, just today, and I have attended
24 all these hearings a of years and I go home, without
25 fail, totally frustrated. I heard them sit here today

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1 and whine, by the way, diplomacy is not one my strong
2 suits, but I heard them whine about the three or four
3 years it's taken to get here.
4 Well, I would hope something this big and
5 this complex would take whatever time it takes, so we
6 get it the right the first time. And I, quite frankly,
7 am not happy with their attitude about this.
8 Our coalition representatives got here today
9 to try and clarify why our proposal will work and they
10 sat there and tried to throw roadblocks and not allow
11 them to present that and they talked about individual
12 well monitoring. And they have to give a general
13 location to the public where that well might be, but
14 the owner knows the exact location of that will not be
15 made public.
16 No reasonable person buys that argument or
17 that statement. That information will become public
18 and individual growers will be faced with certain
19 groups targeting them because of some issues that they
20 may or may not have.
21 I've got so many notes here, I'm not sure
22 where it stops. Sustainable agriculture, your Staff
23 talks about what a great program that is and I want to
24 say that that's not government. That came from
25 Agriculture. That's great. When agriculture presents

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1 a proposal to you about helping and taking a leadership
2 role in Water Quality Improvement.
3 Please consider what we've proposed to you
4 because it can work, it's worked in other places and it
5 can work here.
6 **MR. YOUNG:** Thank you, Mr. Campbell.
7 Maryann Pickman, Sara Dayman, Abigail Solis,
8 Dana Perlas, Rose Frances, Marcela Morales.
9 **MR. YOUNG:** First name. Go ahead.
10 **MS. PERLAS:** My name is Dana Perlas, P-e-r-l-a-s.
11 I'm Community Organizer and Policy Advocate
12 for the Nonprofit Organization Pesticide Watch
13 Education Fund.
14 I've specifically worked on the Central Coast
15 and worked with over 200 community organizations and
16 community members who are concerned about the
17 contamination of pesticides in their air and
18 groundwater.
19 All of these people I've been working with,
20 specifically on issues of Methyl Iodine, which your
21 Board has been very supportive, and wrote a letter
22 encouraging against the registration of Methyl Iodine,
23 specifically citing the fact that you're already
24 concerned enough about the contamination of groundwater
25 and surface water in the Central Coast.

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1 I want you to think about the issues that
2 have been raised today with a lens of public health.
3 Think about not just the costs to agriculture, but of
4 the lives of the thousands of people in the Central
5 Coast.
6 Think about the costs, the impacts that it
7 will have on the health clinics and schools, should
8 people drinking their groundwater drinking the surface
9 water, playing in the water, being impacted by the
10 pesticides, by the nitrates which affects their body
11 neurologically, cancer, thyroid disease, the list goes
12 on and on you're well aware of risks that happen when
13 contaminated with pesticides.
14 I want to encourage the Board to take a vote
15 on this waiver and not wait any longer. It's been way
16 too long, and the longer you wait, the longer these
17 impacts will have on community members.
18 The Staff has done a very good job at the
19 report so far. It's flexible, and I think that this
20 report can take into consideration the importance of
21 monitoring and evaluation of groundwater and of surface
22 water.
23 Don't weaken the Pesticide regulations. We
24 want monitoring. We want regulation, enforcement, and
25 furthermore we want transparency. We want this

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1 information to be publicly accessible.
2 Thank you.
3 **MR. YOUNG:** Thank you for your comments.
4 Rose Francis, Marcela Morales.
5 **MS. DAMRON:** Sara Damron, D-a-m-r-o-n, for the
6 Surfrider Foundation.
7 Good evening, Chair, Board members. We have
8 five chapters here in the region, and one chapter could
9 be here today, so I'll speak for the other four that
10 can't be here.
11 We wish to comment on the Order because the
12 treatment of coastal water quality is a key issue upon
13 which our organization was founded. And, of course,
14 some of the most toxic water bodies in this region, the
15 Salinas River and the Santa Maria River, actually empty
16 out to the ocean forming sand bars, and obviously there
17 are many other beneficial uses of the watershed, as
18 well.
19 What we wanted to point out is this Board is
20 tasked protecting the waters of our region to support
21 all beneficial uses, and you are also tasked with
22 regulating dischargers whose Discharge could impact
23 those beneficial uses and water quality objectives.
24 We are going to keep these duties in front
25 you, in front of your mind, and to overcome the

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1 pressures that may obscure or focus elsewhere.
2 Your Staff has provided ample evidence
3 documenting water quality issues faced in the Central
4 Coast, and irrigated agriculture's contribution to
5 these impairments.
6 It's up to you to choose to implement a
7 program designed to address impairments and the most
8 likely contributors to the impairments, which would be
9 high risk farms or to continue to be dissuaded from
10 taking action all together and perpetuate the
11 continuing pollution of our waters.
12 While we continue to support individual
13 monitoring of the farms and ranches because we believe
14 that is the most effective way to pinpoint pollution,
15 we appreciate that the latest Draft does require
16 individual monitoring of the high risk dischargers.
17 That said, we do support the Waiver, the
18 proposed Waiver right now, we urge you to adopt that
19 tomorrow, so we can get back on track and begin working
20 toward the next five years.
21 Thank you.
22 **MR. YOUNG:** Thank you for your comments.
23 Rose Francis, and then Marcela Morales,
24 Karen Araujo. Reverend Lindsey Rampton.
25 **MS. FRANCIS:** Good afternoon. Rose Francis,

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1 F-r-a-n-c-i-s.
2 I'm an attorney with Community Water Plan, a
3 nonprofit organization based in Tulare County, and I'm
4 here today to represent not the community, but
5 currently drinking water in, in the Central Coast is at
6 risk for future contamination of their drinking water
7 provides a number of parallels between Tulare's
8 agricultural and that of the Central Coast.
9 I'm an attorney for a number of small public
10 water utilities in the San Joaquin Valley. And these
11 water providers serve Salinas and the San Joaquin
12 valleys. They are run by an all volunteer Water
13 Board.
14 The Board members are residents of the
15 community the public water system serves, and all of
16 the small public water systems, both in the San Joaquin
17 and here on the Central Coast are held to strict
18 regulatory standards to protect public health including
19 the submission of data and numerous reports on an
20 annual basis. They are required to attend and maintain
21 a minimum of technical and managerial capacity in order
22 to operate safely and effectively and the vast majority
23 have met these requirements.
24 I appreciate the burden that a regulatory
25 program places on growers and in particular in the Tier

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1 2 and Tier 3 region, specifically on small growers,
2 however, I believe it's disrespectful to suggest that
3 they're not capable ever meeting basic reporting
4 requirements to protect public health.
5 **MR. YOUNG:** Thank you for your comments.
6 Marcela Morales.
7 **MS. MORALES:** Thank you, Chair, and members of the
8 Board.
9 I'm Marcela Morales, M-o-r-a-l-e-s, of the
10 Central Coast Alliance for United Work & Sustainable
11 Economy. And I'm referencing the definition for
12 Environmental Justice provided to the Board in May of
13 2010. And, in brief, the environmental justice is
14 equal and public access to help the environment,
15 including the elimination of burdens for communities
16 with color and low income communities. Positive
17 history of working with diverse coalitions including
18 the business community.
19 We are partnering with UCI in the City of
20 Channel Islands on a business forum and commercial
21 business problem forum integrating social and
22 environmental responsibility, so we are partnering with
23 the agricultural community in Ventura County and the
24 business community as a whole.
25 And our concern and our support is for the

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1 Staff's recommendations, because of the environmental
2 justice urgency. And I want to echo Mr. Marsh's quote
3 earlier about the frustration about what seems to be a
4 lack of sense of urgency, for us, this is an issue for
5 racial justice. We have communities which is almost
6 100 percent Latino communities.

7 This is not just an environmental issue, it's
8 a racial justice issue. It's difficult to come here
9 year after year, at this point for me, only two years,
10 and see quite frankly a sea of white, knowing that the
11 communities that are bearing the disproportionate
12 burden are almost 75 percent to 100 percent people of
13 color.

14 And so I want to raise the issue of racial
15 justice and say that enough delay. Justice delayed is
16 justice denied. It's time to make a decision, and move
17 forward. We all agree this is no where near any
18 perfect solution, but we must move on to take the next
19 step and start day one, after it's approved, working on
20 the next better step.

21 Thank you.

22 **MR. YOUNG:** Thank you.

23 **THE REPORTER:** I need to change my paper, please.
24 (Brief interruption.)

25 **MS. SOLIS:** Gabrielle Solis. I was called

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1 earlier.

2 **MR. YOUNG:** All right.

3 Ms. Solis.

4 **MS. SOLIS:** Gabrielle Solis. I was called
5 earlier.

6 **MR. YOUNG:** All right.

7 **MS. SOLIS:** My name is Gabrielle Solis. I am the
8 community organizer for the Community Water Center of
9 the Central Valley, and as the organizer there, I can
10 stand here and tell you about the many families we are
11 with on a daily basis that are impacted by water.

12 But we have heard that today. I do want to
13 mention that our work at the center has shifted from
14 just the families, to working a lot of school districts
15 that have this problem.

16 School districts that are now faced with
17 dealing with the fact of how are we going to pay to
18 supply clean drinking water to our hundreds and even
19 thousands of students. And I'm sure you know this --
20 perhaps you don't -- but California has the most number
21 of schools without safe water in the nation.
22 California.

23 And it just astounds me to stand here and say
24 this to you in 2012. Almost a shameful thing to say.
25 And I think we are all kind of under the misconception

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1 that this water issue is for the low income. ;.

2 I just want to say, on a personal note, my
3 daughter goes to a school that is -- has water that is
4 highly contaminated with arsenic. My daughter.

5 So this means every day when she goes to
6 school, she must take an alternative source of water
7 with her. If she forgets her bottle of water, which
8 kids do, this means two things, one, do I -- am I
9 thirsty all day, or, two, um, do I drink this poison
10 water.

11 Now no child should have to ask themselves
12 this question. So I ask you this. What would you
13 choose? What would you do?

14 And, lastly, I want to say to a comment that
15 was made earlier, how we've been whining all morning
16 about spending three or four years talking about this
17 decision. How it's been too long, and how he hopes
18 that we would take at least this long, while we wait
19 and while he thinks we whine our kids, our students, in
20 our California schools are getting sick.

21 Thank you.

22 **MR. YOUNG:** Thank you for your comments.

23 Now we have Karen Araujo?

24 **MS. ARAUJO:** Araujo.

25 **MR. YOUNG:** Araujo?

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1 **MS. ARAUJO:** A-r-a-u-j-o.

2 I'm with the Unitarian Universalist Legislate
3 Ministry. I'm a volunteer here, on my own time, and my
4 own dime today because this is what my faith in action
5 looks like.

6 Thank you all for taking on this huge task,
7 those of you who are paid Staff and those of you who
8 are volunteers, members of this Board.

9 Mr. Wolff quoted earlier something about
10 change, the difficulty of change. As Unitarian
11 Charles Darwin said, it wasn't survival of the fittest
12 that made a difference. It was the adaptability. How
13 much, how much we can change? That's what makes a
14 difference.

15 This is a key moment for us here. We must be
16 able to change. It's on you. You have a tough row to
17 hoe, because people before did not make the toughest
18 decisions they could, because of whatever pressure they
19 endured or faced.

20 Five million dollars in my neighborhood to
21 provide safe water for the San Jerardo folks. This is
22 only one group. If these statistics that quoted
23 earlier, pan out, through out our area, about 60,000
24 people are at risk of drinking from contaminated
25 wells. It's up to you.

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1 It's your responsibility, as you know, to
2 protect the water quality. Please pass this. Vote on
3 it tomorrow. We are always going to have more
4 information, and if we're doing things correctly, we
5 will have processes in place as of this year, in this
6 great proposal by the Staff, the mechanisms to address
7 needed modifications and change, but it's in the doing
8 that we're really going to learn what they did in
9 practice, in the implementation there will be
10 innovation. We're going to be okay. We're going to be
11 okay.

12 Was that my time?

13 **MR. YOUNG:** It was.

14 **MS. ARAUJO:** Please vote tomorrow, thank you.

15 **MR. YOUNG:** Thank you for your comment.

16 Reverend Lindsay Rampston and then Brad
17 Snook, Carl Wiley.

18 **MS. RAMPSTON:** Chairman, members of the Board, I
19 am Reverend Lindsay Rampston.

20 I'm the Senior Minister at Unitarian
21 Universalist Legislative Ministry which coordinates
22 collaborative ministries and congregation in
23 California.

24 Last March we hosted the United Nations
25 Independent Expert on the Human Right for Water

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1 Sanitation here in California.

2 She was here to listen to communities and
3 receive testimony, but she was also here to look at
4 good practices that she could take back into the larger
5 framework internationally, as all of us together are
6 trying to figure out how to actually implement and
7 realize the human right for water, for safe, affordable
8 accessible water for daily human needs.

9 The problem with nitrates and unregulated
10 groundwater is indeed profound. But just as California
11 established new omissions standards for cars, which has
12 generated innovations for jobs as well as cleaner air.
13 I think California can take the leadership role in
14 establishing a regulatory foundation, as well as to
15 collaborative strategies to address this serious threat
16 to our shared existence.

17 I was concerned by Congressman Farr's
18 testimony that San Jerardo might be the example of a
19 success story. San Jerardo is unique. It is a
20 cooperative, it has central meeting place, a talented
21 manager, allies in government, a new profit center, but
22 five million dollars later and taxpayer funds and \$120
23 a month is not something that's sustainable.

24 The story that a baby's coming down the river
25 and the community trying to save them until they

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1 finally realized they need to go upstream and deal with
2 the root causes, is appropriate here.

3 We can't deal with this community by
4 community by community. We ask that you go forward
5 with an Ag Order that sets a regulatory foundation that
6 is usable, that brings in widespread data, that still
7 allows for continued, creative, collaborative effort
8 and new information.

9 Continuing to postpone a vote not only
10 threatens community help, but it displaces economic
11 responsibility burdening the most vulnerable and it
12 undermines trust.

13 Thank you for your service. Thank you for
14 the service of those in your Staff who are dedicated to
15 your mission, and thank you to all of the farmers who
16 are working so hard to figure out how to grow this
17 without damaging the gift of creation that blesses all
18 of our lives.

19 **MR. YOUNG:** Thank you for your comments.
20 Brad Snook, Joel Wiley.

21 **MR. SNOOK:** My name is Brad Snook, S-n-o-o-k.
22 I'm the Chair of San Luis Obispo Chapter of
23 Surfrider Foundation. Welcome to our County. I do
24 want to state a little observation on the Farm Bureau,
25 the CFBF presentation earlier.

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1 I'm a little bit concerned that perhaps that
2 information could have been brought in front of the
3 Board earlier. That questioning whether this was the
4 time or place to bring out all that information.

5 The Surfrider values environmentally
6 responsible agriculture, but who are the responsible
7 ones? No one argues the existence of a problem. It's
8 obvious that adoption of this Agricultural Order will
9 help address water quality problems in our County.

10 The Water Board has created a workable
11 solution and to a delay to implementation by just
12 simply ignoring the problems of mismanagement that got
13 us here. To delay implementation will continue to put
14 mental health at risk and it, potentially, could invite
15 new risk.

16 Please vote to authorize the Ag Order today
17 or tomorrow. Thank you.

18 **MR. YOUNG:** Thank you for your comments.
19 Joel Wiley.

20 **MR. WILEY:** Good evening. My name is Joel Wiley.
21 That's W-i-l-e-y. I'm a CCA and been practicing crop
22 nutrition for 33 years, and I see the proposal that's
23 in front of you, that you're asking to propose to and
24 vote on.

25 It's incredibly overwhelming. I've been

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1 doing this for 33 years and it's like, Wow! It's a
2 pretty big project. There's going to be a lot of
3 information that's brought up in front of you that this
4 Staff is going to have to address.

5 I don't know how you're going to do it. The
6 hydrologist -- the hydrology requirement as CCA having
7 that certification, I don't know if there is very many
8 of those available in the State of California that have
9 that certification. I think you should look into
10 that. That's something that's really an overwhelming
11 certification that you're asking people to have, if you
12 want to include CCA certification in this process.

13 I am trying to figure out the Tier process,
14 because I can identify one acre parcel that has as much
15 influence on groundwater than a 500-acre parcel would
16 have, a greenhouse. There's a lot of down pressure
17 from water, with very little evaporation, and it just
18 keeps pushing nitrogen down. Okay?

19 So I think the Tier process comes with and
20 it's, kind of, complicated, and I could see why people
21 would have a hard time figuring it out.

22 The last thing I want to say is that if you
23 vote on, what I would call, the Alternative Ag
24 Proposal, the Marc Los Huertos Proposal, there's
25 collaboration that I heard overwhelmingly pushed by our

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1 legislators, and then there's this question about
2 creativity. And I don't want to see creativity stuck,
3 and I think with the allowing of an alternative
4 approach to what we're here voting on, potentially
5 tomorrow, I think it's really important we look at the
6 alternative.

7 Thank you.

8 **MR. YOUNG:** Thank you for your comments,
9 Mr. Wiley.

10 Mr. Tomlinson (inaudible names).

11 **MR. TOMLINSON:** Rick Tomlinson. I am from the
12 California Strawberry Commission. We support clean
13 water. I have to rush through and correct the record
14 on a few things.

15 First, we agree with Staff that most
16 strawberry farms will fall into Tier 2. Our main
17 concern with the Tiers is that no matter what a
18 strawberry grower does to improve water quality, most
19 will always be stuck in Tier 2.

20 In short, there is no carrot, there is no
21 reward for doing well. A grower gets stuck and they
22 stay in a Tier. We agree with Staff that a fertilizer
23 cap of a 120 percent is an achievable BMP for most
24 strawberry farms. Not all, but most.

25 However, we're concerned with the assumption

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1 to regulate use is an effective control of discharge.
2 As we indicated in a previous hearing, research jointly
3 funded by the Regional Board and the Strawberry
4 Commission demonstrates, on average, most strawberry
5 farmers already have adopted this BMP of 120 percent
6 and combined with strip irrigation are not high risk
7 for leaching.

8 In previous comments, we requested that
9 strawberries be moved to a lower designation. Staff
10 showed a slide that indicated that 20 to 40 percent of
11 wells are affected by nitrates.

12 Some of the previous reports and USDS reports
13 that Staff has referenced indicate that the correct
14 number at face value is 9 percent.

15 Last year we presented data on the
16 groundwater analysis. The data shows that about
17 50 percent of small disadvantaged communities, those
18 that are on systems that serve between 2 and 14 homes
19 are in areas where no commercial agriculture. Half of
20 the affected wells are in areas with no farms.

21 Staff described the Central Coast Vineyard
22 Team SIP program that you could move from Tier 3 down
23 to Tier 1 if you're a member of SIP, but then they also
24 talked about the Farmers Water Quality Program, that
25 our reports aren't publicly available. They're not

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1 publicly available with SIP, either. The criteria is
2 not available, the audits aren't available. More
3 importantly, the Staff Report doesn't even require them
4 to be available.

5 That's the type of different standard that is
6 being proposed for farmers for Water Quality versus
7 everything else.

8 So I'll just conclude, because I have to say
9 this, I agree with Staff that vineyards are low risk,
10 and that the SIP program is a good program. I'm just
11 using it as an example to state differences in
12 standards.

13 Lastly, I'll tell you that Ventura has a
14 coalition, and it's working great.

15 **MR. YOUNG:** Thank you for your comments.

16 **MR. JEFFRIES:** Can I ask a question?

17 **MR. YOUNG:** Go ahead.

18 **MR. JEFFRIES:** Mr. Tomlinson, do you know, off the
19 top of your head, in this region, how many acres of
20 strawberries are under irrigation?

21 **MR. TOMLINSON:** 100 percent.

22 **MR. JEFFRIES:** 100 percent?

23 **MR. TOMLINSON:** All strawberries, we only occupy
24 about 6 percent of the plant area, and they're all
25 using drip, and the report that was finally sponsored

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1 showed that at the very beginning of the season you
2 have to move the salt away from the root zone to allow
3 that first 12 inches, and after the plant gets
4 established, you fertilize, and that's how we're able
5 to achieve that 120 percent, because no plant can
6 absorb 100 percent. There's inefficiencies, then
7 there's laws of nature.

8 **MR. JEFFRIES:** I'm trying to think of what
9 question I had for you. Oh, crop rotation.

10 How many years does the strawberry farmer
11 keep the present farm or present piece of land on
12 strawberries.

13 **MR. TOMLINSON:** Strawberries are constantly
14 rotating. It's a 14-month crop. So you can't grow
15 back to back, so you're -- I mean, you could, but
16 you're going to cut your season short. A few might who
17 own their land, but most strawberry folks lease.
18 They're in a constant rotation with vegetables. Part
19 of the grievance of the Tier system is one year that
20 farm might be a Tier 2 and the next year it might be a
21 Tier 3 vegetable farm, and then next year might be a
22 Tier 1 farm. That's going to change annually as the
23 crop changes.

24 **MR. YOUNG:** Is that the same owner; the same farm
25 operator.

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1 **MR. TOMLINSON:** Not landowner.
2 **MR. YOUNG:** No, I mean the farmer.
3 **MR. TOMLINSON:** No, all different farmers. The
4 land is being leased, so you're constantly moving
5 farmers and crop.

6 **MR. YOUNG:** You answered my next question.
7 **MR. JEFFRIES:** Since you had a 14-month rotation,
8 consequently the nitrate contamination wouldn't
9 necessarily be from your crop or the crop before, it
10 could have been several crops back?

11 **MR. TOMLINSON:** This is the challenge. That's why
12 we came up with the proposal that Dr. Los Huertos
13 elaborated on, trying to figure out a legitimate way to
14 clean up water and deal with our whole system
15 approach.

16 And that's why you hear so many people talk
17 about how the Tiering system is not going to achieve
18 it. It looks okay on paper, like I said a strawberry
19 farmer is going to be Tier 2.

20 It's doable we can do it, but I don't know
21 that you're going to get the results that you're look
22 for, and we don't want to be standing up here five
23 years from now with the target on us.

24 **MR. JEFFRIES:** And you're Tier 1 or Tier 2? If
25 you're under drip you have no runoff, very little

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1 percolation.

2 **MR. TOMLINSON:** Yeah. The average strawberry farm
3 is 73 acres, it's small, but we're designated high
4 potential to leach even though we have the study that
5 says that's not accurate.

6 Everything I've told you about the
7 groundwater, the wells that are effected, and where
8 they're at and the studies, all the most current
9 reports are all consistent with everything I've said.
10 There is nothing that you will read about later and
11 find that so there is new information that changed.

12 **MR. JEFFRIES:** Do strawberry farmers use diazinon?
13 **MR. TOMLINSON:** A small percentage, maybe about
14 two or three percent of the acreage will use it because
15 some farms will plant and leave the plants in for two
16 years. And if that pest pressure builds up, that's
17 when they use it.

18 So I think that's why I said Staff actually
19 characterized about five farms in Tier 3. I think, you
20 know, if they use chlorophyll-a phosphor diazinon, it's
21 going to put them in Tier 3.

22 **MR. JEFFRIES:** Thank you.
23 **MR. YOUNG:** Thank you.
24 **MR. BRIGGS:** You just said, you know, no plan can
25 be 100 percent efficient and somebody else represented

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1 earlier, as to our Staff Proposal is requiring that,
2 you're not implying that you think the proposed Order
3 requires 100 percent efficiency, are you?

4 **MR. TOMLINSON:** Not for strawberries, but I read
5 certain crops that it required that.

6 **MR. BRIGGS:** You think the Board requires 100
7 percent?

8 **MR. TOMLINSON:** It says it. It says there's a cap
9 for farms in Tier 3, on certain vegetables that the
10 most you could apply is 100 percent; right. So if they
11 plant as far as 100 pounds the most they could apply is
12 100 pounds.

13 **MR. BRIGGS:** Are you referring to the 1.0 balance
14 issue?

15 **MR. TOMLINSON:** Yes.
16 **MR. BRIGGS:** As I recall, you reported to the
17 workshop last year, you achieved .78 for strawberries.
18 **MR. TOMLINSON:** Right. That's right. So we
19 achieved .78, so that's where for strawberries, 120
20 percent is the number you need; right. If we are only
21 80 percent efficient or 78 percent efficient, you have
22 to apply more than what you need. So that's where the
23 Staff correctly identified, and I think that it comes
24 from the report, 120 percent is an appropriate number
25 for strawberries. I think there are other numbers for

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1 other crops, but I don't know that they have the
2 benefit of the type of studies that we generally
3 funded.
4 **MR. BRIGGS:** Okay. I just want to clarify the
5 order does not required 100 percent removal of nitrogen
6 above plant, and we can explain that again, if
7 necessary.
8 **MR. TOMLINSON:** It does say that right here. It
9 would be helpful to explain. Like I said, for
10 strawberries, I'm under the impression it's 120
11 percent, and it works for us, but I think I've read it
12 to read, for other crops, it does require a cap. I
13 don't know if that's helpful.
14 **MR. YOUNG:** Can your Staff here clarify that?
15 **MR. BRIGGS:** Maybe that's something we should do,
16 just partner around.
17 **MR. YOUNG:** Probably so.
18 **MR. DELGADO:** I think it's something we should do
19 right now because they may not be here tomorrow.
20 **MR. YOUNG:** Can you do it now?
21 **MS. SCHROETER:** I could do it now and we have
22 Monica Barricarte here who can also --
23 **MR. YOUNG:** Speak up, speak up.
24 **MS. SCHROETER:** -- Try to assist with some more
25 specific information. But, um, we do have some slides,

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1 but I'm trying to refrain from using them right now.
2 So the nitrate balance ratio, Monica, correct
3 me if I'm wrong, is the total nitrate applied to a crop
4 over the crop need so on our bottom denominator --
5 should I put the slide in?
6 **MR. YOUNG:** Well, let me ask this.
7 Does the Order limit how much nitrogen a
8 farmer can apply to his crop?
9 **MS. SCHROETER:** No.
10 **MR. TOMLINSON:** Yes, it absolutely does.
11 **MR. YOUNG:** Hang on, hang on.
12 **MS. SCHROETER:** It doesn't specify that crops
13 cannot apply more than so many pounds per acre if
14 that's your question.
15 **MR. YOUNG:** Is there a limit to how much nitrogen
16 a farmer can apply to his or her crop.
17 **MS. SCHROETER:** I agree, but it's open to
18 interpretation, okay. But, I mean, we see it
19 differently is what I'm trying to say. Let me just
20 show -- let me bring this up and we can talk about it.
21 **MR. JEFFRIES:** May I make a comment, Mr. Chair?
22 **MR. YOUNG:** Yes.
23 **MR. JEFFRIES:** I made this comment at a previous
24 hearing, but this is some of the issues that, I think,
25 we faced in the past is interpretation because we have

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1 the Staff saying one thing and you have other people
2 saying the other thing, and I have said that instead of
3 writing these Orders in technical writing, they should
4 be written in layman's language, so that the individual
5 farmer or whoever they're dealing with could understand
6 this. And it's obvious there is mass confusion over
7 this one item. It's a very large item, I'm not going
8 to say it's a small item, but it's a very important
9 item for everybody, but now that she has it up, I think
10 it's important that the language be very clear so that
11 everybody understands it as they can.
12 **MS. SCHROETER:** So let me start by saying that
13 this requirement is Staff is including this requirement
14 to address this very severe groundwater quality
15 condition, and to address the nitrate loading to
16 groundwater to better protect drinking water. So the
17 way you can do that is by tracking the inputs, the
18 nitrate going top, going into the system, or monitoring
19 the Discharge, which is leaving the root zone. Staff
20 agrees with the comments that it's very -- it's more
21 costly to measure the discharge, as described by an
22 earlier commenter. So we if we can't measure the
23 discharge, then we have to measure something else, as
24 an indicator to nitrate load. This nitrate balance
25 ratio is the nitrate applied over crop need.

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1 Let me first say that this concept was
2 developed in coordination with UC extension, as well as
3 certified crop advisors and both representatives from
4 our region and from Region 5, a similar approach is
5 already in used in Region 5.
6 So the nitrate balance ratio is the total
7 nitrogen applied, over crop need. The grower
8 determines that bottom denominator. They justify the
9 amount that their crop needs.
10 So, for example, if you're in a certain soil
11 type, or if you have a tissue test or if you can
12 determine your crop based on that, and apply that
13 justification, that's acceptable.
14 Another way to do it is you can use reference
15 literature -- for example, US crop cooperative has
16 information on certain varieties of lettuce of 120 to
17 140 pounds per acre. So there is many different ways
18 you could identify crop needs. The Water Board does
19 not specify how much nitrogen the crop needs. The
20 grower gets to provide that information. What we want
21 to see is the amount that growers are applying relative
22 to what they're seeing their crop needs.
23 **MR. TOMLINSON:** So that was strawberries I think
24 the research would show that, in general, the crop
25 needs 200 pounds. So that's 200 on the bottom. And so

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1 the 1.2 would result in the top number being you can
2 apply 240 pounds, and that's a target and so you run
3 into what does a target mean? What if you did more.
4 And then also the crop needs parts. I note, so there
5 are some varieties of strawberries in certain areas of
6 Santa Maria where you have a really long growing
7 season, so you might really bump up against that 240,
8 you might apply 250, but what that grower needs is 210
9 or 220, so that's where a lot of this uncertainty comes
10 from, and then it gets even tougher for some crops who
11 are in the 1.
12 **MR. JEFFRIES:** Mr. Tomlinson, isn't another part
13 of this equation is the soil type --
14 **MR. TOMLINSON:** Absolutely.
15 **MR. JEFFRIES:** -- doesn't to make a difference?
16 **MR. YOUNG:** Yes.
17 **MR. TOMLINSON:** Because that's going to define the
18 crop region, the soil conditions, the climate --
19 **MR. YOUNG:** So the problem, then, is the ratio
20 defined, either 1 or 1.2, is that it?
21 **MR. TOMLINSON:** Well, it's the ratio combined with
22 the context of the Order. Is it a good thing to do? A
23 required thing to do what if you miss it? What if it
24 has one farmer and you pick one number, and, I mean,
25 what's the range of acceptability, I think that's what

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1 a lot of people are kind of reading there.
2 **MS. SCHROETER:** Let me just follow up real quick
3 in terms of the actual numbers 1 and 1.2. Those were
4 numbers suggested by the research group that we
5 pulled. Both those numbers were not developed by
6 Staff. Staff was in that group and agreed with the
7 development of those numbers, but that was based upon
8 the research and the professionals that. The reason
9 why strawberries are 1.2 is strawberries are an annual
10 crop. So -- and so basically you have the nitrogen
11 that you use throughout the process. Vegetables are in
12 rotation, so you have the opportunity to use the
13 nitrate left in the system into your next crop, so
14 we're not accounting for nitrogen that's left in the
15 system, and so over a three rotation a nitrate balance
16 ratio of 1 is accommodated for nitrate level in system,
17 so it's not 100 percent effective system and that's
18 based upon what the researchers told us.
19 **MR. YOUNG:** What do the farmers, what comments did
20 they gave you about using ratios like that, 1 and 1.2?
21 **MS. SCHROETER:** We -- there was no suggestions to
22 alternatives.
23 **MS. DUNHAM:** We were never asked.
24 **MR. TOMLINSON:** We do this type of work. The
25 Strawberry Commission jointly funded it. This is the

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1 exact kind of work that farmers want to know. When it
2 turns into a regulatory requirement is when everyone
3 kind of says hold on a second they're putting a cap on
4 my fertilizer, which is major part of my formula, my
5 receipt, for whether I get my plants to come early or
6 late. Now you're really interrupting what I do on the
7 farm. And so that's where the big difference is. I
8 think it's good work, but when it makes the regulatory
9 requirement it's a real challenge, compared to like the
10 rubber dam, where that diversion from the rubber dam
11 was going to take out 200,000 pounds of nitrogen out of
12 surface water drain.
13 So there's more comprehensive ways that
14 agricultural can remove nitrogen from the environment,
15 and prevent it from going into the Bay, then just a
16 simple cap. So I think to the extent that that cap can
17 be a guide or, you know, some sort of research or type
18 of thing that coalition could work on, I think it's
19 useful. It's just the more you talk about a regular
20 requirement, it's going to be challenging.
21 **MR. YOUNG:** So are these ratio numbers -- I don't
22 want to use the work actionable, but did they create a
23 potential for violation if someone -- Mr. Thomas,
24 please. I hear you, but I'm asking a question.
25 **MS. SCHROETER:** They are a target in Table 5, I

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1 believe, in the Order, which is a compliance target.
2 **MR. YOUNG:** So a farmer could potentially be in
3 violation of that target.
4 **MS. SCHROETER:** The order requires to growers to
5 achieve this minimum reading within 3 years.
6 Let me just move on to this slide. This is
7 the slide that you saw from Dr. Hartsworth that he
8 presented at the management meeting back, I think it
9 was last year. This is for lettuce.
10 So in that middle column you have what
11 basically are the ratios. So you see below, average in
12 that column of zero to five and a high average of 2.8.
13 What that demonstrates is that it is achievable, and
14 that some growers area very close. The average 1.5,
15 the average lowest is 1.1.
16 What I want to emphasize here, it's a way for
17 Staff and the Water Board to evaluate the progress. We
18 aren't trying to nickel and dime growers by saying you
19 can only apply 1.1 or 1.2.
20 What we know from that data is some growers
21 were are at 4.0, 3.0. So what we're trying to do is
22 identify those real high ratios.
23 **MR. YOUNG:** Well, can you do it while just making
24 a target and not be something that creates a
25 violation?

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1 **MS. SCHROETER:** We could move to a milestone.
2 **MR. YOUNG:** I mean, since there's a lot of
3 variations and this is going to be something new for
4 them, I mean --
5 **MS. SCHROETER:** That's an option.
6 **MR. YOUNG:** I don't see the need to have it a
7 violation immediately.
8 **MS. SCHROETER:** We can take that into
9 consideration and move it to the milestone table. I do
10 want to say is, this is the only target for
11 groundwater. So this is the only indicator of a
12 requirement to reduce loading. So in response to the
13 severe water quality and the need to protect your
14 groundwater, we're trying to set a standard for reduced
15 loading and this is the only thing in the Order. We
16 can move it. It is a possibility.
17 **MR. YOUNG:** I understand what you're trying to
18 do. I'm not disagreeing with you. I'm just trying to
19 make it a little bit more, maybe, workable in the
20 context of what the state of the art is.
21 **MR. TOMLINSON:** So this is where they tile drains
22 come in, because the tile drains are mitigation for
23 leaching. But they're not exemptions. You're required
24 to achieve the standard. So as the tile drain, drains,
25 then you have high nitrate in the drain. So it's

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1 mitigation on groundwater, but it goes into the surface
2 water, and then you have to read the biostimulatory
3 threshold, if I got that right. So that's one tenth of
4 the drinking water. So the tile drain has to be
5 cleaner than the drinking water on nitrate, but if the
6 tile drain is in the right spot, like in the Boronda
7 area, it goes through the recycling plant and all that
8 nitrogen gets removed from that environment.
9 So that's where it's a more -- there are
10 solutions. We absolutely have to take nitrogen out of
11 the environment. There is no question, we have to get
12 a handle on the groundwater issue, but there are some
13 more complex solutions that are out there that perhaps
14 are not appropriate for the Ag Waiver, right? They'll
15 be worked out in other forms.
16 **MS. SCHROETER:** Just to clarify, there's no
17 standard that tile drains have.
18 **MR. TOMLINSON:** For surface water? There is no
19 standards for nitrates in surface water?
20 **MS. SCHROETER:** There is no standard, no.
21 **MR. YOUNG:** Okay.
22 Mr. Johnston?
23 **MR. JOHNSTON:** Yes.
24 **MR. YOUNG:** Mr. Delgado? Mr. Jeffries?
25 **MR. JEFFRIES:** So one of the points that was made

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1 in favor of the Ag Alternative Proposals today was that
2 it would require many, many more farms to have a
3 nutrient plan, than the number of farms in Tier 3. And
4 I -- I really understand what we're hearing from Staff
5 about if this is the only, um, measure, the concrete
6 measurable thing in terms of eliminating nitrogen
7 groundwater, which is supposed to be our highest
8 priority. I understand why that is a very hard thing
9 to say, fine, we'll just make it a milestone.
10 My question is, so when you're talking about
11 nutrient management plan in the Ag Alternative, what do
12 they do? Is it just have a plan and whatever it is
13 it's okay, or are there metrics that have to be met
14 there?
15 **MR. TOMLINSON:** So that would be developed, but
16 this is the type of thing would be included in the
17 plan, including testing the soil and testing the water,
18 so you know the total amount of nitrogen that's
19 available. And the difference is use agriculture,
20 embrace agriculture, and let agriculture work for you.
21 That's the whole concept of the coalition is that you
22 get agriculture working on these things that, um -- but
23 as soon as you them into a hard number and into a
24 regulation, then you get, just, weird anomalies.
25 **MR. JEFFRIES:** I understand that nobody likes to

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1 be told what to do, and farmers like it less than
2 almost anybody, but I'm still trying to understand how
3 this would work. So you're saying that there would be
4 some sort of similar process with nutrient plans in the
5 Ag Alternative. Now would that be simply up to each
6 individual farmer to grab what that process is, and
7 would -- or would there been some sort of formula, like
8 this, that the Executive Officer would have to approve
9 in the -- that's what I'm trying to get at here.
10 **MR. TOMLINSON:** As the coalition was developed,
11 that would be something that would be approved as part
12 of that process by the Staff.
13 **MR. JOHNSTON:** So what you're saying is there
14 would still be something like that 1 or 1.2 number, the
15 difference is that there would be farmer participation
16 in developing it, but that, essentially, the Board,
17 through the EO, would still have to approve it; is that
18 correct?
19 **MR. TOMLINSON:** I'm saying that's possible, yes.
20 And that, yes, it's possible that you might get more
21 folks participating than just two or three right now.
22 I'm not going to say there's going to be this huge rush
23 for everyone to jump in.
24 **MR. JOHNSTON:** No, I'm not asking who's going to
25 participate. I'm trying to get -- I'm trying to get a

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1 handle -- because it's been all kind of squishy to me,
2 what the actual -- who's approving what in the Ag
3 Alternative process -- and maybe I'm asking the wrong
4 person -- and part of the problem is who are we talking
5 to? But I'm trying to get a handle on whether, in
6 fact, under the Nutrient Plans under the Ag Alternative
7 some measurable standards, in terms of nitrogen nitrate
8 loading?
9 **MR. TOMLINSON:** I think Tess wants to answer that
10 question.
11 **MS. DUNHAM:** The concept with the Ag Proposal is
12 that there would be a part of these. The Nutrient
13 Management Plan is something that looks definitely at
14 the exact type of things, but it doesn't become the
15 regulatory in point. It becomes a tool in order to
16 evaluate what the individual farmers are do.
17 In other words, go back and remember
18 Dr. Los Huertos box plot in his report? And, basically
19 what we do is taking this type of information, and
20 putting it into that box plot format to take a look at
21 to see where are growers at? Who is up there at the
22 port? That's who we should be going and auditing and
23 doing the practice effectiveness evaluations, and we
24 should be targeting to work with to make sure they're
25 making changes through that -- using that box plot

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1 formula, but not as a regulatory end point.
2 **MR. JOHNSTON:** Well, let me see if I understand.
3 Let me repeat back, and you tell me if I've got it
4 right.
5 What I hear you saying is that under the
6 Ag Alternative they would still have to be making some
7 version of this calculation of nitrate loading, but
8 that there would not be -- in terms of what you call a
9 regulatory end point, there would not be a standard
10 that they would have to hit, everybody would make the
11 calculation, everybody would be somewhere on the --
12 maybe, conceivably in the range we see on that chart
13 of .5 to 2.8, and that hopefully over time that would
14 go down.
15 Is that correct?
16 **MS. DUNHAM:** That is correct. And also I would
17 say and with the input of the technical advisory
18 committee to really determine, for that individual farm
19 and operation, have they appropriately managed their
20 nitrate -- their nitrogen and their nutrient inputs.
21 Have they appropriately managed it, based upon their
22 site specific information, in order to determine if the
23 ratio that they picked is appropriate for their
24 operation. The ratio, you know, this is not a hard and
25 fast for every operation. You have to consider it on a

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1 farm-by-farm basis.
2 **MR. JOHNSTON:** I understand it's going to vary
3 farm by farm. Would it be appropriate, then, for a
4 third-party coalition to have a weighted-average target
5 that overall the coalition would have to hit? Because
6 we're -- our goal is to get the nitrate loading down.
7 **MS. DUNHAM:** And I would defer to Dr. Los Huertos'
8 technical advisor, whether that would be appropriate or
9 not, I don't know. I would apologize now.
10 **MR. YOUNG:** Do you support his work?
11 **MS. DUNHAM:** Do I whose his work?
12 **MR. YOUNG:** -- Dr. Los Huertos. Is he speaking on
13 behalf of Ag?
14 **MS. DUNHAM:** Dr. Los Huertos, I believe, is
15 speaking for himself.
16 **MR. YOUNG:** Okay.
17 **MS. DUNHAM:** But Dr. Los Huertos, as he said, has
18 done a lot of work in agriculture, and while we don't
19 agree with everything he says, we do respect him and
20 his technical abilities, and he's provided a lot of
21 really good information, and I think that when we
22 develop the technical advisory committee, we will look
23 to use Dr. Los Huertos to help with that technical
24 advisory committee because of his technical information
25 and knowledge that he has with these issues.

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1 **DR. LOS HUERTOS:** So one of the issues that
2 effectively changes it is not just nitrogen in the
3 soil, it's nitrogen moving below the soil.
4 So it's easy to prescribe things like drip
5 irrigation, as a sort of overall practice and say
6 that's good, and that's a lower risk, than maybe flood
7 irrigation. But the problem is if you mismanage your
8 drip irrigation, you release just as much nitrate.
9 So the part that is missing here, and that's
10 that part, in theory, is the coalition approach, you
11 don't just look at the nitrogen manager valve, you look
12 at the overall farm management plan in terms of the
13 risk. So how well is the irrigator doing? Is the
14 irrigator paying attention to the soil moisture?
15 Because nitrogen is a combination of nitrogen in the
16 soil and the leaching potential because of water
17 movement.
18 If nitrogen movement is not appropriately
19 addressed, in terms of irrigation, whatever the ratio
20 is, it's a nice easy category to select, but it
21 actually has nothing to do with leaching, because
22 leaching is the combination of multiple effects.
23 So what we're trying to do is bring a
24 somewhat subtle approach, to be able to look at
25 leaching from at full risk, so it will be much more

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1 robust, and I will say probably require a little more
2 effort from farmers, not because of affording, but in
3 terms of really paying attention to their farms.
4 And the other thing that I have to say is
5 this, managing nitrates on the soil takes a lot of
6 practice. I have to say this is generally true of all
7 growers I talked you finally figured it out in
8 15 Years. The first five years you don't know what's
9 going on and every year is different in terms of
10 rainfall, then the next five years you figure out how
11 you can actually make money, then you actually feel
12 like you know what you are doing. The problem is you
13 have so many different levels of where people are in
14 that category, that you really need a lot of work to
15 hand hold them through the nitrogen management process,
16 in terms of -- and again you may have simple nitrogen
17 balance approach, but if you don't measure the
18 nitrogenization of the nitrogen generation which became
19 organic matter, which when buried, you may release a
20 lot of nitrogen when the temperatures are boiling, and
21 over irrigate that one time.
22 So what I'm trying to say and what I'm trying
23 or express is that it's not -- be more subtle. I think
24 what I would say is I fear we're going to be using
25 these budgets and then we're going to come back to the

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1 growers and say you're leaching a lot of nitrates. We
2 need to lower that nitrogen ratio even more. And
3 that's not the solution.
4 **MR. JOHNSTON:** Dr. Los Huertos, if I can try to
5 get an answer to the question that Ms. Dunham punted to
6 you.
7 The question was, do you think that -- I
8 understand the it's different on every farm response to
9 this nitrate loading target. And I also understand
10 what you're saying about irrigation, and I hear what
11 Staff is saying that this is the only measure that
12 we've got at this point that actually deals with
13 nitrate loading. So my question to Ms. Dunham was, do
14 you think if the it's different on every farm argument
15 mandates the, we want to experiment with our
16 creativity, or mandates against individual standards
17 that it would be appropriate for a coalition in or
18 perhaps a subwatershed area to have an aggregate
19 target, get a weighted-aggregate target that somebody
20 has to be accountable somewhere.
21 **DR. LOS HUERTOS:** I agree. And, actually, that's a
22 really good idea. I like that idea a lot. But it
23 can't be all by itself. It has to be linked to
24 irrigation efficiency and management practices. If you
25 pull that one piece out you're trading a flimsy house

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1 for --
2 **MR. JOHNSTON:** I understand that, but both the
3 public and the Board has to have some things they can
4 look at to actually see what's going on.
5 **DR. LOS HUERTOS:** Yes.
6 **MR. DELGADO:** Does the nutrient balance ratio of
7 1.2 or 1.0, does that included the nitrate that's in
8 the water that's being applied to the crop.
9 **MS. SCHROETER:** Yes, it does.
10 **MR. DELGADO:** Okay.
11 **MR. YOUNG:** Okay.
12 **MR. DELGADO:** So the only thing it doesn't include
13 is the residual, if there is any, from prior corps.
14 **MS SCHROETER:** That's correct. And, actually,
15 that was in response to comments that we got from
16 agricultural stakeholders. So the example that we were
17 using and the model was the Dairy Order, Region 5,
18 which does require growers to account for residual. We
19 do not and we clarified that in the Order.
20 **MR. YOUNG:** Go ahead, Mr. Thomas you can
21 continue.
22 **MR. THOMAS:** The section that is at issue here and
23 all this discussion you could find in Table 3, entitled
24 Schedule for Compliance. And it says, achieve nitrogen
25 balance ratio target for crops equal to one for crops

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1 in annual rotation, season vegetables, by October 1,
2 2015 and it's absolutely with compliance.
3 **MR. DELGADO:** Okay. Thanks for clarifying that.
4 So in lay person's terms, if I'm a grower of
5 lettuce, I consider how much nitrogen I have in my
6 water, I have to monitor my water to know that, because
7 that counts, right? So I know how much nitrogen is in
8 my water, and I figure out my soil type and I tell the
9 Board, I tell the Staff I need this much nitrogen for
10 my crop, given all the conditions that I've considered,
11 and Staff looks at it says that looks reasonable,
12 okay. You've named your own target. And so the only
13 thing that you're not accounting for, or I'm not
14 accounting for, is the residual. That's wherein lies
15 this debate whether it's 100 percent or not, and you're
16 saying, Staff, it's not 100 percent, because we are not
17 making you count the residual, so you actually get to
18 apply more.
19 **MS. SCHROETER:** Yes.
20 **MR. DELGADO:** In other words, if I go back to you
21 and say I'm doing something different than three months
22 ago, I need more nitrogen or my need is higher than I
23 told you and then staff would probably say, okay,
24 that's all right then your denominator is now
25 different, go with that new denominator?

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1 **MS. SCHROETER:** You actually report annually, so
2 you don't tell us every time, you just represent it at
3 the end. And, actually, FEMA says that we do have
4 growers right now who are already reporting this type
5 of information. Monica has developed a spreadsheet
6 right here, so I should probably blow this up. And you
7 can see there are growers right now successfully
8 putting in this type of information.

9 **MR. DELGADO:** Okay. My last question is something
10 that Dr. Los Fuertos referred to that if you just look
11 at this nitrate balance ratio by itself, you're missing
12 the big picture and and you're chasing your tail. And
13 my question is, isn't it true that this whole Ag Waiver
14 is looking at all of the different practices going on,
15 on the farm. It's not just relying on that. But in
16 this case, this is being used for a certain purpose of
17 monitoring the water quality, but it's not isolated
18 from everything else that the Best Management Practices
19 that are going on.

20 **MS SCHROETER:** That's correct. In general,
21 there's farm plan requirements that includes many
22 elements, one of them is irrigation management, another
23 one is nitrate management and on and on. And they can
24 also demonstrate various deficiencies to make sure
25 we're not depercolating.

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1 **MR. DELGADO:** Okay. And this will be my last
2 question. If I tell you my crop need and you say okay
3 and you say okay, and I make my annual report, or
4 somehow you find out that I'm applying more than my
5 crop needs, what kind of penalty or consequences to I
6 face under the Draft Ag Order?

7 **MR. KEELING:** Using what we talked about earlier
8 today we would initially contact the grower and talk to
9 them about this information. And we would say why is
10 your crop need so high?

11 **MR. DELGADO:** Well, my example was you find out
12 I'm applying a lot more than we agreed to. So I guess
13 you would call me or email me and say what's up?

14 **MR. KEELING:** Yes, we talk to the grower and try
15 to figure it out. So we would work with them to lower
16 this?

17 **MR. YOUNG:** Okay. Thank you for your comments.

18 **MR. YOUNG:** Thank you for our comments.
19 Mike Brown, Dirk Giannini.

20 **MR. BROWN:** I'm Mike Brown, that's B-r-o-w-n,
21 representing the Coalition of Labor, Agriculture and
22 Business. I'm the Government Affairs Director for both
23 Santa Barbara Counties and San Luis Obispo County. I
24 had a 42-year career mainly as a City Manager and
25 executive in various jurisdictions and dealt with a

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1 plethora of water pollution issues. Some of them quite
2 large, in fact, almost entire cities, trichloroethylene
3 then TBS, VOC, the whole thing.

4 And this Order is very complicated, and if
5 you don't go with the Ag Order and somehow you do
6 determine to adopt the Staff version, in some fashion,
7 what you might want to think about is doing a test,
8 doing some pilots, see in some of these areas Staff
9 venture people are already doing things, run a couple
10 of geographic and a couple of Tier pilots and tease out
11 all of these issues that Ags talking to you about, and
12 others. But before you pull the trigger, it's like
13 when the simplest thing, a jurisdiction decides to talk
14 a boulevard and substantially change the speed zones
15 and put in stop signs or something, they don't pull the
16 enforcement trigger right away. They provide warnings,
17 and let people get used to it. And I present that
18 process, having made many mistakes myself, so you might
19 want to pilot this thing, get it going, and then we'll
20 all learn what works and what doesn't. All these
21 highly technical conundrums might get clarified.

22 Thank you very much.

23 **MR. YOUNG:** Thank you for your comments.
24 Mr. Giannini, Mr. David Costa, Rick Sweet,
25 Ben Fairly, and Marla Jo Buton.

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1 **MR. GIANNINI:** Dirk Giannini, G-i-a-n-n-i-n-i.
2 Mr. Chair, next time, make sure I'm before
3 Mr. Tomlinson in these late meetings.

4 **MR. TOMLINSON:** I get a bad rep from my own guys.

5 **MR. GIANNINI:** Good evening, Chair and Board
6 members.

7 My name is Dirk Giannini from Leafy Green
8 Growers, Salinas. Mr. Michael Thomas used an analogy
9 earlier this morning that the best is a good offense.
10 I want to reflect on that analogy.

11 I cannot agree more when it comes to
12 improving water quality. The gain, is going to be one
13 on the ground with growers, such as my -- myself that
14 implement practices on the farm, not by submitting
15 multiple layers of monitoring results and paperwork
16 that has nothing to do with the improvement of water
17 quality.

18 The Staff Proposal, as presented, has a
19 tremendous amount of required paperwork that is to be
20 submitted, which is onerous. Compliance of such laws
21 that we are discussing today usually comes naturally
22 with good stewardship and strategic business plan, when
23 considering the safety of our environment and our
24 employees. However, in this case, we agree this
25 request being made by the Staff Proposal is up and

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1 beyond, and inhibits this compliance, when compared to
2 other regulations.
3 Staff and Agriculture are very apart. So far
4 apart, that today that Staff just increased their Tier
5 3 by 200 growers, after listening to Sergio Sanchez'
6 public comments -- this is Assemblyman Luis Alejo's
7 representative.
8 Even though Staff is telling me it is not
9 required to line freshwater basins all the associations
10 of that I am a member of, and all of the meetings that
11 I have attended, including legal expert opinions are
12 telling me the opposite. They're all suggesting that I
13 line these catch basins. These two small examples lead
14 me to believe that we have very different
15 interpretations of the Staff Proposal in many
16 categories. This was also highlighted by the 11
17 misconceptions presented today by California Farm
18 Bureaus and Kari Fisher.
19 **MR. YOUNG:** Can you rap it up, Mr. Giannini?
20 **MR. GIANNINI:** I hope and urge you include the
21 Ag Proposal in the game plan, in addition to the
22 inclusion of Dr. Los Huertos as an Ag Alternative.
23 Thank you.
24 **MR. YOUNG:** Thank you for your comments.
25 David Costa, Rick Sweet, Ben Fairly.

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1 **MR. COSTA:** Thank you, Mr. Chair.
2 David Costa, C-o-s-t-a.
3 In the Draft Order for Tier 3, it stated
4 today, 103 farms, the Farm Water Quality Buffer Plan
5 and Irrigation Nutrient Management Plan are said to be
6 only required of a subset Tier 3 grower. I don't know
7 what the definition of subset is. But the numbers that
8 came out today says as required, those two are required
9 between 55 and 60 percent of the growers, over half of
10 the Tier 3 growers.
11 So one question I have is at what point have
12 we created a Tier 4, by requiring those components of
13 such a large group of Tier 3 growers, for those of whom
14 it's required the irrigation Nutrient Management Plans
15 effectiveness Monitoring, it says, must be conducted or
16 supervised by a registered professional engineer, a
17 professional geologist, or a certified crop advisor
18 with hydro-geology experience, I don't know of one that
19 has that kind of experience and the CCAs that I talk to
20 today aren't aware of any either. In my calculations
21 from the analysis I turned in of our operation of nine
22 Tier 3 ranches, and for the comments that came earlier,
23 they are a little hard to bear. Everybody says that
24 the problem is in the Tier 3 farms. Well, as a grower
25 that has, you know, a good share of Tier 3 farms, our

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1 calculations show nine out of 103, so I would question
2 a 103 because we are one operation, although we're a
3 large operation. We spent last year, \$179,000, in
4 pre-application solo testing for nitrogen prior to
5 those nitrogen applications. Okay. And I just want to
6 make sure that -- it's difficult to get the sense in
7 the room, and that's information I wanted to share.
8 **MR. YOUNG:** Why did you spend that amount of
9 money.
10 **MR. COSTA:** We're testing soil instead of tissue.
11 In my opinion, testing tissue tells you what's in the
12 sand. It would be like saying, I still have gas
13 because the engine is running in my car. It doesn't
14 tell us what's underneath. It doesn't tell us, I don't
15 think, what's going to happen in the next several days,
16 or next week, or two weeks. And because of the number
17 of acres that we sample, we sample before every
18 prepared operation, both in the fall and on the
19 turnaround between the first and second crop. We are
20 trying to test between every side dress application on
21 a growing crop.
22 So for us to recoup those numbers, my math is
23 if we can just save about half of a fertilizer
24 application. If we have four applications of
25 fertilizer in the life of a crop, we basically save

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1 half of one of those to pay for that program before we
2 can start recouping the savings that are frequently
3 asked questions sheet said that we would be receiving.
4 **MR. YOUNG:** So about \$179,000 spread over how many
5 acres? I know before you talked about --
6 **MR. COSTA:** 5,400 land acres, averaging 2.1 crops.
7 **MR. YOUNG:** Okay. All right.
8 Thank you very much.
9 **MR. JOHNSTON:** Just a quick question.
10 **MR. YOUNG:** Yes.
11 **MR. JOHNSTON:** Are you saving that half of
12 fertilizer application at this point? I don't know how
13 long you've been doing this, I'm just curious.
14 **MR. COSTA:** The program is two years in the
15 making. The expenditure two years ago wasn't that
16 great. In the first year, none in all our acres. The
17 goal is to recoup that and I guess from that exercise
18 is farther down the road. That's more -- that's a back
19 burner issue right now. We are trying to get to the
20 point, you know, people are documenting the need for
21 every application, so I'm confident that we'll get
22 there. I don't think we are there yet. We haven't run
23 full circle over all our acres, over the crop area.
24 **MR. JOHNSTON:** Do you test your groundwater to
25 know how much nitrogen is in the irrigation to?

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1 **MR. COSTA:** Yes, we do.
2 **MR. DELGADO:** And, I guess, it's substantial
3 enough to make a difference in your application?
4 **MR. COSTA:** Well, it varies by area. It varies by
5 ranch. Within our different growing areas we have four
6 distinct growing acres in the Salinas area, where we
7 farm. You know, the history on those numbers is they
8 vary. Some have gone up; some have gone down. Some of
9 that, you know, depends on the area, and some I don't
10 know that we can attribute, you know, the cause to does
11 seem to be somewhat variable, and the other place where
12 it gets complicated for us is an arrangement where
13 multiple wells that are either interconnected that
14 irrigated cross blocks and do gave flexibility, maybe
15 all the blocks that need to irrigate this side of the
16 range or all this half the ranch, it becomes a harder
17 number to pin down which number do I use, which well is
18 running in this block this time. So the budgeting
19 issue gets complex.
20 **MR. DELGADO:** And I really appreciate hearing this
21 detail about your operation.
22 **MR. COSTA:** You're welcome.
23 **MR. DELGADO:** When you talked about trying to save
24 one half of the nitrogen application in order to recoup
25 your 180k?

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1 **MR. COSTA:** Yes. That's a round number.
2 **MR. DELGADO:** You seem to say it easily, like this
3 wasn't priority. I mean, we keep hearing how
4 competitive the industry and that what you do on you
5 ranch and your farms, that you may not want your
6 competitors to know, because you're trying to, you
7 know, keep your -- you're trying to get your product to
8 the market faster. So is that true that the
9 information that you're sharing with us is not
10 proprietary, in general?
11 **MR. COSTA:** I don't know exactly how many detail I
12 shared with you. I think there's a lot to what you're
13 trying to do that's not all there on the table right
14 now, whether it, in fact, works long term or not is
15 still to be determined. I mean, it's still a work in
16 practicing. It's an example the type of things that
17 growers are trying to do in one way or shape or form or
18 through, you know, alternative method. This might not
19 be a method to everyone. It's a commitment that we
20 made because we knew that we -- because of the size of
21 our operation, we need to figure things out. We can't
22 wait for last minute. Someone else may be able to do
23 that. Somebody that has it dialed in better might be
24 able to do that. I would say that, probably, you
25 know. Do we recoup that investment? In that testing,

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1 the worse grower has a better chance of recouping that
2 investment, because it means we're farther off in
3 everything we've been doing for last half a century.
4 The more we have it dialed in, in the recent past, then
5 there is going to be less to be gained from it. So I
6 guess I hope I don't recoup my investment because that
7 means we're doing a better job up to this point.
8 **MR. DELGADO:** You mean you'd have less ground to
9 make up because you're already doing so well, but if
10 you're already doing so well it's possible there is no
11 ground to make up?
12 **MR. COSTA:** But this is the way that I chose to do
13 it.
14 **MR. DELGADO:** Okay. Very small question. I'm not
15 asking for any more information now, but, in general,
16 are you more sensitive to the priority nature of your
17 groundwater supply, and it's monitoring results then
18 you are for the information you've disclosed on the
19 nitrogen cycle, and how much money you spent for the
20 testing yourself?
21 **MR. COSTA:** Yeah.
22 **MR. DELGADO:** The water is more sensitive than the
23 soil?
24 **MR. COSTA:** I would agree with that.
25 **MR. DELGADO:** Thanks again very much.

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1 **MR. YOUNG:** Okay. Thank you.
2 Rick Sweet.
3 **MR. SWEET:** Rick Sweet. Good evening and I
4 apologize, I have a cold and I sound funnier that, I
5 guess. I just wanted to highlight one point. What
6 we're trying to do that's not out here on the table is
7 determine whether in fact this works long term or not.
8 I mean it's still in progress. The fact that 97
9 percent, more or less, of growers will be unaffected by
10 the new requirements in the proposed Order. 97 percent
11 of growers. That's the amount of growers who are
12 likely to fall into Tier 1 or Tier 2 and will --
13 **THE REPORTER:** Won't or will? I'm sorry, I didn't
14 hear you.
15 **MR. SWEET:** They will not face additional
16 significant requirements and it just makes me ask the
17 question, why are we still here? Why are we talking?
18 Really, 97 percent? Um, I believe that the folks that
19 are still rallying against this aren't necessarily
20 representative of the majority of growers in the
21 meeting. I think there is actually a significant
22 division amongst the agricultural community itself and
23 I think that the remaining group of growers, who are
24 still here, are the ones who have anything at all at
25 stake, and I don't mean to diminish their concerns, but

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1 I think the vast majority of the growers in the region,
2 if you were to ask them individually and not their
3 Bureau reps or, you know, if not supportive would, at
4 worse, be indifferent to what's being said.
5 So my question to you, you know, what level
6 of support does it take, support or indifference, does
7 it take for the board to approve an Order? Are you
8 really going to wait until we have 100 percent support
9 from the regulated community to approve this?
10 97 percent are virtually unaffected by this.
11 The environmental community is going to get
12 what they wanted and we are not happy with the Order.
13 We wanted something, we didn't get it, we are not going
14 to get it. You know, this isn't a perfect Order, but
15 it's been three years and we need to get moving again.
16 There are projects, there are collaborations, there are
17 programs that could have been happening right now that
18 haven't, because people are waiting to see how the
19 chips are going to land on this thing. We need to get
20 back on track. You have an opportunity tomorrow to do
21 that. I hope you vote to support the Staff Proposal.
22 Thank you.
23 **MR. YOUNG:** Thank you for your comments.
24 Marla Jo Bruton, Mary Mundos, Buta Ratar,
25 Robert Chapman, William Fortat, Jack Berian, Michael

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1 Salsbury, Gordon Hensley, and that's it.
2 Marla Jo Buton.
3 **MS. BUTON:** I have a specific question that I hope
4 that someone here at Staff can answer or direct me to
5 someone who can answer later. I am interested in
6 impacts of nitrate pollution. I come from the
7 community of Morro Bay and we have public drinking
8 water wells impact. My city has 1.5 million and I'm
9 wondering if that was used for the plant?
10 **MR. YOUNG:** Ms. Buton, you can ask that question
11 but not here because it doesn't have to do with the Ag
12 water.
13 **MS. BUTON:** Well, why? This has to do with the Ag
14 Order.
15 **MR. YOUNG:** Well, that can be answered later.
16 **MS. BUTON:** I'm here representing my city.
17 **MR. YOUNG:** Address your comments if you would to
18 what's in the Ag Water Order. That's what this is
19 about.
20 **MS. BUTON:** When you look here you have farm,
21 labors, San Lucas, King City and San Jerardo and I'm
22 curious as to why Morro Bay was removed from that and
23 if that has to do with agriculture not being the main
24 source of our pollution. The farmers are being blamed
25 and there are concerned citizens who believe that it's

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1 explicated sewage. Everything here seems so
2 complicated and it is complicated but I live in a town
3 whose drinking water is permanently contaminated and
4 I'd like some answers.
5 **MR. YOUNG:** The staff would be glad to answer your
6 question but not here.
7 **MS. BUTON:** I disagree.
8 **MR. YOUNG:** It's okay for you to disagree.
9 Thank you for your comments.
10 Raymundo Butar.
11 **MR. BUTAR:** Raymundo Butar, R-a-y-m-u-n-d-o
12 B-u-t-a-r. I am here as a former analyst for pollution
13 of water and my work focused on gathering water quality
14 data for the Marin County and I collected raw data
15 directly from the site and worked with a senior analyst
16 and the information has been published in the
17 information presented last year in March by my
18 director. We wanted something, we didn't get it, we
19 are not going to get it. You know, this isn't a
20 perfect Order, but it's been three years and we need to
21 get moving again. There are projects, there are
22 collaborations, there are programs that could have been
23 happening right now that haven't, because people are
24 waiting to see how the chips are going to land on this
25 thing. We need to get back on track. You have an

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1 opportunity tomorrow to do that. I hope you vote to
2 support the Staff Proposal.
3 I urge on behalf of the EGCB, that the Board
4 look away from all this convoluted that's going on,
5 and take into consideration this issue that we are
6 talking about today is an issue of human rights, and we
7 have -- we're dealing with the well being of humans and
8 particularly in low income communities that are not
9 represented today.
10 And so please vote tomorrow and vote for the
11 Staff Proposal. And while it's not a perfect solution,
12 it's a step closer to bringing the nitrate level down,
13 and to bring a perfect solution.
14 Thank you.
15 **MR. YOUNG:** Thank you for your comments.
16 Robin Chapman.
17 **MS. CHAPMAN:** Robin Chapman, C-h-a-p-m-a-n.
18 Thank you to the Board for your service, to
19 the Staff for your hard work, to our hard working
20 stenographer and to our awesome awesome simultaneous
21 translators in the back of the room. Thank you.
22 In every industry there are people that have
23 to be already people who have to be dragged, kicking
24 and screaming to abandon antiquated ideology and to
25 embrace a new and better pyridine. Very often the

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1 irrational argument against change that the new way is
2 too expensive. In every situation, remediation has
3 caused thousands of times more than prevention and can
4 anybody spell "Esterson."
5 Water is not a personal possession. It's
6 every individual's obligation to protect, and anyone
7 responsible for affecting the water quality should be
8 held responsible for it's long-term viability,
9 regardless of cost.
10 The Board has no responsibility to protect
11 farming. You're only obligation is to protect water
12 quality. I ask you to adopt the Staff recommendations,
13 with the addition of the environmental
14 recommendations.
15 And, oh, by the way, this is personal to me,
16 because I live on the confluence of the Estrella and
17 Salinas Rivers. Incidentally (sic), my husband and I
18 derive 100 percent of our income from farming.
19 **MR. YOUNG:** Thank you for your comments.
20 Is there a William here? Elena? No, okay.
21 How about a Bill? No, okay.
22 All right. Jack Darrian, V6 Ranch,
23 Hartfield?
24 **MR. DELGADO:** He left. He's a cattle rancher. He
25 thought he was not needed here.

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1 **MR. YOUNG:** John Salsbury. I know he's still
2 here.
3 **MR. SALSBUARY:** John Salsbury, S-a-l-s-b-u-r-y,
4 like the steak.
5 I'm a sixth generation California farmer and
6 we have water rights in the Sacramento Delta going back
7 to 1850, which are also in jeopardy. I also farm right
8 down the road, about five miles, which is a very
9 sustainable operation, 100 percent organic. Monica was
10 there in the beginning. It was just the two of us when
11 we started because one of the things we worried about
12 anything running off that ranch, because we had pretty
13 steep slopes and we have a lot of copper dams to hold
14 the water because if I kill one steelhead within an
15 inch or a foot long, it's \$13,000 a pop. You don't
16 kill one, you kill a bunch. We've been set up that way
17 a long time, and you don't have a farm for 163 years in
18 tenancy, without being good stewards of the land. We
19 pretty much have always been organic for the last 20
20 years and we're sitting in a spot though that got a
21 creek going on the west and south side of it, it is
22 only about 30 feet away from the vineyard, and we have
23 a municipal well for the people up above, homeowners,
24 and we also have an Ag well, so that immediately puts
25 me into Class 2 or 3, Tier 2 or 3 situation, which is

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1 kind of crazy because it's 100 percent organic.
2 I'm also a Board member on the Central Coast
3 Wine Grape Growers Association as is my colleague and
4 our Ag representative, Jean-Pierre, and I know he
5 shouldn't be able to vote because it is a conflict of
6 interest. I have a hard time thinking that he
7 shouldn't be up there with you asking questions as an
8 Ag representative.
9 Finally, what is this going to cost us?
10 Nobody has given me any ideas. I have a budget. What
11 is it going to cost me? I have not been able to get a
12 good read on that, and if I'm a Tier 1 or Tier 3,
13 whatever, it's almost like getting a bomb, you have to
14 get it and find out what's in it to see to what it
15 costs. And also, what about the guys above us? San
16 Luis Big Water Creek are sending down a million gallons
17 a day with nitrates in it, over the limit. I have
18 three wells next to it. Am I going to get dinged for
19 them sending down nitrates?
20 Am I going to get dinged for the homeowner's
21 association above us that is completely landscaped two
22 acre parcels sending down all pesticides? There's a
23 lot of things about the other people sending things,
24 the golf course, they have a system on both sides of
25 the creek am I going to get dinged for all that?

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1 Thank you.
2 **MR. YOUNG:** Thank you for your comments.
3 **MR. DELGADO:** Quick question.
4 Could you get the Staff to weigh in, if he's
5 organic, would he be Tier 1?
6 **MR. SALSBUARY:** No, but I have a well in the middle
7 of it that feeds 25 homes.
8 **MS. SCHROETER:** I'm sorry, I stepped out when he
9 was describing the ranch.
10 **MR. DELGADO:** If he does not use any pesticides,
11 is he Tier 1?
12 **MR. SALSBUARY:** Yeah, it's only five acres. This
13 one part, I've got plenty of others, but this one
14 parcel is five acres. It's on a creek on the west side
15 and Sea County Creek on the south side.
16 **MS. SCHROETER:** What type of crop do you grow?
17 **MR. SALSBUARY:** It's a vineyard and it's never had
18 a pesticide on it. It's bottom land. I don't have to
19 have fertilizer and the whole thing is organic, but
20 it's got a well near it.
21 **MS. SCHROETER:** You're in Tier 1.
22 **MR. JOHNSTON:** Unless he has a surface water or
23 impaired drinking water well?
24 **MR. SALSBUARY:** I have both of them.
25 **DR. HUNTER:** No, it's too nice.

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1 **MR. JOHNSTON:** So we are clear, the Tier criteria,
2 as I understand it, Tier 1, all four of those criteria
3 have to be true. Tier 2, it's not an "and," it's an
4 "or," and if any of those things are true, you're in
5 Tier 2 or Tier 3.
6 **MR. DELGADO:** So that's the question. Is it
7 an "or" or an "and" for Tier 1, 2 and 3 on slide 42,
8 Page 21 of today's Staff report.
9 **MR. JOHNSTON:** Let me see the actual slide.
10 **MR. DELGADO:** Page 21 slide of your Tier
11 criteria.
12 **MS. SCHROETER:** Sorry, it's late.
13 **MR. DELGADO:** So are those four bullets under Tier
14 1, are those "ors" or "ands"? And do you have to have
15 all four or just one? Tier 1 with four bullets?
16 **MS. SCHROETER:** So that's correct, you have to
17 have all three of the top three or be a certified
18 sustainable practice.
19 **MR. DELGADO:** So if Mr. Salsbury has an impaired
20 surface water that he's discharging into or if he has
21 an impaired drinking water well, he cannot be in
22 Tier 1.
23 **MS. SCHROETER:** Actually, you know, this slide is
24 slightly incorrect relative to the drinking water well,
25 so the drinking water well piece is only invoked if you

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1 grow a certain crop type.
2 **MR. DELGADO:** Okay.
3 **MS. SCHROETER:** I'm sorry.
4 **MR. DELGADO:** All right. Then the three bullets
5 under Tier 2, are they "ors" or "ands"?
6 **MS. SCHROETER:** So the Tier 2 criteria are that
7 you use chlorophyll-a phosphor diazinon, if those are
8 "ors." So if any one of those Tier 2 criteria
9 applies, you are in Tier 2.
10 **MR. DELGADO:** So just being organic, doesn't mean
11 he's in Tier 1, it's depends on impairment of surface
12 and drinking -- or just surface areas?
13 **MR. JOHNSTON:** If he has 50 acres of grapes and
14 were organic and there was no impaired surface water,
15 and that's nitrate loading problem, he'd be in Tier 2
16 unless he was in SEP program; right?
17 **MS. SCHROETER:** That's correct, I believe.
18 **MR. JOHNSTON:** Okay.
19 **MR. SALSBUARY:** What about the drinking well for
20 the 28 homes above me?
21 **MS. SCHROETER:** I'm not sure what the question
22 is.
23 **MR. SALSBUARY:** What about, I have a well in the
24 middle of my farm that feeds 28 homes that are above
25 me.

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1 **MS. SCHROETER:** That doesn't effect what Tier
2 you're in.
3 **MR. JOHNSTON:** For his crops.
4 **MR. SALSBUARY:** Then I'm okay? It's organic.
5 **MS. SCHROETER:** But it there's --
6 **MR. SALSBUARY:** And I have got a creek 25 feet
7 away.
8 **MR. YOUNG:** Is it impaired?
9 **MR. SALSBUARY:** What's impaired mean?
10 **MR. YOUNG:** It would be polluted with certain
11 contaminants above a certain level and you would be on
12 a list 303D list of water bodies, just because it's a
13 creek.
14 If it's a clean creek, you're okay.
15 **MR. SALSBUARY:** I definitely know it is.
16 **MR. JEFFRIES:** As far as you know, it is.
17 **MR. YOUNG:** No problem.
18 **MR. SALSBUARY:** Okay. Thank you.
19 **MR. JEFFRIES:** But how would he know that when he
20 was is filling out his form to apply? Which direction
21 doe he?
22 **MR. YOUNG:** To the Staff to ask questions.
23 **MR. SALSBUARY:** I'm going to go stand in line right
24 now right now.
25 **MR. JEFFRIES:** Your fortunate to know a Staff

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1 person personally, not everybody has the good advantage
2 you have.
3 **MS. SCHROETER:** Sir, you can also go on our CCAM
4 website. It has the impairments available.
5 **MR. YOUNG:** So does the Order.
6 **MR. BRIGGS:** It's right here.
7 **MR. YOUNG:** I think it's easier said than
8 necessarily done.
9 **MR. KEELING:** And that's through the process
10 through the ENOI, Electronic Notice of Intent where
11 farmers are uploading their information. They have
12 been contacting us, contacting our team regularly for
13 the past year and a half, and we've had -- I don't know
14 how many contacts, hundreds if not thousands of
15 contacts, with growers, where they're actually coming
16 into our office to work with Monica, who is on the
17 team, to provide that information and figure out what
18 Tier they're in.
19 They're doing it.
20 **MR. YOUNG:** Okay. Thank you.
21 Michael, we are done with public comment.
22 It's closed.
23 **MR. JOHNSTON:** I'd to make a comment to make sure
24 the Staff understands at least I feel they should
25 together.

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EXHIBIT “K”

1 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

2 PANEL HEARING

3 SAN LUIS OBISPO, CALIFORNIA

4 MARCH 15, 2012

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7
8 CONTINUATION OF THE

9 HEARING ON THE WAIVER OF WASTE DISCHARGE

10 REQUIREMENTS DISCHARGED FROM

11 IRRIGATED LANDS

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19 ATKINSON-BAKER, INC.

20 COURT REPORTERS

21 www.depo.com

22 800-288-3376

23
24 REPORTED BY: DEBORAH L. HOLDEN, CSR NO. 8885

25 FILE NO.: A6028BE

1 A P P E A R A N C E S

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4 FOR THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL
5 BOARD:

6

JEFFREY S. YOUNG, CHAIRMAN, SANTA BARBARA, WATER SUPPLY

7

Michael Johnston, Watsonville, County Government

8

Bruce Delgado, Marina, Municipal Government

9

Monica S. Hunter, Los Osos, Public

10

Russell M. Jeffries, Vice Chair, Salinas, Water Quality

11

Frances McChesney, Senior Staff Counsel

12

Michael Jordan, Santa Barbara, Recreation, Fish or Wildlife

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Roger W. Briggs, Executive Officer

14

15 LEAD STAFF PERSONS:

16

Michael Thomas, Assistant Executive Officer/Ombudsman

17

Lisa Horowitz McCann, Section Manager/Aquatic Habitat

18

Angela Schroeter, Agricultural Regulatory Program/
19 Basin Planning

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SPEAKERS:

PAGE:

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Tess Dunham

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SAN LUIS OBISPO, CALIFORNIA

THURSDAY, MARCH 15, 2012, 2:15 P.M.

MR. YOUNG: Folks, it's 2:15. We're continuing Agenda Item Number 4, which is the proposed Conditional Waiver of WDRs for irrigated agriculture. This has been continued from yesterday's session.

Dr. Wolff.

MR. WOLFF: Yes. Mr. Chair, I will recuse myself at this time from participating to Item 4 due to conflict of interest being an agriculture discharger.

MR. YOUNG: Thank you.

All right. Mr. Briggs, so we are now at the five minute rebuttal period?

MR. BRIGGS: Right. The Ag representatives had their 60 minutes allocated to them, and they chose to save the last five minutes for response to everything that they heard yesterday. And I understand that's going to be Tess Dunham.

MS. DUNHAM: Thank you.

For the Reporter's purposes, Tess, T-e-s-s, Dunham, D-u-n-h-a-m, with Somach, Simmons & Dunn representing Farmers For Water Quality.

I just obviously not going exactly what will be in the Staff response so making some guesses and trying to

1 address some issues that I think would be of interest to
2 the Board. We heard pretty frequently yesterday the need
3 to trust and verify. And I think -- in wanting to clarify
4 some components with respect to what could be added into
5 the Ag Proposal to maybe provide the Board members with
6 that sense of verification and trust would be appropriate
7 that an independent audit that has been done would be part
8 of the farm plan or be a required element of the farm plan
9 that is to be remained on site. If Staff comes to inspect
10 the farm plan, as they are allowed under the Draft Order,
11 that they would then be able to review the audit that was
12 done by the independent auditor through the third party
13 group.

14 In an effort to try to provide some additional,
15 you know, trust and verification to the process, that
16 would be an element that we think would be appropriate and
17 would not be one that we would be opposed to. So we put
18 that forward in the form of clarification here today as
19 something else for the Board to consider should they
20 decide to consider the Ag Proposal, you know, looking for
21 that trust and verification process.

22 The only other thing I really wanted to touch
23 upon here today is really talking about what we mean by
24 individual reporting or group reporting or watershed
25 reporting. There's obviously been significant discussion

1 with respect to what is the legal standard and the legal
2 requirement.

3 Well, Water Code Section 13269 with respect to
4 monitoring says a couple of basic things. One, it says
5 that you must have monitoring with a Conditional Waiver,
6 and that that monitoring may be individual, it may be
7 group, or it may be watershed based.

8 It also says that the monitoring must support the
9 development and implementation of the Waiver, and it must
10 verify the adequacy and the effectiveness of the Waiver's
11 conditions and that those monitoring results must be made
12 public.

13 We, of course, would contend that what we are
14 proposing does comply with all three of those elements.
15 Specifically, what we were talking with respect to the
16 reporting is group reporting that does verify and provide
17 the effectiveness of the Waiver. If you recall, the box
18 plats that Dr. Los Huertos put forward that really showed
19 and compared growers and really determined whether
20 management practices are working or not is a form of
21 verification in order to make those determinations to see
22 if the Waiver is working or not.

23 And, of course, those public reports or those
24 summaries that would be given to the regional Board would
25 absolutely be public. This is absolutely consistent with

1 how it is done in regions five, regions four, and regions
2 six. This is a form, a standard, a process that the State
3 Water Board approved in its 2004 Order when it reviewed
4 the Conditional Waiver for the Central Valley. And it is
5 a format and a process that is allowed under the Water
6 Code.

7 So we hope that as you work on all this today,
8 you take all of that into consideration with respect to
9 the reporting, its group format, and that it does meet the
10 legal standards within the Water Code.

11 Now, policy decision. If the Board decides that
12 it wants something more different, to me that is a
13 different question with respect to whether does it meet
14 the legal standard.

15 That's the main points we wanted to leave with
16 you as you start your deliberations today. And if there
17 are any questions, of course.

18 MR. YOUNG: Any Board questions?

19 MS. HUNTER: No.

20 MR. YOUNG: Thank you. One thing I'd like to
21 just alert you to, I know you lodged some objections
22 yesterday --

23 MS. DUNHAM: Yes.

24 MR. YOUNG: -- at the beginning of our session.
25 I just wanted to remind you to take the opportunity right

1 now during your rebuttal period if there's anything that
2 you heard that you had objected to that this would be an
3 opportunity for you to rebut what you heard.

4 MS. DUNHAM: The only thing I would add is,
5 there's been a lot of obvious reference and a lot of press
6 media to the recent U.C. Davis report that's come out.
7 And I think it's important for everybody to understand
8 that that report was released on Tuesday. It is over 1300
9 pages. And it's going to take time for everybody to
10 review and comprehend the extent of what that report says
11 and what it means.

12 As with any report, we're all going to pick and
13 choose elements out of it that we like and those that we
14 don't like as it is with any scientific or technical
15 report.

16 I think it may have been mentioned earlier today
17 that the State Water Board is holding a workshop with
18 respect to that report on May 23rd. And from there, we'll
19 be looking to give guidance to the regional Boards, as
20 well. So I think we all need to sit back, take some time,
21 review it ourselves, understand it ourselves, and make our
22 own determinations and conclusions with respect to the
23 information and then participate in the State Board's
24 Hearing.

25 MR. YOUNG: I'm sure you can appreciate that we

1 haven't read the report.

2 MS. DUNHAM: Neither have I, Chairman Young, so I
3 can appreciate that.

4 MR. YOUNG: There's nothing that we -- we haven't
5 considered it because it's not part of the evidence on
6 this matter.

7 MS. DUNHAM: Understood.

8 MR. YOUNG: Yeah. Okay. Thank you.

9 MS. DUNHAM: Thank you.

10 MR. YOUNG: All right. Mr. Briggs.

11 MR. BRIGGS: So the Order of events, if I've got
12 it right, is that the Staff will have an opportunity to
13 provide their response to comments yesterday, as well as
14 the summary and then back to me for final recommendation.

15 MR. YOUNG: Okay. Can everybody speak up loudly
16 and clearly.

17 MS. McCANN: Good afternoon. Again, I'm Lisa
18 McCann, M-c-C-a-n-n, environmental program manager. I
19 brought my suitcase today in case you make me sleep over
20 again. Just kidding.

21 Last night, we successfully, and you patiently
22 got through all the public comment. And you also gave us
23 a homework assignment. And we took that seriously.

24 And, Mr. Johnston, you specifically asked, What
25 is the most effective Order that you, the Board, can pass

1 to improve water quality which meets legal standards. And
2 you also asked what legal and policy issues need to be
3 resolved to make the proposed edits and alternative from
4 Farmers For Water Quality work.

5 We reviewed the proposed edits from Farmers For
6 Water Quality and the additional issues that were raised
7 yesterday during comments and during your various
8 questions, and we've prepared responses that we will
9 present to you in -- next slide -- in this Order. This is
10 generally what we're going to address. So it would be the
11 responses to the edits as proposed from Farmers For Water
12 Quality, some other suggested edits in response to
13 comments, and then just, if we have time, interest and
14 response to some of the other issues that were discussed,
15 and then as Roger mentioned, make a recommendation.

16 I do want to assure you that our responses
17 represent the best way to advance water quality
18 improvements so that aquatic habitat becomes healthier and
19 drinking water becomes safe for the communities on the
20 central coast.

21 MS. SCHROETER: I think the easiest way to go
22 through is to actually go through the presentation
23 provided by Ms. Dunham yesterday and talk a little bit
24 about what our response is to the information.

25 In some cases, it's -- a legal response is going

1 to be required, so I'll defer to Frances for those.

2 We didn't have the opportunity to prepare a
3 handout to go with these slides. So what I'm going to do
4 I'm going to put it in the format where there's notes on
5 the bottom of this presentation. And you can just read
6 off the notes as we entered them last night and this
7 morning.

8 Can you read where it says -- no, no, no, no.
9 Let's just do it the other way, slide view.

10 (Discussion held off the record.)

11 MS. McCANN: I just want to clarify what we're
12 trying to show you here. We put the notes in some of the
13 responses to the edits that were proposed in the notes
14 area in the PowerPoint, so we don't want to use the slide
15 view because then we won't be able to show you the notes.

16 MR. BRIGGS: It's going to be down here.

17 MS. McCANN: So it's going to be a little bit
18 less than the full view of the slides. But hopefully
19 you'll be able to follow along and see exactly what we're
20 trying to help you see.

21 MS. SCHROETER: What I suggest you do is to use
22 your handout yesterday that Ms. Dunham provided to you to
23 go ahead and do your markups.

24 In general, our review focused on all of these
25 items in the presentation but especially in areas where

1 there were suggested changes. And we'll go through
2 specifically how we responded to the specific changes or
3 not, and provide you with our justification.

4 This first one is a statement here that growers
5 are treated differently, however the treatment is not
6 necessarily based upon the threat to water quality but
7 size of operation. What I wanted to remind you -- if I
8 can pull up -- let's see if I can pull up my
9 presentation -- but with a tiering, the criteria for each
10 of the tiers.

11 In response to comments both in November, as well
12 as in March 2011, we proposed tiers that were based upon
13 threat to water quality. Tier 1, which is the lowest
14 threat. Tier 2, the water threat. Tier 3 is the higher
15 threat.

16 We did evaluate all sources of information in
17 terms of what was causing the impairments in the region
18 for toxicity as well as for groundwater. And we knew that
19 the major drivers for both those items were pesticide use
20 and specific pesticides were causing much of the toxicity.
21 We knew that fertilizer application, specifically
22 excessive fertilizer application was causing the
23 impairments to groundwater.

24 What we tried to do in terms of taking a
25 reasonable approach in advancing the current Order was to

1 apply this tier criteria.

2 I'm just going to jump down to Tier 3. I think
3 that's where there is a lot of concern about whether or
4 not this really is an indicator of risk. So Tier 3 is
5 those farms that use chlorpyrifos or diazinon and
6 discharge to an impaired surface water, impaired
7 specifically for toxicity and pesticides.

8 So in our Staffs' opinion and judgment, there is
9 no other better indicator for threat to water quality.
10 The use of chemicals known to cause toxicity, specifically
11 diazinon and chlorpyrifos, and the actual discharge to a
12 water body that's already impaired for pesticides and
13 toxicity. Simply that.

14 The second one is nitrogen loading crop type and
15 an acreage grid of 500 acres. It's important to look at
16 how the tiers relate to each other. Remember, again, this
17 is relative threat. In this case, the acreage for Tier 3
18 is 500 acres and the acreage for Tier 1 is 50 acres.

19 All things held the same, for example, a lettuce
20 crop, the potential risk or threat to water quality for a
21 500-acre farm is much, much different than a 50-acre farm.

22 We'll show you also in a moment when we get to
23 other issues how we build the conditions from Tier 1,
24 Tier 2, and Tier 3 based upon that risk. So it's not that
25 the Tier 1 farms don't have any conditions, for example,

1 related to nutrients, they just have lesser than those in
2 Tier 3.

3 MS. HUNTER: Angela, so what -- if I can just
4 restate what you just said. You're saying it's the size
5 of the operation, but also the type of pesticide they're
6 using and the higher crop potential for nitrogen loading
7 to the groundwater?

8 MS. SCHROETER: Right.

9 MS. HUNTER: So it's not one size fits all?

10 MS. SCHROETER: It's not one size fits all. It's
11 doesn't mean that no one in Tier 1 or Tier 2 have any
12 risk. It's relative risk and the balancing of reasonable
13 requirements relative to that risk.

14 MS. HUNTER: Okay.

15 MS. SCHROETER: The second one is requesting --
16 or is talking about this Ag report in terms of the
17 Executive Officer elevating into Tier 1 and Tier 2. And
18 that you may require also looking at the specifics of
19 operations in farms in terms of the tiering.

20 In response to these, what we're suggesting here
21 is to also address -- I can't remember the gentleman's
22 name -- about the smaller farms. He talked about smaller
23 farms and the 300 -- was it Sanchez? I can't remember his
24 name.

25 MR. YOUNG: Mr. Sanchez.

1 MS. SCHROETER: Mr. Sanchez -- and whether or not
2 we -- how we were going to deal with those smaller farms.
3 And one of the suggestions that we are suggesting in the
4 Order -- I don't know if it's an appropriate time to pass
5 out these -- is to look at those specific farms that have
6 a specific disadvantage. So USDA actually has a
7 definition for limited resource farmers and to prioritize
8 compliance assistance for those types of farms.

9 In the interest of time, do you think I should
10 just --

11 I'm wondering if I should just jump to those that
12 speak to specific edits.

13 MR. THOMAS: Yes.

14 (Discussion held off the record.)

15 MS. HUNTER: Are you done, then, with that
16 particular issue of the E.O. having the ability to elevate
17 to a higher tier an individual operation?

18 MR. YOUNG: Monica, how about if I suggest this
19 that maybe we all hold our questions, write them down, so
20 we can have Staff tell us what they want to tell us, and
21 then we'll launch in with our questions. That might just
22 help get through this point.

23 MS. HUNTER: Yes. You asked me that yesterday,
24 and I forgot.

25 MR. YOUNG: That's okay.

1 MS. HUNTER: Thank you.

2 MS. SCHROETER: What I'm doing now is going to
3 their first slide of suggested edits.

4 (Discussion held off the record.)

5 MS. SCHROETER: Starting on Page 18, the Farmers
6 For Water Quality start suggesting specific edits. For
7 example, here their suggestion is related to
8 Attachment 1B. Attachment 1B includes 140 findings. And
9 the solution was not to adopt Attachment 1B.

10 Attachment 1B basically is the attachment to the
11 Order which includes all of the findings about the
12 rationale for conditions in the Order. Staff included
13 these to be transparent about the justification and
14 rationale for those conditions. So we do not agree with
15 the suggestion to not adopt or not include Attachment 1B.

16 There's no page numbers. Sorry. It has the
17 heading here Attachment 1B.

18 Got it? Okay. So next page.

19 MR. JEFFRIES: You're not going page by page?

20 MS. SCHROETER: In the interest of time, since
21 this presentation was 66 slides, I'm going straight to the
22 ones where there was suggested modification to the Order
23 MRP. And then we can go back if you want to discuss any
24 of the other items.

25 (Discussion held off the record.)

1 MR. YOUNG: Okay. Go ahead.

2 MS. SCHROETER: The second one relates to
3 Table 1A and Attachment 1B. And that, if you recall, is a
4 table of Water Quality Standards. They're specifically
5 culling out the narrative objective for biostimulation.
6 The objection is is that -- we included language here at
7 the bottom which is the water Board Staff estimates that
8 one milligram per liter nitrate is necessary to protect
9 aquatic life.

10 We agree that that's not an adopted standard. We
11 have a suggestion -- or we agree with the edit to delete
12 that.

13 MR. DELGADO: You're agreeing to delete Table 1A?

14 MS. SCHROETER: No, no, no. Just this piece
15 of -- just the sentence in 1A.

16 What Michael is handing out is a supplemental
17 sheet which actually summarizes all of the proposed edits.

18 MS. McCHESNEY: Angela, do have copies for people
19 in the audience, too?

20 MS. SCHROETER: I'm not sure how much admin made,
21 but I think there's a lot of extras there.

22 MR. YOUNG: We need to make sure everybody who
23 wants a copy gets a copy.

24 MS. SCHROETER: You can make as many copies as
25 you want.

1 (Discussion held off the record.)

2 MS. SCHROETER: We can go to the page. Let's do
3 that.

4 MS. HUNTER: I just want to clarify which
5 sentence is being deleted in Table 1A.

6 MS. McCHESNEY: It's on your yellow sheet right
7 there, number one.

8 MS. SCHROETER: So in front of you, you have a
9 supplemental sheet. What it includes is all of the edits
10 suggested by Staff in response to both the information
11 presented by Farmers For Water Quality as well as some
12 issues that were brought up by the Board members
13 themselves yesterday.

14 If I can just make a suggestion or give you some
15 options for how to go through this. So we have the slides
16 in front of us from Farmers For Water Quality, we have the
17 edits here in the yellow sheet, and we also have the Order
18 itself. So I can connect back to the Order. We can go to
19 the page and we can look at that specific change.

20 MR. JORDAN: On the yellow sheet, Angela, when
21 you don't say Attachment A, does that mean we're back in
22 the Order? Like the second item.

23 MS. SCHROETER: Yes.

24 MR. JORDAN: Okay.

25 MR. YOUNG: Are you ready for the second change

1 you're going to tell us about or --

2 MR. THOMAS: Yes.

3 MR. YOUNG: -- or proposed change that you
4 addressed and have a response to?

5 MS. SCHROETER: Yes.

6 MR. YOUNG: Go ahead.

7 (Discussion held off the record.)

8 MS. SCHROETER: Just to clarify, our comments
9 relate to specific changes as well as to the general
10 concept described as Part E. And Part E is very large. I
11 think it's going to be an involved discussion. So I'm
12 going to defer the Part E discussions until the very last.

13 Is that okay?

14 (Discussion held off the record.)

15 MR. YOUNG: Okay. Let's continue.

16 MR. THOMAS: I have a suggestion, Mr. Chairman,
17 that -- we have 66 pages that were submitted in the form
18 of slides with recommended changes. Some of those are
19 edits, some are policy things, some are rebuttal. What
20 I'm proposing is that instead of the Board trying to
21 follow along in the Order or in the attachments or even in
22 this sheet that we just handed out, that we just stick to
23 the issue that's on the Board, the slide that's up here,
24 where we are recommending an edit. We'll stop at each one
25 where we are recommending an edit in response to the

1 suggestion. We'll just focus on that to try and simplify
2 this.

3 MR. YOUNG: I thought that's what we were trying
4 to do.

5 MR. THOMAS: I think what happened is, when we
6 passed out the yellow sheet -- and I can see the Board
7 members trying to follow along with the yellow sheet and
8 with the Order itself trying to match things up. I think
9 it's too complex.

10 MR. YOUNG: Okay. So we'll stick to what's on
11 the screen. Right?

12 MR. THOMAS: Yes.

13 (Discussion held off the record.)

14 MR. DELGADO: Since the audience only has the
15 yellow sheet, perhaps, then maybe you could tell them each
16 slide where it is on the yellow sheet that we're talking
17 about.

18 MS. McCHESNEY: Just to clarify, all the public
19 comment has occurred. Now you're hearing from the Staffs'
20 rebuttal. The Staff needs to communicate with you what
21 they want to communicate. The public isn't going to have
22 an opportunity to say more. The Staff can clarify to the
23 extent they can, but --

24 MR. DELGADO: I understand. But it helps
25 everyone if the public can follow along.

1 MS. McCHESNEY: I apologize if I sound like the
2 public doesn't need to understand. It's important that
3 you understand and not to get distracted by lots of
4 different things. But just make sure the Board
5 understands the Staffs' responses.

6 MR. THOMAS: I think that these are
7 self-explanatory when we look at them. The Order
8 requires -- currently requires as this states -- I'm going
9 right to the part where it has red text. Organic
10 materials, such as organic pesticides, and we're going
11 to -- we agree that we should cross that out. And
12 registered pesticides that may. We agree to add that
13 language with the exception of taking out the word
14 registered so that it's just pesticides. We're agreeing
15 with most of that edit in that part of the Order.

16 MR. DELGADO: I just want to note that on the
17 yellow sheet, the word registered is not there. That's
18 your point.

19 MR. THOMAS: Yes.

20 MR. DELGADO: That the yellow sheet is what you
21 want to suggest to us?

22 MR. THOMAS: Yes.

23 MR. DELGADO: Okay.

24 MR. THOMAS: Next slide?

25 MR. YOUNG: Yes, next slide.

1 MR. THOMAS: Next slide, it's slide 28. I'm
2 sorry the slides are not numbered.

3 We agree with this edit as it is presented here.
4 We're agreeing to make this change to the Order.

5 I'm going to keep going unless you stop me.

6 MR. YOUNG: That's fine. Just make sure we find
7 the page before you advance.

8 MR. DELGADO: I'm sorry. I hate to bugger up the
9 process. It would be nice if you would justify the change
10 or the disagreement. On the previous slide, you did not
11 agree to the word registered. And I know that that makes
12 a big difference, whether you talk about registered
13 pesticides or all pesticides. And you're recommending all
14 pesticides.

15 MR. THOMAS: Yes.

16 MR. DELGADO: So that's a big enough difference
17 that I'd like you to explain the justification.

18 MR. THOMAS: The reason that we took out
19 registered is we thought -- it's possible that pesticides
20 might be used that are not registered. That's all. We
21 don't want to --

22 MR. DELGADO: That's because not all pesticides
23 need to be registered. There's a lot of things that you
24 use to address pests that are not toxic enough to require
25 registration; right? Like safe soaps. There's lots of

1 things that you can use to kill pests.

2 MR. YOUNG: Hold on one second.

3 Folks, it is hard for us up here to hear clearly
4 when there's mumbling in the background. I would
5 encourage you, please don't do it.

6 MR. DELGADO: My question is: Are there
7 pesticides that are legal to use that are not required to
8 be registered?

9 MS. SCHROETER: We were just intending it to be
10 inclusive of any type of pesticide used, registered,
11 unregistered. Any type of thing, chemical, that you would
12 use to control pests.

13 MR. DELGADO: Right. So my question is: Are
14 there pesticides that are legal to use in this context
15 that are not required to be registered with the EPA?

16 MS. SCHROETER: I'm not certain of that answer.

17 What I'm thinking of, for example, are examples
18 like the bait traps that currently -- I'm not sure that's
19 a registered pesticide. That would be an example of what
20 we were thinking of.

21 MS. McCHESNEY: And just to clarify the point of
22 this particular provision is that it's saying what is
23 covered. So the Waiver is covering the discharge of those
24 things. Whether it's a, quote, "registered pesticide" or
25 not, it's just saying that's the scope of this provision.

1 It's not saying that they're discharging unregistered
2 pesticides just. It's just, this Waiver applies to things
3 that constitute waste, and waste includes pesticides
4 whether they're registered or not. It doesn't really
5 matter if they're registered or not. For this purpose,
6 it's just the scope of the Waiver so that they can be
7 allowed to discharge that. Otherwise, if it doesn't cover
8 it, they would have to go get some other permit to
9 discharge.

10 MR. DELGADO: So Staff is considering this to be
11 in the favor of the growers by expanding the kinds of
12 things that they can apply if it ever is needed to include
13 things that are not registered pesticides?

14 MS. SCHROETER: No. The context of this
15 requirement is to talk about what can be discharged to
16 water, what's covered by this Order.

17 MR. DELGADO: You're thinking that deleting the
18 word registered -- or leaving that word out is favorable
19 to the growers because it allows them to discharge more?

20 MS. McCHESNEY: No. It's not favorable or
21 unfavorable. This is just a general statement that these
22 kinds of things are the kinds of things that could be
23 discharged under the Waiver. So, you know, it's --

24 MS. SCHROETER: The language used to say, "such
25 as organic pesticides. Tess, yesterday suggested that

1 that language be removed and added registered pesticides.
2 We agree with that statement and just are simply saying
3 that we want to remove the word registered. That might
4 preclude some pesticides that are not --

5 MR. DELGADO: Registered.

6 MS. SCHROETER: -- registered.

7 MR. JEFFRIES: I'm a little confused. I was
8 under the impression that all pesticides are registered.

9 MS. SCHROETER: That's not my understanding, but
10 I am not an expert on pesticides.

11 MR. JEFFRIES: Because homemade ones may not be.
12 But, also, my understanding is before a farmer can apply
13 pesticides, he has to file. He does not? I see people
14 shaking their heads. They don't have to file that they're
15 using that application on their particular farm?

16 MS. SCHROETER: They -- I believe that they have
17 to file if they're using a registered pesticide.

18 MR. THOMAS: Mr. Chairman.

19 MR. YOUNG: Let me just say something. We're
20 getting bogged down on the trees and losing -- you know,
21 we're losing sight of the forest here. This is just
22 describing waste kind of generally. Whether it's
23 registered or not, I don't think is really an issue.
24 Pesticides. It's a type of waste that's involved in this.
25 So there may be some that aren't; there may be some that

1 are. For this purpose, I don't think it's going to make
2 any difference at all. It is definitional.

3 MR. JEFFRIES: It is definitional. And if it
4 becomes an issue, it can be brought back to the Board and
5 reconsidered.

6 MR. YOUNG: Okay. Yeah. Like anything can be.

7 MR. THOMAS: Next slide is Slide 28.

8 MS. McCANN: They don't have the numbers.

9 MS. HUNTER: We don't have the numbers.

10 MR. THOMAS: I know. I thought that you might
11 count them.

12 MR. YOUNG: We don't have the numbers.

13 MR. THOMAS: We agree with this change. So we're
14 going to make this change.

15 MR. JEFFRIES: As is?

16 MR. THOMAS: As is.

17 MR. JEFFRIES: This is a little easier to follow,
18 this way.

19 MR. THOMAS: We're not agreeing with this change
20 on this next slide.

21 MR. YOUNG: And why?

22 MR. THOMAS: We don't think it's necessary to add
23 the language, quote, "to the extent feasible," unquote.

24 MR. DELGADO: For purpose of the audience, I'm
25 not seeing this in the yellow sheet.

1 MR. THOMAS: Because we're not agreeing to this
2 change.

3 MR. DELGADO: I want to back up on this because
4 Tess was recommending the words, "to the extent feasible"
5 be added to "Dischargers must to the extent feasible do X,
6 Y, and Z regarding vegetative cover on the creeks, et
7 cetera.

8 To me, they're saying, to the extent feasible,
9 give some wiggle room so that things considered infeasible
10 would not be required of them to do. I think Staff is
11 probably saying that that wiggle room is not room that
12 they want to allow to be put into this language.

13 I just wanted to make sure that that's the
14 justification for not agreeing to this.

15 MS. SCHROETER: There's two main reasons. One,
16 it's difficult to define what is "to the extent feasible."
17 It's an ambiguous term. The other reason is, that's a
18 consideration with all of the requirements. So if a
19 grower has difficulty implementing something because of
20 feasibility, that would be a consideration. So we don't
21 generally apply that to every single condition that we --

22 MR. DELGADO: And I agree with this because I
23 think that every time you have a shall or a must
24 throughout this Ag Order, you could add those words, "to
25 the extent practical, feasible," et cetera. And it

1 doesn't really change much. But if we're going to change
2 it in one place, we'd want to wholesaley change it
3 everywhere throughout the document. Right? Everywhere
4 you had a must or a shall, we could be at this place of
5 considering this addition.

6 MR. THOMAS: The existing language also says, "in
7 aquatic habitat areas as necessary to minimize." So we
8 already have language in there that provides wiggle room.

9 MR. DELGADO: That's wiggle room in a different
10 way; right?

11 MR. THOMAS: Uh-huh.

12 MR. DELGADO: "As necessary" is different than
13 feasible.

14 MR. THOMAS: Uh-huh.

15 MS. McCHESNEY: No. I think the wiggle room is
16 "minimize." You're not stopping it, just minimizing. So,
17 you know, that's -- the feasibility fits into that.

18 MR. DELGADO: You've got two wiggles. You don't
19 need three.

20 MS. McCHESNEY: Exactly.

21 MR. YOUNG: Okay. Next one.

22 MR. THOMAS: Next one, we don't agree with the
23 change. My intent in going through these was actually to
24 stop on the ones where we agree with changes and not spend
25 a lot of time on the ones where we don't agree with the

1 changes. I wanted to just go to the ones that we do. But
2 we are --

3 MR. YOUNG: I think we want -- I'd like to know
4 which ones you're not agreeing to so we can just take a
5 quick look at it.

6 MR. THOMAS: Okay.

7 MR. YOUNG: Read it quickly and then we can move
8 on if we have no questions on it.

9 MR. THOMAS: The next slide indicates where
10 disturbance of aquatic habitat is necessary for the
11 purposes of water quality improvement or restoration
12 activities, Dischargers must implement appropriate and
13 practical measures.

14 We disagree with the deletion. We think that is
15 necessary and reasonable language.

16 MS. SCHROETER: But we also added language to
17 clarify that it relates to the other permitted activities.
18 So things like the 40, the stream alteration agreements --
19 actually the 401 certifications. So the change would be
20 in a case where disturbance of aquatic habitat is
21 necessary for the purposes of water quality improvement or
22 restoration activities or other permitted activities. So
23 just to clarify that it wasn't only for those water
24 quality improvement.

25 MR. THOMAS: If that makes sense, we're saying

1 that there can be disturbance of aquatic habitat. And it
2 could be done as part of a stream alteration agreement or
3 a 401 certification program -- or 401 certification. And
4 there are requirements associated with those. For
5 whatever reason the farmer would need to create that
6 disturbance, they can get a permit to do it.

7 MS. McCHESNEY: Angela, it looks like you skipped
8 over Paragraph 35, Page 19, the one --

9 MS. SCHROETER: It's going to come up.

10 MS. McCHESNEY: Okay. Sorry.

11 MR. DELGADO: We have a question to the Chair.
12 Do we care about grammar or English details at this point
13 or does that get cleaned up later by Staff?

14 MR. YOUNG: It doesn't get cleaned up later.

15 MR. DELGADO: Okay.

16 MR. YOUNG: When we vote on something --

17 MR. DELGADO: Okay. So normally when you say
18 "or," you only say it once. So I would say purposes of
19 water quality improvement, comma, delete the first or,
20 restoration activities or other permitted activities.
21 Just like an and. You wouldn't use an and over and over.

22 MS. McCHESNEY: What I would suggest for that is
23 you note it. And then if the Board ends up choosing to
24 make those revisions, then we can correct all that then.
25 We can identify the ones.

1 MR. DELGADO: Is somebody logging all these
2 little details?

3 MS. McCHESNEY: Yeah.

4 MR. DELGADO: I hate to get to this level. I
5 just wanted to ask the Chair what he thought about
6 grammar, small details.

7 MR. YOUNG: I haven't been concerned with grammar
8 up until now. I hate to admit that. If I can read it and
9 understand it, you know, I'm usually good with that.

10 MS. McCHESNEY: If it's a non-substantive
11 grammar, that can be corrected without needing a Board's
12 vote.

13 MR. YOUNG: If there's confusion to the way it's
14 written, yes, we've got to get it corrected.

15 MR. DELGADO: Thank you.

16 MR. YOUNG: Tell me what page we're on.

17 MR. THOMAS: 31, Slide 31.

18 MR. YOUNG: What paragraph number is that in --
19 okay. Page 43.

20 Okay.

21 MR. THOMAS: This suggestion is to add language.
22 Farm plans must be kept current, kept on the farm, and a
23 current copy must be made available to Central Coast Water
24 Board Staff upon request. The edit is to -- recommended
25 edit is to add the language "should Central Coast Water

1 Board Staff conduct an inspection of the farm or ranch.

2 MR. YOUNG: Right.

3 MR. THOMAS: We don't agree with that edit. That
4 information should be made available upon represent, not
5 based on a visit.

6 MR. YOUNG: Right.

7 MR. DELGADO: Okay. So comment here. It's
8 obviously a big trust issue. They don't want a document
9 leaving the site because it could be copied, distributed,
10 to who knows -- as far as their perspective, to who knows
11 who. So this is a pretty big issue. Right?

12 We shouldn't be making it up one way or the
13 other. What's the industry standard? How do other
14 regions handle farm plan --

15 MS. McCHESNEY: I can answer that.

16 First of all, under the Water Code, the Board has
17 the authority to require the submittal of technical
18 reports. My recommendation on this is that I can't advise
19 you to accept this edit because the Board has the right
20 and responsibility to have technical reports submitted to
21 them so that they can evaluate water quality.

22 This would, then, preclude the Board from getting
23 information. It's already in the current Order. The
24 Central Valley Order requires these kinds of reports to be
25 submitted as soon as there's one -- automatically if

1 there's one exceedance of water quality centered -- more
2 than one within three years or upon the request of the
3 Executive Officer.

4 This is the normal process for the Board to
5 implement its laws is to require technical reports be
6 submitted upon request. So this would say the Staff would
7 have to go to the farm, look at it, and then they couldn't
8 take it back to evaluate it.

9 MR. YOUNG: Mr. Johnston.

10 MR. JOHNSTON: Just to be clear about what the
11 concern is that's being expressed, I don't think it's a
12 concern that it would somehow slip out the back door of
13 the Water Board. The concern is: That except for
14 proprietary information in that report, that report, once
15 its received here, does become publically accessible
16 information.

17 MR. YOUNG: Right.

18 MS. McCHESNEY: Right. But that's not correct.
19 They can identify the proprietary information, and the
20 Board is obligated by law to keep it protected. And they
21 already do that. There's quite a few reports in all the
22 different programs that are submitted regularly that
23 have -- basically two reports are submitted, the redacted
24 report with the confidential information deleted. That's
25 the public report and then a private report that this

1 Staff keeps separately. And that happens in many
2 programs. All the regional Boards deal with this on a
3 regular basis.

4 MR. YOUNG: Okay.

5 MS. McCHESNEY: Just so you know, the Order does
6 very clearly state how the processor, how the person would
7 identify what is proprietary. And they can do that.

8 MR. JOHNSTON: Just out of curiosity, is there a
9 template for these reports? Remind me. I forget.

10 MS. McCHESNEY: I don't know.

11 MR. JOHNSTON: At this point for the farm plan --
12 at this point that -- what -- there's no clarity as to
13 whether what an individual farmer would consider
14 proprietary and what we would consider proprietary in
15 terms of general categories, whether those would coincide;
16 correct?

17 MS. McCHESNEY: Correct. That's why it's up to
18 the farmer to identify what they think is proprietary.
19 And there's quite a bit of case law. This has been a big
20 issue in the case law about how to do that, including in
21 the area of agricultural information. But it's really up
22 to them to identify what they think is confidential.

23 And it only becomes an issue if then someone
24 makes a public record act request for the document and
25 then which -- the process then is to go back to the farmer

1 and say, "Justify why you think this is proprietary
2 because we've been asked for it." So it's not released
3 until they agree to it.

4 MR. JOHNSTON: I know we're well past the
5 eleventh hour. Were we not, it would certainly be nice to
6 simply have a definition of what the case law says is
7 proprietary. That might answer the question.

8 MS. McCHESNEY: Yeah. It's really up to them to
9 say what they think is proprietary. I've actually been
10 doing -- been an attorney for the Board now for 25 years
11 and only once has anybody ever asked for a report. It's
12 even been an issue in my experience. It's been pretty
13 straightforward. They identify it; we keep it
14 confidential.

15 MR. YOUNG: Okay. Continue.

16 MR. THOMAS: Next slide, Paragraph 46, Page 21.
17 The recommendation is to delete this text. And the rather
18 than read it all, I will read instead our reason for not
19 agreeing with the deletion.

20 This finding is a high property inclusion for
21 environmental justice. Individuals concerned about
22 drinking water and other stakeholders, they've expressed
23 concern about this very issue and wanted it to be in the
24 Order. And the State Water Board does have goals with
25 respect environmental justice as I mentioned yesterday.

1 MR. DELGADO: And I wanted to jump in here
2 because the rationale I heard from Tess for deleting this
3 was that it was redundant under the law so that it's
4 inappropriate to include it as a condition of the Waiver.

5 MS. McCHESNEY: Right.

6 And, actually, it shouldn't be in this portion.
7 I agree with Tess, too, that it should be -- this is the
8 Order part. It should be -- it can be a finding in the
9 Order. It's not an Order. It's not a part of the Order
10 part.

11 MR. THOMAS: I agree. That's our mistake. We
12 agreed last night that this was going to be moved and made
13 an Order --

14 MS. McCHESNEY: Made a finding.

15 MR. THOMAS: -- made a finding --

16 MS. McCHESNEY: Right.

17 MR. THOMAS: -- and not a condition.

18 MS. McCHESNEY: Right. It's just like more
19 notice to people that these are the kinds of things that
20 can happen.

21 MR. JEFFRIES: This language will be kept, but it
22 will be kept in a finding?

23 MR. YOUNG: Correct.

24 MS. McCHESNEY: Correct. Just an
25 informational --

1 MR. JEFFRIES: All right.

2 MR. YOUNG: Okay. Continue.

3 MR. THOMAS: Next slide I'm going to skip because
4 we're going to deal with Part E in a few minutes.

5 Next slide is Paragraph 52, Page 22. We're not
6 going to add this language here as suggested because we
7 have included this language in the monitoring and
8 reporting program, and it's not necessary to make this
9 change and include it in the Order, as well.

10 MR. DELGADO: Does it hurt or reduce the quality
11 of the document to include it in an additional location as
12 they're suggesting?

13 MS. SCHROETER: No, it doesn't.

14 MS. McCHESNEY: Well, I had a concern with it
15 because it's kind of ambiguous the way it's written;
16 whereas, in the MRP, it's much more clearly stated under
17 what circumstances you either do individual or group
18 monitoring. So to put this kind of general thing here
19 creates ambiguity later when -- because the MRP -- because
20 the sentence is to comply with the MRPs. The MRP includes
21 the language that's very specific about how you do group
22 monitoring.

23 MS. SCHROETER: The MRP is much more specific
24 about the areas in which it applies.

25 MR. DELGADO: So this might be an example of a

1 subsequent plain English summary of the Ag Waiver could
2 say something about this being allowed either individually
3 or through a cooperative Monitoring Program. If you
4 choose to do it one way or the other, you need to refer to
5 the MRP for further direction. It's just something to
6 keep in mind as an example of a subsequent plain English
7 summary.

8 MS. SCHROETER: So this is just a list of items
9 in the electronic -- or I'm sorry in the Notice of Intent.
10 They suggested an option related to Part E. We're going
11 to discuss that in a moment so I won't talk about that
12 one.

13 The second one is a suggestion to add a place on
14 the NOI to identify cooperative groundwater monitoring
15 similar to the cooperative surface water monitoring
16 selection. And that's fine. We agree with that.

17 There was an additional suggestion at the end to
18 delete information on the Notice of Intent which is asking
19 farmers if there is the presence and location of any
20 perennial or intermittent or ephemeral streams or riparian
21 or wetland habitats on their farm.

22 We disagree with this deletion. What it does is,
23 having that checkbox, it really is just a checkbox in
24 terms of, do you have a stream adjacent to or running
25 through your property. It allows us to identify those

1 farms quickly and to prioritize those if necessary. So we
2 disagree with that deletion.

3 MR. DELGADO: Chair, can I jump in?

4 MR. YOUNG: Yes.

5 MR. DELGADO: What I have down that Tess stated
6 on this was that there was no need for a standalone
7 requirement. Those are my words. I may be incorrect.

8 But if I'm correct, is this a standalone
9 requirement, or is it just a checklist item?

10 MS. SCHROETER: This is just a checkbox on the
11 Notice of Intent.

12 What I understood from Ms. Dunham yesterday was
13 she said it was not necessary because they already
14 included the farm map and that the locations of streams
15 were located on the farm map. That's what was written in
16 my notes.

17 This is simply a checkbox. Do you have a creek
18 or not. Without the checkbox, Staff has to go into every
19 single farm map and look at them and see who has a creek
20 running through their property or not. This is just a
21 checkbox to say presence, absence, and allows us to
22 prioritize them quickly.

23 MR. JOHNSTON: What I recall from the discussion
24 wasn't just that you could get this information from the
25 farm map, but that the question of figuring out -- some of

1 these things -- it's easy to know if you have a stream.
2 If you have a wetland area habitat, her statement was that
3 could require a fairly comprehensive study to answer the
4 question, that some of these -- some of the categories
5 that are in -- I can't really tell from this if it's N
6 or -- the last one there.

7 MR. YOUNG: N.

8 MR. JOHNSTON: -- are fairly obvious, and some
9 are not, and that you would not necessarily get an
10 accurate answer.

11 MS. SCHROETER: This is just a screening level.
12 So we're not using it as a definitive interpretation of
13 whether or not it's an actual wetland per the definition.
14 What we're looking at, is there streams, creeks, or other
15 wetland area, riparian types of habitat running through
16 the property or adjacent to the property.

17 MR. YOUNG: In other words, you're not expecting
18 them to hire an expert to help them answer those
19 questions?

20 MS. SCHROETER: No.

21 MR. YOUNG: It's if they know?

22 MS. SCHROETER: That's correct.

23 MR. JOHNSTON: And it won't change their tier
24 depending on how they answer?

25 MS. SCHROETER: It does not change their tier.

1 It's merely a screening tool for us.

2 MR. DELGADO: To me a wetland habitat means, in
3 my mind, a pond or a lake. That's your interpretation, as
4 well?

5 MS. SCHROETER: I think that's a fair
6 characterization.

7 MR. DELGADO: All right.

8 MR. YOUNG: The definition may be more
9 complicated than that as to what's a wetland.

10 MR. DELGADO: The official definition is more
11 complicated than that?

12 MR. YOUNG: Yes.

13 MR. DELGADO: But in the farmers' minds and in my
14 mind, a wetland looks different than a creek. It looks
15 like a round object that has surface water.

16 MS. SCHROETER: There is actually a definition in
17 the Order.

18 MR. YOUNG: Yeah. It could be a marsh.

19 MS. McCHESNEY: I don't know if you heard Angela.
20 There is a definition in the Order. They can look at that
21 and say "yes" or "no."

22 MR. YOUNG: Okay.

23 MR. DELGADO: In real-life, I think when they
24 fill this out, they're going to check the box according to
25 their mindset. They're not going to go look for the

1 definition buried in the Order.

2 MR. JOHNSTON: Right.

3 MR. DELGADO: If they see a seepy area with water
4 on top of it, they may not think of that as a wetland area
5 and they may not check that box or put that on a map.

6 MS. SCHROETER: One thing we could do, then, to
7 address your comment, Mr. Delgado, is, similar to other
8 areas of the Notice of Intent already, we have a link on
9 the side for those that require more definition. And you
10 simply click on that wetland and the definition pops up so
11 they can see it right there.

12 MR. THOMAS: I'm going to skip the next slide.

13 (Recess taken.)

14 MS. SCHROETER: We're moving to Part E. Just to
15 summarize, those are all of the edits, our response to all
16 of the edits, that would result in an edit to the Order
17 based upon the input from Farmers For Water Quality. We
18 do have additional edits which are shown on the yellow
19 sheet which we'll discuss later which are a result of
20 Board member discussion.

21 MR. YOUNG: Are you moving to E right now?
22 Because there's some other pages in here that don't
23 involve E, I believe. Like they've got a Paragraph 61,
24 Page 25. I'm assuming you're not in agreement with adding
25 that language. Oh, cause it does --

1 MS. McCHESNEY: That is Part E.

2 MR. YOUNG: That is Part E. Okay. Gotcha.

3 All right.

4 MR. JOHNSTON: There was also some groundwater
5 monitoring stuff. Maybe that's going to be covered in
6 your Part E, also. Attachments 2A, B, and C.

7 MS. SCHROETER: That specific edit also relates
8 to some changes related to Board member discussion. So
9 we'll capture those in a moment.

10 MR. JOHNSTON: Thank you.

11 MR. THOMAS: With respect to Attachment E, it
12 was --

13 MS. HUNTER: Is it Attachment or Part?

14 MR. THOMAS: Part E.

15 MS. HUNTER: Part E. Thank you.

16 MR. THOMAS: Part E, language was proposed to add
17 New Part E. The Board directed us to evaluate that
18 language and to consider the pros and cons and answer the
19 question about what would be the most effective Order.

20 MS. HUNTER: Question.

21 MR. THOMAS: So the pros --

22 MS. HUNTER: Question.

23 MR. THOMAS: Yes.

24 MS. HUNTER: I have a question.

25 Can you tell me the title of Part E and where I

1 can find it in the Order so that I'm sure that I
2 understand what we're talking about. In this case, I do
3 want to know where I am in the document.

4 MS. McCANN: You're asking where in the Order?

5 MS. HUNTER: (Nods head.)

6 MS. McCANN: Page 26. This is where they are
7 recommending to insert --

8 MS. McCHESNEY: It's not in the Order.

9 MS. McCANN: -- a New Part E.

10 MS. McCHESNEY: It's their PowerPoint --

11 MS. HUNTER: Right.

12 MS. McCHESNEY: -- with the new part.

13 MS. HUNTER: What I'm saying is, we already have
14 a Part E. On Page 26, there is a Part E.

15 MS. McCHESNEY: It would replace their proposed
16 Attachment B with a New Part E.

17 MS. HUNTER: But where does the New Part E
18 belong? That's my question.

19 MS. McCHESNEY: Renumber, reletter. So E -- it
20 would be a new E, and E would become F.

21 MS. HUNTER: Become F. Okay. That's what I
22 wasn't clear on. Okay. Got it.

23 MR. DELGADO: So they would replace the Part E
24 that's in the Waiver with their Part E?

25 MS. McCHESNEY: No. They're making some changes

1 to their Attachment B. Their third party group proposal
2 that they submitted in March and May, they are proposing
3 changes to that, and that's going to be E. It would be a
4 new E, and then E would become F, and F would become G.

5 MR. DELGADO: Okay. The reason I'm a little bit
6 confused is because the title of their Part E is pretty
7 much the same as the title of our existing Part E. So you
8 would have an E and an F that would had the same title.

9 MS. McCANN: There is a difference. Their title
10 says, Additional conditions that apply to Tier 2 and
11 Tier 3 Dischargers -- this is what's new -- through
12 participation in third party group. And ours which does
13 not say per third party group will become Part F. Wait a
14 minute.

15 MR. THOMAS: The pros of the new language, the
16 new language that was proposed. There is more detail here
17 on a potential coalition concept, and that's a good thing.
18 It looks like they did more work on it, thought about it
19 more, and provided a little bit more detail.

20 We thought that was a good thing. We also think
21 that coalitions could be very helpful in the overall
22 implementation of the Order, the Water Board's Order, and
23 that would include any Order. That includes the 2004
24 Order or this proposed 2012 Order.

25 They really could help tremendously with

1 education, assistance, outreach coordination and grants,
2 inspections, providing incentives, awards, collaboration
3 and leveraging of their efforts with others. I think the
4 coalitions also could help facilitate broad scale
5 implementation. That includes Dr. Los Huertos' ideas.

6 And I specifically call them ideas because they
7 are ideas. They're not developed. They're just concepts
8 or ideas that he has been working on for some time. As he
9 has said, he's not actually working for anyone right now.
10 They're just his ideas.

11 We've talked to him about this individually
12 outside these Board hearings about where he actually
13 stands with this. And he's told us he does not have
14 support, he does not have an infrastructure, he does not
15 have an organization, or the support from any organization
16 to implement what he's talking about doing. He's told us
17 that it is purely an idea.

18 I'm not trying to knock the idea. I'm just
19 trying to put it in the context of how he is presenting
20 it. Because there's -- we heard a lot yesterday and at
21 the last workshop, that we really want you to implement
22 Dr. Los Huertos' proposal. And it's not a proposal that
23 can be implemented.

24 You also heard from Sarah Lopez yesterday about
25 the Quail Creek Project that she did with Preservation,

1 Inc.

2 We think that the work that they did their to
3 reduce loading is great. We think the coalitions could
4 cause more of that type of work to be done. And we would
5 be very supportive of that.

6 You also heard from Ross Clark who talked about
7 Wetland Treatment Systems. And I don't know if I got the
8 name of his organization correct there. I just was going
9 by memory.

10 MS. HUNTER: Yeah. I think it's Central Coast
11 Watershed Group.

12 MR. THOMAS: Central Coast Watershed Group.
13 Sorry about that.

14 The kind of work that Ross Clark was talking
15 about, we are highly supportive of. We agree with his
16 presentation, and we think it was outstanding. We think
17 the work that he's doing and is proposing to do is
18 outstanding. We will do everything that we possibly can
19 to help him implement those types of projects. And we
20 think coalitions would be a big help in doing that. I
21 actually think that it would be necessary to do it, the
22 kind of collaboration that they could provide.

23 The cons. It is still a concept, though we think
24 it is a concept that could be done. By saying it's a
25 concept, I'm not trying to be overly critical, I'm not

1 trying to kill the idea. I actually hope that it is
2 developed, and that we do implement it -- or that the
3 industry does implement it. And there may be more than
4 one coalition. We don't know at this point.

5 We're still missing key indicators of pollution
6 reduction and practice effectiveness. The language that
7 is proposed is not what Dr. Los Huertos was proposing,
8 even though what he was proposes was in concept, it's not
9 the same thing -- or it's not the same as what Sarah Lopez
10 did and what she described.

11 If you were to look at the Preservation project
12 that Sarah implemented -- it's already done, that project
13 is already done -- there's a great amount of detail there.
14 It's a scientifically based project. It's statistically
15 significant. The design is based on science and achieving
16 statistically significant results.

17 That kind of approach, that kind of information,
18 is not included in this concept. Again, I don't mean to
19 be overly critical here. I'm just trying to point out
20 that what the context is for this language. And there
21 also isn't a point of compliance, which we discuss in our
22 Draft Order.

23 There's also no risk-based prioritization
24 criteria such as what we have in our Order. No milestones
25 or targets within the term of the Order. The time frames

1 presented are too long. These Orders -- the one before
2 the Board and the 2004 Order have a five-year term. They
3 have to be renewed in five years for a reason.

4 We are required to -- in order to be consistent
5 with the law, we need to determine the effectiveness of
6 the Order. At the end of five years, we need to be able
7 to say to the Board and the public and ourselves and the
8 growers how effective that Order is. We need to know that
9 so that when we renew it, we can make changes that are
10 necessary to ensure that the Order is effective.

11 MR. YOUNG: Are you, Michael, referring to the
12 2015 date that was proposed as unacceptable because it's
13 too long term?

14 MS. McCANN: I'm not sure what you're referring
15 to. In here, we have a replacement for our timeline with
16 the first milestone at eight years out. I would have to
17 look at it to tell you what the other ones are.

18 MR. BRIGGS: I think there was an 8-15.

19 MS. McCANN: Yeah. Maybe that's what --

20 MS. HUNTER: It's under Part G? Is that revised
21 in Part G, the time frame?

22 MS. McCHESNEY: Yes, it would be G.

23 MS. McCANN: Yes. It would be their Part H
24 replacing our Part G with time schedules that are outside
25 the term of the Order five years -- excuse me -- eight

1 years. And I think Roger's correct, 15.

2 MR. DELGADO: Can you explain the difference
3 between milestones, targets, and time frames? When I see
4 the time frames that they suggested, I kind of thought of
5 those as milestones. Can you explain the difference.

6 MS. McCANN: I think we're using milestones and
7 targets interchangeably. So maybe we didn't need two
8 words there. Or maybe another way to say it is a
9 milestone is a target plus a time frame.

10 What are we trying to achieve, that's a target.
11 And what's the time frame that we want to achieve it or
12 the date we want to achieve it by. So we have, for
13 example, indicate pollution reduction with some indicators
14 by a set date. It's fair to say that they also have some
15 targets with time frames. I think you're calling those
16 milestones now. But they're eight years and fifteen years
17 out.

18 MR. DELGADO: When you say no milestones/targets,
19 is that true, or did they have some?

20 MS. McCANN: Let me clarify. You have to read
21 the other part of that phrase. Within the term of the
22 Order. There's nothing proposed as a set goal that we
23 would measure something by in terms of pollution reduction
24 or effectiveness of management practices with a date that
25 is within the term of the Order the way the language is

1 written.

2 MR. DELGADO: So they may have a target of
3 certifying at least 20 percent of the participating farms
4 to an audit. But that certification, that target, is not
5 a water quality numeric target. It's a process target,
6 sort of.

7 MS. McCANN: I agree with your assessment, but I
8 wasn't trying to distinguish between water quality and
9 other types of targets here. Now you're raising a
10 slightly different issue which is, if there are -- to the
11 extent that there are some -- we'll call them process
12 targets to use your term -- they're not reported or
13 they're reported at such a high level, that they won't
14 tell us how much progress we're making in pollution
15 reduction or advancing towards water quality improvement.

16 MR. BRIGGS: Lisa, back from the mic just a hair.

17 MS. HUNTER: By high level, you mean aggregate?
18 They're reported at an aggregate level that does not allow
19 us to understand what's happening? I don't know what you
20 mean by high.

21 MS. McCANN: As far as the language that is in
22 here to be added to the Order, that remains unclear. But
23 when I say high level, aggregate is not -- it's not just
24 aggregate that's high level. It's what's scale and what's
25 the indicator that we're aggregating the information. I

1 am talking about things like numbers of growers or types
2 of practices.

3 MS. HUNTER: Okay.

4 MR. YOUNG: Go ahead.

5 MR. JOHNSTON: Just a quick question here.

6 Is this list of cons the list of policy and legal
7 issues which would have to be resolved to utilize this
8 concept or is that coming separately?

9 MR. THOMAS: These things would have to be
10 resolved, yes.

11 MR. JOHNSTON: I understand.

12 So this is that list that I was asking for last
13 night; is that correct?

14 MR. THOMAS: Yes.

15 MR. JOHNSTON: Okay. I want to let you walk
16 through it, and then I've got some questions about
17 different things.

18 MR. DELGADO: Okay. I have to jump in if I
19 could, Chair, because I don't see all these as legal.
20 Having risk-based prioritization criteria, is that a legal
21 requirement?

22 MR. YOUNG: They're going to get to that.
23 Whether it's legal or not, they're --

24 MR. DELGADO: They just did get to that. They
25 said, I think, that everything up there are legal

1 requirements. That's what I think I heard.

2 MS. McCHESNEY: No. I think he said they were
3 some policy, some legal.

4 MR. DELGADO: Okay. I missed that. Thank you.

5 MR. YOUNG: Yeah.

6 MR. THOMAS: So the next thing is that we don't
7 think that the language is responsive to the threat to
8 human health. And that includes not focusing on --
9 because it does not focus on shallow groundwater where
10 most domestic wells are located and where the threat to
11 human health is greatest. There are no targets or
12 indicators of nitrate-loading reduction, no advanced
13 requirements for higher risk operations, operations where
14 the threat is greater, which is how our Order is designed.

15 The last item there, the language and the
16 approach does not meet the legal standard. We talked to
17 our attorney about this last night and this morning. And
18 the Board -- members of the Board said yesterday that
19 Board counsel's advice is a high bar. Just so you know,
20 from the Staffs' perspective, it's the bar.

21 When we have the conflicting attorneys, attorneys
22 giving conflicting interpretations, we take the advice of
23 the Board's legal counsel. We don't take the advice of
24 other counsel.

25 I don't know if you want to jump in here,

1 Frances.

2 MS. McCHESNEY: I don't know.

3 Do you want to hear my -- these are a couple
4 issues that I had identified as concerns I have with their
5 proposal.

6 So the first one is that Ms. Dunham has expressed
7 the concern that the proposed Order would somehow be
8 interpreted to require immediate compliance with Water
9 Quality Standards because it says, "Dischargers shall
10 comply with Water Quality Standards and protect beneficial
11 uses and prevent nuisance."

12 And my comment on that has been that it's the
13 language in the existing Order, it's the language in all
14 the other Orders adopted by other regional Boards
15 regarding compliance of Water Quality Standards, it's the
16 requirement of the law that they comply with Water Quality
17 Standards.

18 Where the issue has come up is that there seems
19 to be this view that the language means that -- assuming
20 the Board adopts something today, that tomorrow everybody
21 is going to be out of compliance. But there are
22 numerous -- with the Water Quality Standards, there are
23 numerous provisions in the Order, both in the findings and
24 in the Order part that make it clear that for purpose --
25 and in the State Water Board's policy on the Non Point

1 Source Policy, for nonpoint sources, compliance with Water
2 Quality Standards means to implement management practices.
3 If they aren't effective in reducing discharges to meet
4 Water Quality Standards, that they revise or do new
5 management practices.

6 And it's been made clear in the Order. It's the
7 same language in the Central Valley Order that the Staff
8 has proposed and is currently in the Order. It has not
9 resulted -- it's the same language that's in the Coalition
10 Group Waiver for -- in the Central Valley. It has not
11 resulted in any enforcement actions for not complying with
12 Water Quality Standards.

13 So my recommendation that it not be changed
14 because it's -- it implements a law, and it's been
15 carefully defined within the Order.

16 Tess proposed a different way to address that
17 issue in her proposal, which is the Paragraphs 21 and 22.
18 You know, if you -- there are ways to write it in the way
19 she's proposed, but it would take some rewriting because
20 of some issues that she's raised by her proposed rewrites.

21 And I would -- you know, if you want to consider
22 her proposal, I'd be happy to talk about what I would
23 change about her proposal. But I really think it's
24 working the way it's working. It's a requirement of the
25 law to require compliance with Water Quality Standards.

1 That's the basic standard of every discharger in the State
2 is to comply with Water Quality Standards.

3 In the case of nonpoint source pollution, it's an
4 integrative process to do management practices and then
5 make them better. There's nothing in the Order that would
6 require them to be in compliance tomorrow. It's made very
7 clear.

8 MR. DELGADO: To the Chair, if I may. If she had
9 suggestions that you just said were workable that also
10 satisfy your needs and our needs, then why wouldn't we
11 take a look at those?

12 MS. McCHESNEY: That's what I said. I did look
13 at them. They would require significant rewrites because
14 she's introduced new issues. She's changed other things
15 in the Order in response to those changes. So it's not
16 just like one thing. It's like going to a whole bunch of
17 different places. Okay. Fix that, now go fix that, now
18 go fix that. If you want me to do that, I can do that.

19 I want to just tell you that I don't think it's
20 necessary to address the concern, and the language works
21 the way it is. So that's one of the legal issues.

22 MR. DELGADO: Okay.

23 MR. YOUNG: Mr. Johnston.

24 MR. JOHNSTON: Yes. Just a suggestion on
25 process, Mr. Chair. Because I know none of us want to be

1 here at midnight tonight.

2 You know, Staff has done an impressive job on, I
3 suspect, very little sleep of responding to a tremendous
4 volume of stuff. I suggest that we let them finish their
5 presentation. And to the extent that we don't understand
6 stuff that they're presenting, that we ask questions so we
7 understand it.

8 And I think that there are some other proposed
9 edits that they have. We let them run through their whole
10 presentation, and we ask questions as we need to to
11 understand it. And then we circle back around, and we
12 talk about whether we as a Board want to consider trying
13 to implement some version of what we heard yesterday from
14 Tess. And if we decide we do, then I think we need to run
15 through point by point: I think this is the list of legal
16 and policy considerations that would have to be resolved,
17 and the policy considerations to our satisfaction and the
18 legal considerations certainly, I want to satisfy Frances
19 here. That's what we pay her for. I suggest we just run
20 on through, ask questions as we need to to understand, and
21 then circle back around and see how much we want to dig
22 into this.

23 MR. YOUNG: That's fine. So go ahead.

24 Frances had some more, I think, to address this
25 list.

1 MS. McCHESNEY: I talked about the other one.
2 That's the proposal to delete the provision of the Staff
3 report, the Staff proposal that they provide their farm
4 plans upon request to the Board, and they have proposed to
5 not allow that to happen. And I have already described my
6 legal concern with that, that it's undermining your own
7 authority to get technical reports submitted to the Board,
8 and that I would not recommend that. And the Central
9 Valley's Order has that, the current Order has that. I
10 don't see any need to delete. It would undermine your own
11 authority, which I don't recommend that you undermine your
12 own authority.

13 MR. YOUNG: Okay. Michael.

14 MR. JOHNSTON: So that's the second point, lacks
15 reporting requirements.

16 What about there cannot be a shield. Could you
17 just --

18 MS. McCHESNEY: I think that there is a great
19 improvement with the newer version of the now Part E. And
20 as far as the role of the third party groups in clarifying
21 that individuals are ultimately responsible, there are
22 some areas that sort of create some ambiguity about that.

23 Under the Water Code, a person who discharges
24 waste is required to submit a Report of Waste Discharge,
25 or in this case, a Notice of Intent. And either obtain

1 Waste Discharge Requirements or a Waiver of Waste
2 Discharge Requirements.

3 It's the individual Discharger's responsibility
4 under the law to comply with the law. So you can't have a
5 third party group that shields the individual from the
6 compliance with the law. Some of the ways that it was
7 written in the previous version appeared to try to do
8 that. Which is somewhat surprising because I would think
9 the third party group would not want to be taking on the
10 responsibility that's really assigned to the individual
11 discharger. So that was a little interesting.

12 I think the newer version does clarify some of
13 those things that the individual discharger is ultimately
14 responsible. But there are some areas that could be
15 clarified better. So that was my other concern.

16 MR. YOUNG: Go ahead, Michael.

17 MR. THOMAS: Our recommendation regarding this
18 new language, New Part E, is that -- and this is not our
19 final recommendation of the day. This is just the
20 recommendation regarding this particular language -- that
21 we cannot recommend adding -- I should have said Part E
22 there -- this language in the Order. We can't recommend
23 it for the reasons I said on the previous slide.

24 However, we want to make it clear, if we haven't
25 made it clear before, that we encourage third party groups

1 to develop alternative implementation approaches with the
2 key elements on the previous slide. And we also think the
3 technical advisory committee is a good idea. That was
4 mentioned in the proposed language.

5 The question that was asked yesterday --

6 MR. YOUNG: Before you go, Mr. Jordan has a
7 question for clarification.

8 MR. THOMAS: Yes.

9 MR. JORDAN: Before you left that last page, I'm
10 curious, other than the legal items that Frances has
11 identified and the strict policy items that you've
12 identified, is everything else on that page or everything
13 on the prior cons page able to be folded into the existing
14 Order the way it's already written?

15 MR. THOMAS: Yes.

16 MR. JORDAN: Thank you.

17 MR. THOMAS: That's where I was going.

18 MR. JORDAN: Sorry.

19 MR. THOMAS: That's a good question.

20 The question that was asked yesterday, what is
21 the most effective Order to improve water quality and meet
22 legal standards. There's a typo. We were working on this
23 late.

24 What's the answer? An Order that includes the
25 things that we've been talking about and emphasizing to

1 the Board for years now. Key indicators of pollution
2 reduction and practice effectiveness, risk-based
3 prioritization criteria, milestones or targets within the
4 term of the Order so that we can demonstrate progress of
5 reducing pollution loading.

6 We need to be responsive to the human health
7 threat. It's our highest priority. We cannot put
8 language into this Order that diminishes or undermines the
9 Board's authority -- diminishes that or undermines the
10 Board's authority. We need to focus on shallow
11 groundwater and targets or indicators of nitrate loading
12 reduction. We have to have advanced requirements for
13 higher risk. This is how the Board conducts its business
14 on every program that it implements. And the language or
15 the approach must be consistent with the law and policies,
16 or it's not defensible.

17 We also need to include in our Order in order for
18 it to be effective an option to implement alternatives
19 that are equivalent or better than what we are proposing.
20 Because there are other options that are equivalent and
21 better than what we are proposing. And the industry can
22 develop those. So we have tried to make the Order as
23 flexible as we can. We tried to include language to
24 encourage and promote these alternatives. And we welcome
25 the industry's effort to do it.

1 We currently have timelines in the Order. And
2 one of the edits that we are proposing that we'll get to
3 in a few minutes is to extend those deadlines that are in
4 the Order to further promote the development of these
5 third party alternatives that will be submitted to the
6 Executive Officer for approval.

7 We want them. We want them to meet these
8 requirements. So we've designed the Order to do that.
9 And it's not unusual. Many of the Orders that this Board
10 adopts and has adopted over the past years -- over many
11 years includes this approach, where the Board establishes
12 requirements and says, or an alternative that is
13 equivalent or better, and allows the industry or the
14 responsible party to develop that. That is the most
15 effective Order that we can have, to set standards and
16 allow alternatives.

17 If you want to see alternatives from third party
18 groups that meet the law and that have the conditions that
19 we've talked about, then adopting the Order with that
20 option is the way to go. Continuing to delay is going to
21 result in a continuation of what we have had over the past
22 three and a half years. We continue to argue about these
23 things. We continue to have opposing legal arguments and
24 we're stuck.

25 Okay. Other edits.

1 MR. YOUNG: Let me just say something. It's okay
2 to have opposing legal arguments. Ultimately the Board
3 needs to weigh those and decide where it wants to go with
4 that.

5 Right?

6 MR. THOMAS: Sure. It's okay to have opposing
7 legal arguments. I don't think it's okay for us to
8 continue to delay and not implement actions that protect
9 people that are threatened by this pollution. I don't
10 think that's okay.

11 MR. YOUNG: I understand that. Right.

12 MS. SCHROETER: Now I'm going to -- what Michael
13 put up here on the screen is a list of other edits that
14 Staff is recommending, and they also are reflected on your
15 yellow sheets. So I'm going to talk about them in detail.

16 MR. YOUNG: Angela, hold on one second.

17 Dr. Hunter, you want to quickly ask that
18 question?

19 MS. HUNTER: Okay. Thank you.

20 Again, I'm trying to track how the proposed new
21 Part E, which refers to and puts a lot of detail -- more
22 detail, as Michael said, from Attachment B. So that's an
23 improvement.

24 Where in the monitoring report section, which is
25 1, 2, and 3, do we see any kind of spelling out of how the

1 third party process will work? Or do we have that? I'm
2 not seeing it. I just want to know: Do we have something
3 that's equivalent?

4 MS. McCANN: I don't think they proposed any
5 edits to the monitoring and reporting program.

6 MS. HUNTER: I know.

7 MS. McCANN: Okay.

8 MS. HUNTER: So let me ask that question a little
9 differently.

10 MS. McCANN: Okay.

11 MS. HUNTER: The only place that I see third
12 party referenced is in Additional Findings, Number 10. It
13 says it deals -- that's where you deal with third party
14 groups. And it refers to the Monitoring Program Orders.
15 That's why I was wondering: Is it in the Monitoring
16 Program Order, or is that the only place where you refer
17 to third party groups?

18 MS. McCANN: You're referring to our Draft Order?

19 MS. HUNTER: Yes. Correct.

20 MS. McCANN: Okay.

21 MR. JOHNSTON: Besides Condition 10, I think
22 Finding 11 refers to cooperative -- that's not monitoring.
23 Sorry.

24 MR. BRIGGS: Mr. Chairman, in Attachment 2B,
25 which is, for example, monitoring and reporting program

1 for Tier 2 on Page 9, it talks about cooperative
2 groundwater monitoring efforts to minimize costs. This is
3 A6, Page 9 of the Tier 2 Monitoring Program.

4 MR. JOHNSTON: Page 9 of what?

5 MR. BRIGGS: The monitoring and reporting program
6 for Tier 2.

7 MS. HUNTER: On Page 9, what number is it?

8 MR. BRIGGS: Number 6.

9 MS. HUNTER: Okay. I have found it. Thank you.

10 (Discussion held off the record.)

11 MS. HUNTER: Each tier Monitoring Program has
12 that same Number 6 apparently.

13 MR. DELGADO: On Page 9, Paragraph 6 in each
14 tier.

15 MR. JORDAN: Okay.

16 MS. HUNTER: Thank you. I just need to get my
17 bearings.

18 MS. SCHROETER: Now what you have in front of you
19 on the yellow sheet are four pages of additional edits
20 that Staff is suggesting based upon the information
21 submitted by Farmers For Water Quality as well as the
22 Board member discussion yesterday.

23 We already went through a page and a half of
24 them. I'm going to start on Page 2 where it says
25 Paragraph 58, Page 24 and 25. You'll notice on the one

1 above Paragraph 56, we already discussed that one, about
2 the NOI form and the edits to the NOI form.

3 Paragraph 58 is the middle of Page 2, left-hand
4 column.

5 MR. YOUNG: Do you want the word "an" in front of
6 appropriate?

7 MS. SCHROETER: Yes. Sorry.

8 MS. McCHESNEY: "In the."

9 MS. SCHROETER: "In the appropriate tier."

10 MR. YOUNG: Right.

11 MS. SCHROETER: This one is for Dischargers who
12 do not provide adequate information for the Water Board to
13 confirm. The Executive Officer will place the farm ranch
14 in the appropriate tier based upon information submitted
15 in the Notice of Intent. And I'm bringing this one up
16 because this was left over from Tess' that we didn't
17 address. Her concern was that farmers would be
18 automatically placed on the higher tier. And we agree.
19 So we are suggesting additional edit that they would be
20 placed in the appropriate tier based upon the information
21 submitted in the Notice of Intent.

22 The second change, and this was in response to --

23 MR. DELGADO: Excuse me, Angela.

24 MS. SCHROETER: Yes.

25 MR. DELGADO: To the Chair, back to that point, I

1 think sometimes the Notice of Intent will be incomplete
2 and not allow the Executive Officer based on that
3 standalone document to make a determination. I mean,
4 that's a possibility that I could foresee.

5 If this would say, "Place the farm ranch in the
6 appropriate tier based upon either information submitted
7 in the Notice of Intent or further communication between
8 the Executive Officer or Staff and the applicant, that
9 that -- I think that would be more thorough.

10 MS. SCHROETER: We could add that information,
11 "or further communication with the grower regarding their
12 enrollment."

13 The next one is regarding the sampling of
14 groundwater, individual groundwater sampling. And this
15 actually is in response to a comment that was brought up
16 by Board Member Wolff as a stakeholder. His concern was
17 about the need to have registered professionals conducting
18 the groundwater sampling. We do suggest a change. We
19 understand that comment, and the change is that we would
20 delete the sections that say, "State registered
21 professional engineer, professional geologist, or other
22 similarly qualified professional," and replace that with a
23 qualified third party, for example, technician,
24 consultant, or individual conducting cooperative
25 monitoring.

1 So, for example, Preservation, Inc., currently
2 conducts surface water cooperative monitoring. Someone
3 like that would be fine to conduct the groundwater
4 sampling, or a certified lab employee, for example.

5 MR. DELGADO: Who would determine the
6 qualifications necessary?

7 MS. SCHROETER: Well, it's per the proper
8 sampling methods and analytical. So someone who's
9 qualified to do the sampling methods and --

10 MR. DELGADO: Who determines that? I might get a
11 lesson from you. And you and I might agree that I'm now
12 qualified.

13 Am I qualified?

14 MS. SCHROETER: What we intended to do was to
15 hold a workshop or provide some assistance for growers of
16 how -- it states very specifically how to conduct the
17 sampling in the MRP. We would have some assistance about
18 that. And then as long as it was a third party familiar
19 and who could implement those methods, it would be a
20 qualified third party. It's deliberately flexible.

21 MR. DELGADO: Okay.

22 MR. YOUNG: Let me just offer some example here.

23 When I used to grow oysters and I was taking
24 water samples, the Department of Health Services showed me
25 how to do it, and then I was responsible myself to go out,

1 get a clean sterilized jar from the lab, take it in a bag,
2 go get my sample, fill out a label, and submit it, and
3 that was okay.

4 As long as you're going to be able to explain
5 this to people, train them how to be able to do it
6 themselves, with some training, they could become
7 qualified.

8 MR. JEFFRIES: It's also a cost savings.

9 MR. YOUNG: It's a cost savings. And it makes it
10 easier to do. So just consider that.

11 MR. DELGADO: Okay.

12 MS. SCHROETER: That's a good example.

13 The second one relates specifically to the
14 Farmers For Water Quality's suggestion about --
15 clarification about the individual groundwater monitoring.

16 Essentially we agreed with their suggested edits,
17 which are in the underline here. The parts that we added
18 are in that last sentence of the second paragraph, a
19 ~~strikeout~~, where it says, Qualifying cooperative
20 groundwater monitoring and reporting programs may include
21 but are not limited to regional or subregional groundwater
22 programs developed for other purposes as long as the
23 proposed cooperative groundwater Monitoring Program meets
24 the Water Board's general purpose of characterizing
25 groundwater quality. That's where Farmers For Water

1 Quality ended.

2 What we'd like to do is to add because this
3 wasn't in our original intent, "and ensuring the
4 protection of drinking water sources."

5 So that really is our general purpose of the
6 individual groundwater monitoring is both to characterize
7 groundwater quality and ensure the protection of drinking
8 water sources. That's the add on.

9 The other change that we made to the suggested
10 edits -- oh, here. So on the third page, at the top of
11 the page, where it says, Adequately characterize the
12 groundwater aquifers in the local area of the
13 participating Dischargers. We agree with that change to
14 strike out represent and add the word characterize.

15 Ms. Dunham had also suggested that we strike out,
16 "characterize the groundwater quality of the uppermost
17 aquifer." Staff disagrees with that strikeout. We feel
18 it's very important for any cooperative groundwater
19 Monitoring Program to also access the uppermost aquifer.
20 It's the most vulnerable to pollution. It's the aquifer
21 that most domestic wells are tapped into and any
22 cooperative groundwater Monitoring Program must include
23 that evaluation.

24 Other than that, we agree with all of the other
25 suggested edits, including the ones which gives them time

1 here to submit the cooperative groundwater monitoring
2 proposal. So you will see that they have -- someone who
3 wanted to do it cooperatively has a year to submit the
4 proposal. That's acceptable to Staff.

5 So the next suggested edit is the one that
6 Michael specifically referenced. And that relates to the
7 dates regarding individual discharge monitoring. So we
8 understand that any cooperative effort, third party
9 effort, is going to require time. So we want to be able
10 to provide that time before some of the more burdensome
11 requirements kick in.

12 For example, for individual sampling analysis
13 plan, we would like to revise that date to submit to be
14 one year, March 15th, 2014, instead of the previous date
15 which was six months after adoption.

16 In addition, we also are suggesting the edit to
17 revise the date to initiate the individual discharge
18 monitoring, surface discharge monitoring to be
19 October 1st, 2013. So this extends individual to surface
20 discharge monitoring 1.5 years. The previous date was
21 October 1, 2012.

22 MR. BRIGGS: Angela, back up one. Is that the
23 right date there? Because it looks like you mean to say
24 2013.

25 MR. JEFFRIES: That's what I thought. You have

1 March 15, 2014.

2 MS. SCHROETER: Oh, I'm sorry. Yes, you're
3 correct. Thank you for catching that important
4 clarification.

5 MR. BRIGGS: So that's the first date change that
6 Angela was talking about.

7 MS. SCHROETER: Submit the individual sampling
8 analysis plan.

9 MR. BRIGGS: Right. Revise date to submit
10 individual sampling analysis plan to March 15th, 2013 as
11 consistent with the one year from today.

12 MR. DELGADO: That is a six-month extension
13 compared to the status quo?

14 MS. SCHROETER: That's correct. That is to
15 submit the plan. And an additional extension for actually
16 initiating the sampling, which is the next one.

17 So in addition, we're also revising dates to
18 submit or to report the individual surface water discharge
19 monitoring to March 15th, 2014. The previous date was
20 October 1, 2013. So this basically provides two years to
21 submit the data. So it allows growers two years to
22 consider and implement -- start implementing alternative
23 before they have to report any individual discharge
24 monitoring data.

25 In summary for those three, they all relate to

1 individual discharge monitoring for surface water, the
2 date to submit the plan would be March 15th, 2013. The
3 date to start sampling would be October 1st, 2013. And
4 the date to submit any reporting would be March 15, 2014,
5 two years after today.

6 In addition Staff is also recommending to delete
7 the date of implementation for the irrigation nutrient
8 management plan to allow for the flexibility of
9 considering alternatives before the development of that
10 plan. The previous date was October 1, 2013. We would
11 just suggest --

12 MR. DELGADO: So you'd leave it open-ended, no
13 date?

14 MS. SCHROETER: Leave that one open-ended with no
15 date.

16 They development and implement that plan at their
17 discretion; however, the next one is regarding the
18 reporting of the elements of the irrigation issue
19 management plan. So here we're suggesting to move the
20 date for reporting the elements of the irrigation issue
21 management plan by one year.

22 Currently it's October 1, 2014, and it would move
23 to October 1, 2015. That previous date notation there is
24 wrong in the note.

25 So those are the suggested edits that relate to

1 dates. All those dates were extended out to allow for the
2 opportunity for the development of alternatives, third
3 party groups, or certifications, cooperative efforts.

4 We also are suggesting some additional edits in
5 response to the hearing discussion yesterday. The next
6 one relates to the nutrient balance ratios as a target
7 versus a milestone. In response to the discussion
8 yesterday, Staff is suggesting that we go ahead and make
9 the nitrogen balance ratio a milestone and not a
10 compliance condition.

11 So the edit, then, is by October 1, 2015,
12 Dischargers with high nitrate loading risk must report the
13 progress towards the following nitrogen balance ratio
14 milestones, instead of must achieve the milestones. They
15 have to still report the ratio at a certain date. But
16 it's moving to a milestone instead of a compliance
17 condition.

18 MR. DELGADO: When you say report progress
19 towards, that means any amount of positive numeric
20 progress?

21 MS. SCHROETER: That's correct. Then the next
22 edit would be moving the conditions to achieve nitrogen
23 balance ratio to the specific table. So they go from the
24 compliance conditions table to Table 4.

25 What Table 4 states in the Order is that these

1 milestones will be used to evaluate progress towards water
2 quality improvement. That milestone is still how we're
3 going to measure progress. But it's not a compliance
4 condition to achieve it.

5 MR. DELGADO: Is it accurate to say that targets
6 are requirements and milestones are suggestions? Because
7 it seems like now we're saying here's the difference
8 between targets and milestones; whereas, earlier they were
9 interchangeable words.

10 MR. BRIGGS: Mr. Chair.

11 MR. YOUNG: Yes.

12 MR. BRIGGS: I think the key thing is not so much
13 the word target but be consistent with Table 4 which we
14 call milestones as opposed to meet targets. And that
15 applies -- in the heading of the table I think was
16 compliance. So you put all that together.

17 MR. DELGADO: Okay. But for the purpose of
18 understanding this on the part of the growers especially,
19 it would be nice if they knew the difference. Because we
20 knew the difference between targets and milestones. So if
21 there is a policy difference, it would be nice to know
22 that consistent policy difference.

23 MR. JEFFRIES: What you're inferring is that the
24 language of milestones be consistent throughout the Order?
25 It means the same thing?

1 MR. DELGADO: Sort of. If there is a difference,
2 let's say that targets were things that had to be met to
3 be complaint, but milestones were time frames that were
4 more wishy washy. Or if there was any other consistent
5 difference, it's just important to me that the growers are
6 able to understand.

7 MR. JEFFRIES: I understand and I appreciate
8 that. And this statement earlier in the presentation
9 that -- at least I understood -- that targets and
10 milestones were interchangeable by the Staff and
11 interpretation. Is that correct?

12 MS. McCANN: Maybe we need to clarify something.
13 This is the only indicator -- or place where we
14 use the term target. It's a descriptor for this thing
15 called the nutrient balance ratio. And we want it to be a
16 milestone. First it's a condition.

17 MS. McCHESNEY: I think I can explain it. The
18 difference is is that in Table 3, this is a time schedule,
19 for example, submit your photo monitoring. So that's a
20 specific date. So if they submit it on that date, by that
21 date, they're in compliance. They wouldn't be subject to
22 enforcement. Those compliance dates, the way I understand
23 it, is that they're clearly enforceable dates. Where the
24 milestone is, This is information provided to the Board so
25 they can see if progress is being made, but it's not going

1 to be an enforceable requirement. If they don't show
2 progress, they're not going to be hit with enforcements.
3 It's just, Okay. Now you need to look at more what you
4 can do to show improvements.

5 Right?

6 MR. DELGADO: So then are targets enforceable?

7 MS. McCHESNEY: Target was only the word used for
8 that thing, and there's no other use of the word target.
9 So it goes away.

10 MR. DELGADO: In the Ag Order and the associated
11 MRP, target comes up in one instance. And in that
12 instance, it's enforceable. But otherwise target's not
13 used, instead milestones are used.

14 MS. McCHESNEY: That was -- because you said
15 yesterday that was the only -- the nitrogen target was the
16 only enforceable thing, if that's a word.

17 MR. JOHNSTON: I think it was enforceable part --
18 the implication I got was -- it was in a table labeled
19 Conditions.

20 MS. McCHESNEY: Right.

21 MR. JOHNSTON: And we have moved it from a table
22 labeled Conditions to a table labeled Milestones and said
23 it will be -- we've stated specifically that you're
24 required to -- excuse me. We said specifically that you
25 must report progress in the direction of that.

1 MS. McCHESNEY: Right.

2 MR. JOHNSTON: So we've moved it from being a
3 condition you have to meet to something you have to
4 progress towards.

5 MS. McCHESNEY: Right. And so you -- before -- I
6 mean, the way it was originally proposed, if you didn't
7 meet that 1 or 1.2 or other alternative that was approved
8 by that date, you would be out of compliance.

9 Right?

10 MS. SCHROETER: That's correct.

11 And actually Roger said it simply before that.
12 The only reason to change the wording from target to
13 milestone is that it was going to the milestone table,
14 otherwise there wasn't really a distinction. It's
15 compliance condition versus a milestone.

16 MR. DELGADO: So just to beat a dead horse, then,
17 there's no longer the word target in any of the papers
18 before us as far as something you have to meet?

19 MS. SCHROETER: Right.

20 MR. DELGADO: Okay.

21 MS. SCHROETER: That's what we intend.

22 MR. BRIGGS: As long as you go to the next
23 change, which is to make the monitoring reporting program
24 for Tier 3 consistent.

25 MS. SCHROETER: Right. There's the use of the

1 word target. It's the same change. It just isn't in the
2 MRP.

3 So that brings me to our last edit. And that is,
4 again -- we already started discussing this one -- that's
5 in response to Mr. Sanchez's comment about his concerns
6 related to small disadvantaged growers, especially those
7 that may be non-English speaking.

8 We agree. We would like to prioritize those
9 types of growers for assistance, and we would like to
10 actually add a finding to the Order that states, The
11 Central Coast Water Board recognizes that certain
12 disadvantaged farmers may have difficulties to achieve
13 compliance with this Order.

14 The Central Coast Water Board will prioritize
15 assistance for these farmers, including but not limited to
16 technical assistance, grant opportunities, and necessary
17 flexibility to achieve compliance with this Order, (e.g.),
18 adjusted monitoring reporting or time schedules.

19 So if that issue comes up, that's how we would
20 handle it. And actually the USDA has a definition for
21 growers called the limited resource farmer definition.
22 And those are the types of farmers that they prioritize
23 for assistance for equip funds and other types of grant
24 opportunities.

25 MR. JEFFRIES: Angela, how is a disadvantaged

1 farmer going to be able to interpret this if they're
2 non-English speaking?

3 MS. SCHROETER: We have increased our efforts to
4 conduct outreach with the non-English speaking community
5 of growers. Our latest example of doing that is working
6 with the Chinese chrysanthemum speakers. So we're really
7 trying to coordinate with commodity groups to identify
8 where that need is. That's actually an example of
9 success. We've increased enrollment in that segment of
10 the agriculture industry where it was not there before.

11 MR. YOUNG: How about for Spanish speakers?

12 I understand that.

13 I just want to know what mechanism do you have
14 right now in place should a Spanish-speaking farmer call
15 the Board to get some help or direction? Is there someone
16 that --

17 MS. SCHROETER: Right now we have two full-time
18 Staff who are Spanish speaking who are actually in the Ag
19 program. It is standard now for all of our letters to
20 have the language on top of the letter that states, "If
21 you need Spanish translation or Spanish assistance to call
22 the numbers of those Staff. We've also held I think three
23 or four Spanish-speaking workshops throughout the region
24 north and south.

25 MR. YOUNG: Have they been attended.

1 MS. SCHROETER: They have been. Monica can
2 correct me if I'm wrong, but I think those have been the
3 most well attended is with those grower groups.

4 MR. YOUNG: Has anyone called to speak to our
5 Spanish-speaking Staff?

6 MS. SCHROETER: Yes, all the time.

7 MR. JEFFRIES: I'm sure there's going to be some
8 of those folks who are going to fall through the cracks.
9 And I think that's some of the folks that Mr. Sanchez was
10 referring to that are afraid to step forward for one
11 reason or another and to ask or even inquire what they're
12 supposed to do.

13 So that's -- and I don't want to speak for him,
14 but that's what I took from some of his comments, that
15 there's folks out there that are farming, whatever type of
16 farming they're doing, haven't attended any of these
17 workshops. And now they're afraid that there's going to
18 be some Order which means some kind of liability to them,
19 and that they don't understand.

20 Is the form also in Spanish and Chinese.

21 MS. SCHROETER: All of our electronic Notice of
22 Intent forms are all in Spanish. They've all been
23 distributed to the commodity groups, where there are
24 Spanish-speaking growers that we know of. For example,
25 the Alba Group. That's just one example as well as the

1 local farm bureaus. For example, the Cachuma RCD, we've
2 worked with them to distribute our documents in Spanish.
3 We hear the concern, and our intent is to provide a higher
4 level of assistance and prioritize assistance for those
5 farmers.

6 MR. JEFFRIES: I realize that we can't cover all
7 bases. But eventually I'm sure we'll discover those folks
8 as they --

9 MR. YOUNG: As they pop up.

10 MR. JEFFRIES: -- as they pop up.

11 MS. SCHROETER: Many of them are already
12 enrolled. So I don't want to leave you with the
13 impression that those types of groups are
14 under-represented. They actually are very well
15 represented. I'm sure that we don't have all of them.
16 But they check a box on the Notice of Intent which states
17 what language is their speaking preference, and there are
18 many non-English speaking growers.

19 MR. YOUNG: Mr. Delgado.

20 MR. DELGADO: Yes.

21 I thought I heard you say that the USDA
22 definition is for something slightly differently worded
23 than disadvantaged farmers. If that's true, why don't we
24 call it what they call it. Dollars.

25 MS. SCHROETER: That was a lay edit. We were

1 trying to find the actual language. That was my recalling
2 of what a definition was. But yes, you're --

3 MR. DELGADO: So what were those two words
4 instead of disadvantaged farmers?

5 MS. SCHROETER: It's called limit resource
6 farmer.

7 MR. DELGADO: Limited resource farmer, CUSDA
8 definition. Is that your preferred language at this
9 point.

10 MS. SCHROETER: That was just a reminder to me to
11 look at that definition so we can strike out the CUSDA.

12 MR. DELGADO: I like the CUSDA definition because
13 then everybody knows that it exists.

14 MS. SCHROETER: Okay. Perfect.

15 MR. DELGADO: And then my other question on this
16 was, if I was a Caucasian grower, I might feel slighted
17 that grants and technical assistance opportunities would
18 be prioritized for somebody else. I just want to make
19 sure that that's both legal and fair in your mind.

20 MS. SCHROETER: Actually it was very difficult
21 for us to articulate what disadvantaged means, which is
22 why we are relying upon an existing definition. The
23 existing definition actually doesn't specify language,
24 ethnicity, anything like that. It's based upon the
25 standard practice of looking at median household income

1 and other indicators.

2 MR. BRIGGS: Needs based.

3 MS. SCHROETER: Needs based.

4 MS. McCHESNEY: Right. And it specifically says
5 that they can't discriminate based on race, color, nation
6 of origin, all that stuff.

7 MR. DELGADO: But they can discriminate in a way
8 based upon socioeconomic status. That's -- what you're
9 telling us is legal?

10 MS. McCHESNEY: The IACT authorizes the secretary
11 to set aside five percent of available equipped funds and
12 CSB acres for socially disadvantaged farmers or ranchers.

13 MR. YOUNG: Speak up.

14 MR. DELGADO: Socialize disadvantaged. So those
15 are different words than --

16 MS. McCHESNEY: The beginning of it refers to
17 limited resource farmers or ranchers. I mean, it's a
18 federal law that deals with limited resource farmers or
19 ranchers and then provides a certain percentage of funds
20 for a certain limited resource and beginning farmers or
21 ranchers, et cetera.

22 MR. DELGADO: Okay. That sounds more fair. If I
23 was a higher income ranch grower that was having trouble
24 implementing this, that there might be 95 percent of the
25 money still available for people like me and five percent

1 is set aside for people that are in a lower socioeconomic
2 status than I?

3 MS. McCHESNEY: Correct. That's what it appears,
4 yeah.

5 MR. YOUNG: Mr. Jordan.

6 MR. JORDAN: Actually I want to back up a couple
7 squares if everybody's done with that subject.

8 MR. YOUNG: Okay.

9 MR. JORDAN: Angela, could you tell me quickly,
10 going back up to the top on the nitrate dates changes.
11 Just a couple sentences. What the difference is between
12 developing irrigation and nutrients management program and
13 submitting the elements? What does that mean?

14 MS. SCHROETER: We require them to develop a
15 plan.

16 MR. JORDAN: Right.

17 MS. SCHROETER: The irrigation management plan,
18 and we also require them to report specific elements.

19 MR. JORDAN: You're proposing, then, to eliminate
20 the first part of that and just give them a window to
21 submit; right?

22 MS. SCHROETER: What we are proposing to do is to
23 eliminate the date specified for developing the plan.
24 They still have to develop the plan.

25 MR. JORDAN: Correct.

1 MS. SCHROETER: Right.

2 MR. JORDAN: There's just no intermediary
3 milestone timeline target.

4 MS. SCHROETER: That's correct. It provides full
5 flexibility as to when to develop that plan.

6 MR. JORDAN: That only applies to a subset of
7 Tier 3; right?

8 MS. SCHROETER: That's correct. It only would
9 apply to a subset of the Tier 3 farms, approximately, if I
10 can recall from yesterday, 61.

11 MR. JORDAN: That subset was developed
12 specifically to recognize a higher risk even within
13 Tier 3; correct?

14 MS. SCHROETER: That is correct.

15 MR. JORDAN: It seems like a significant
16 giveback. I'm wondering what discussions took place on
17 that issue.

18 MS. SCHROETER: It is a very significant
19 compromise, correct.

20 MR. JORDAN: Would you like to share any
21 discussions that were -- well, here's my point, then you
22 can decide. If Staff is willing to give that back, okay.
23 But the particular line where it talks about the strikeout
24 of must meet and is replaced with must report progress
25 towards, that, to me, is a historical line that should be

1 remembered in three years when you start to work on the
2 next Order. Because that's indicative right there that if
3 conditions continue to worsen that that was clearly a
4 point of giveback for consideration at this point. And
5 that it could have been worse at this time.

6 Does that make sense? Or it could have been more
7 stringent at this time? Worse is probably not the right
8 word.

9 MR. THOMAS: It does, yes. I agree. The
10 conversation that we had about it, we go round and round
11 about whether we should or shouldn't reduce these
12 requirements further or extend these due dates further.
13 And in the interest of promoting this coalition effort, we
14 said what can we change in the Order that would promote it
15 and would allow for opportunity and time for people to do
16 that.

17 We didn't want to -- correct me if I'm wrong
18 here, Angela. We didn't want to set up a situation where
19 people were trying to do both, working on the requirements
20 in the Order and trying to set up a coalition or trying to
21 meet requirements of a coalition at the same time. So we
22 wanted to give space to develop that coalition process.

23 MR. JORDAN: It seems to me to be a huge carrot
24 you're dangling out there. Obviously we went by it really
25 quick, and I'm surprised that nobody had any opinions on

1 it. But it would also seem to put the ball in the other
2 party's court, and they better do something with that ball
3 that leads to results or else the next time you look at
4 this, the language reverts back to a more stringent
5 language. Just my two cents.

6 MR. YOUNG: What more does Staff have for us?

7 MS. SCHROETER: Those are all of the suggested
8 changes and some other discussion.

9 MR. YOUNG: Okay. Any other rebuttal for Staff?
10 Any other comments to us on anything else you've heard?

11 MR. THOMAS: There were other issues that came up
12 yesterday. So what we would -- instead of -- let me back
13 up here. So instead of going into the issues that came up
14 and rebutting, we're willing to just let it go and go to
15 our final recommendation.

16 I would request, though, that we be allowed to --
17 if we could take a 5- or 10-minute break so we can talk to
18 the Executive Officer and formulate our final
19 recommendation.

20 MR. YOUNG: Okay. Mr. Johnston.

21 MR. JOHNSTON: Before we do that and presumably
22 after the final recommendation, we're going to circle back
23 around and talk about as a policy, as well as a legal
24 matter, if and how we want to approach the stuff that was
25 given to us yesterday.

1 I have a couple of minor things I'd like to run
2 by Staff that came out of comments. And I don't have
3 something printed on this, but it's pretty simple. This
4 first one, in the Order on Page 7, Paragraph 27. I had it
5 a minute ago. The way that paragraph reads right now,
6 Landowners and operators of irrigated lands who obtain a
7 pesticide use permit from a local County agricultural
8 commissioner may have a discharge of waste that could
9 affect surface water and groundwater and therefore must
10 submit to the Central Coast Water Board a completed
11 electronic Notice of Intent to comply with the conditions
12 of this Order to comply with the Water Code.

13 What that basically says is, if you obtain a
14 pesticide use permit, whether there's any surface water or
15 even whether you're irrigating or not, you must file a
16 Notice of Intent. It seems like -- here's my proposed
17 changes to that. I just want you guys to consider -- if
18 you need to talk about them when you're talking with the
19 Executive Officer, that's fine.

20 MR. YOUNG: Hold on. I think before you get to
21 there, this is conditioned upon it being irrigated lands,
22 which would mean that someone has to be irrigating Ag.

23 MR. JOHNSTON: Correct.

24 MR. YOUNG: That's a precondition.

25 MR. JOHNSTON: Let me just tell you what my

1 proposed change and Staff can talk about it and they can
2 see what they think. I want to remove the word "may" in
3 the second line after agricultural commissioner and add
4 the words "and that." I want to -- after surface water
5 and before groundwater -- replace the word "and" with the
6 word "or" and strike the words "and therefore."

7 Then it would read, Landowners and operators of
8 irrigated lands who obtain a pesticide use permit from a
9 County agricultural commissioner and that have a discharge
10 of waste that could affect surface water or groundwater
11 must submit to the Central Coast Water Board a completed
12 Notice of Intent, yada, yada, yada. Talk about that.

13 The second thing that was raised in comments
14 yesterday and that I didn't hear a response to and I would
15 just like to get Staffs' take on it. It was raised in
16 comments that some piece of the -- I believe it's the
17 irrigation plan has to be prepared by a certified crop
18 advisor with a certificate in hydrology. There was a
19 certified crop advisor who spoke and said, "You know,
20 that's a really high bar and almost nobody has that."

21 MR. THOMAS: It's gone.

22 MR. JOHNSTON: Oh, it's gone?

23 MR. YOUNG: Yeah.

24 MR. JOHNSTON: Okay. Thank you.

25 MR. JEFFRIES: It was stricken.

1 MR. THOMAS: We said earlier that we were
2 removing it.

3 MR. JOHNSTON: I missed that.

4 MS. SCHROETER: Actually, you're correct. We
5 heard that also and intended to strike that. We intended
6 to strike it with the one about collecting groundwater
7 samples. We did that one, but we had intended to strike
8 out the language also that said CCA with a hydrology
9 certificate.

10 MR. JOHNSTON: Okay. Thank you.

11 MR. BRIGGS: One more thing, Mr. Chair.

12 MR. YOUNG: Yes.

13 MR. BRIGGS: You should also mention that in the
14 original Staff report, we recommended changes which had to
15 do with -- mostly administrative. Had to do with the fact
16 that the hearing has been delayed, so it changed a lot of
17 dates. Some of those may be superceded by changes you
18 just went over. And then didn't we have another
19 supplemental sheet?

20 MS. McCHESNEY: Yes.

21 MR. BRIGGS: I mean the one besides --

22 MR. DELGADO: Chair, I have a small request for
23 an edit.

24 MR. YOUNG: A what?

25 MR. DELGADO: A small request for an edit.

1 MR. BRIGGS: Before we do that, though, let's
2 just -- I want to make sure that --

3 MS. McCHESNEY: Here it is.

4 MR. BRIGGS: Yes, this one.

5 MR. YOUNG: Prepared March 6th.

6 MR. BRIGGS: Have you got that handy?

7 MS. SCHROETER: I don't have it with me. It
8 should be in the Board member folders.

9 MR. YOUNG: It is.

10 MS. McCHESNEY: It's in our blue folders.

11 MR. DELGADO: Was the subject the minutes?

12 MR. JOHNSTON: Is it yellow?

13 MR. YOUNG: Yes.

14 MS. HUNTER: Was it Item Number 8?

15 MR. YOUNG: No, Item Number Four. It's a single
16 page.

17 MR. DELGADO: So proposed revisions. Is that the
18 one?

19 MR. YOUNG: Yes.

20 MR. DELGADO: Page 6 and 12?

21 It was in our little blue Peechee folder.

22 MR. BRIGGS: It may have gotten lost in the
23 shuffle.

24 MR. THOMAS: Does anyone need a copy?

25 MR. JOHNSTON: I need a copy.

1 MR. BRIGGS: I think we can share here.

2 MR. JEFFRIES: I don't have one.

3 MS. McCHESNEY: Here, you can take mine. If you
4 need a copy, make a copy.

5 MR. BRIGGS: I just want to make sure we've got
6 all the pieces.

7 Okay, Mr. Chair.

8 MR. YOUNG: What's the question that's pending?

9 MS. McCHESNEY: Bruce had a question.

10 MR. DELGADO: Mine was in the additional findings
11 that is Attachment 1B on Page 6, finding Number 20,
12 regarding NPS policy. It's actually 1B, Page 6, the 20th
13 additional finding.

14 MR. YOUNG: What's the edit change?

15 MR. DELGADO: It has the words, "never may." So
16 the sentence reads, Management practice implementation
17 never may be a substitute for meeting water quality
18 requirements.

19 MS. McCHESNEY: Instead of may never.

20 MR. DELGADO: Instead of may never, or I would
21 prefer it to say is not necessarily a substitute for
22 meeting quality water requirements.

23 MS. McCHESNEY: And the language is from the Non
24 Point Source Policy, but I don't think it's an exact
25 quote. So I would recommend that we say what's in the Non

1 Point Source Policy so I can check what it actually says
2 to make sure it's an accurate -- I don't think it says
3 "never may," so I'll --

4 MR. DELGADO: It could say may never, or it could
5 say something else.

6 MS. McCHESNEY: Right. So I'll check it.

7 MR. DELGADO: Thank you.

8 MR. YOUNG: We're going to take a break, right,
9 for about 10 minutes?

10 (Recess taken.)

11 MR. YOUNG: Okay, folks. We're going to resume
12 our meeting.

13 We are at the point where we heard from Staff.
14 And the Board is now at the point where it can begin to
15 deliberate.

16 MS. McCHESNEY: No. Recommendations, Roger's.

17 MR. JORDAN: Roger's got something.

18 MR. JOHNSTON: All roads lead to Roger.

19 MR. YOUNG: Yes. But -- and actually before
20 that --

21 MR. JORDAN: You mean comments from the Board
22 members?

23 MR. YOUNG: Comments from Board members, is what
24 I meant. We're at the point where it's in the Board's
25 hands. We're still going to hear from Roger on any kind

1 of final recommendation before we actually consider what
2 to do.

3 But, Mr. Johnston, did you have anything at this
4 point? I thought maybe, or not, or wait --

5 MR. JOHNSTON: I gather you're aware,
6 Mr. Chairman, because it was shared with you, although
7 none of the other Board members, is I have worked with the
8 Executive Officer and counsel over the last week or two on
9 a couple of different pieces of language. And the
10 principal stuff in there is -- well, three different
11 things, really.

12 One of them deals with a coalition monitoring of
13 groundwater. And the other two deal with setting up a
14 little more defined process for third party groups to come
15 to make proposals to the Executive Officer and a technical
16 advisory committee to review and make recommendations on
17 the acceptability of those proposals.

18 And my thought on that language, frankly, is that
19 we, as a Board, should decide which of two roads we want
20 to go down. And one road is to work -- to look at the
21 stuff that Ag presented yesterday. And to take point by
22 point by point each of the policy issues on Staffs' con
23 slide. And each of the legal issues on that slide. And
24 resolve them, modify the Ag Order -- excuse me -- the Ag
25 Alternative that was proposed yesterday. And see if we

1 can come up with something that we wish to adopt. And I
2 think if we're not interested in doing that and instead we
3 want to simply kick down the road to the Executive Officer
4 and a technical advisory committee the question of the
5 details of how third party alternatives would work, then I
6 would propose that language.

7 But I think, at least in the way I'm looking at
8 it, kind of the first step would be for us as a Board
9 to -- I guess polling ourselves or something to decide how
10 much interest there is in trying to work through what Ag
11 proposed and use it as a base. I want to come out with an
12 Order today no matter what. I don't --

13 MR. YOUNG: Right. The question you're posing is
14 for each of us to respond to are the changes Staff has
15 just given us in response to Tess Dunham's presentation
16 acceptable as a path to go down, or would you prefer that
17 we go back and revisit the cons and try to take each of
18 those and tweak the Ag Alternative to meet -- no.

19 MR. JOHNSTON: I wouldn't put the question quite
20 that way.

21 MR. YOUNG: Okay.

22 MR. JOHNSTON: I think the changes that Staff has
23 proposed sort of stand on their own. And most, if not
24 all, of them actually made sense to me. I think that the
25 followup question to that, though, is: Do we as a

1 Board -- I think --

2 MR. YOUNG: Let's put those up, if we can, since
3 we're talking about, those cons.

4 MR. JOHNSTON: Put the cons up?

5 MR. YOUNG: Put the cons up so we've got
6 something to look at.

7 (Discussion held off the record.)

8 MR. JOHNSTON: I suspect -- I don't want to speak
9 for anyone else on this Board --

10 MR. YOUNG: Right.

11 MR. JOHNSTON: -- but I suspect that there would
12 be general consensus on the pros that are up on the slide
13 that we're looking at right now. That there certainly are
14 some advantages to the ideas however un-fleshed out they
15 are. And whatever failings they may have, either in
16 policy terms or in legal terms, that there are some
17 advantages to the pros on here and those ideas.

18 And I think that the question that we as a Board
19 face is -- I suspect there's general consensus on that on
20 this Board. That's just my sense from our -- from our
21 public discussion.

22 I think the question we as a Board face is:
23 What's the best way to capture those pros in an Order that
24 we can pass. And one alternative is to -- I'm not saying
25 this would involve rejecting the edits that Staff has

1 proposed. But Staff has made a very clear recommendation
2 that we don't really go past those edits and use what Ag
3 presented as any sort of a framework for how third party
4 coalitions could be formed and participate and provide
5 some alternatives.

6 I think one alternative for us as a Board is to
7 say: Let's take that framework, let's --

8 Can you give me the next slide.

9 I take very seriously everything on that list. I
10 don't think that Staff is raising any of this to be
11 obstructive. They're all of the policy issues, which is
12 really everything except the last three points. I think
13 we need to seriously talk about it, I think we need to
14 decide as a Board issue by issue do we agree with Staff on
15 it? Does that require us, if we're going to use the Ag
16 Proposal as a framework to make changes in that proposal?

17 When we get to the last three, I think we need to
18 look at the legal questions, as well, and say what do we
19 need to do to change in that proposal if we're going to
20 use it as a framework to comply with the law in our Order.
21 That's one alternative. And it's certainly the more labor
22 intensive one. I want to go home tonight.

23 MR. BRIGGS: Mr. Chair.

24 MR. YOUNG: Yes.

25 MR. BRIGGS: To that point, may I say

1 something --

2 MR. YOUNG: Yes.

3 MR. BRIGGS: -- that I was going to say in the
4 concluding remarks. I think it might be helpful in not
5 having to go such a labor-intensive route. And that is
6 that I don't think you need to resolve all the cons that
7 are listed there. But I think you can realize the pros,
8 the advantages that were listed on the previous slide.
9 And that's because Part E can be developed as an
10 alternative.

11 Right now it's kind of a cloud. It's a moving
12 cloud. It can be developed as a proposal. And within the
13 framework that we have provided here, plus all the changes
14 that we've added to encourage this flexibility, it can
15 come back as a proposal for E.O. consideration. And if
16 the E.O., whether it's me or somebody else, disagrees,
17 they can come to the Board -- and come back to the Board.
18 That's what we've been trying to get to in terms of a lot
19 of the changes that we've been making to our proposal to
20 not only allow that but to encourage that kind of
21 approach.

22 We've made significant changes to the Order to
23 support that kind of alternative development. Without the
24 Order in place, however, we won't have the incentives to
25 do that. We will have incentives to continue to debate

1 and to argue without making progress.

2 In trying to assist with that question, I think
3 you framed the question really well, but I think that's a
4 really reasonable route for the Board to take is to adopt
5 the Order with the flexibility that we built into it to
6 encourage something like Part E to come back to the Board.

7 MR. YOUNG: Mr. Jordan.

8 MR. JORDAN: To that end, I guess, I'll ask my
9 question again to Mr. Briggs.

10 In the result of all the edits we saw today in
11 the existing Order, wouldn't it be your opinion that the
12 cons are already envisioned within the wording of the
13 existing Order and the process you just described of
14 coming back with the proposal is already existing in the
15 existing Order as we discussed today?

16 MR. BRIGGS: I'm not sure I understood your
17 question. I'm sorry.

18 MR. JORDAN: Let me try again.

19 We added a bunch of edits today that were the
20 result today of public comment and proposals.

21 MR. BRIGGS: Right.

22 MR. JORDAN: There were some other edits that
23 Staff added that both strengthened language and were
24 givebacks as a result of comments yesterday. The
25 inclusion of the full proposal of Section E as brought by

1 the Ag group, at this time is not being -- at this time is
2 not part of Staffs' recommendation into the Order.

3 MR. BRIGGS: Correct.

4 MR. JORDAN: But both the list of cons that are
5 up there and the possible inclusion of other segments of
6 the proposed Section E are contemplated within that end
7 product of the Order as we have it right now.

8 MR. BRIGGS: Where I'm not following you is that
9 we're not including the list of cons.

10 MR. JORDAN: I'm saying they're already in the
11 existing Order.

12 MR. YOUNG: In terms of they're addressed.

13 MR. JORDAN: Correct.

14 MR. YOUNG: They're addressed.

15 MR. BRIGGS: Okay. That's why I wasn't following
16 you.

17 MR. JORDAN: I'm saying those issues that are
18 cons have been recognized and addressed in the existing
19 wording of the Order.

20 Is that a fair statement?

21 MR. BRIGGS: Yes.

22 MR. YOUNG: Yes.

23 MR. JORDAN: I also -- my experience is, when
24 this can move up the food chain is to look to policy and
25 look to law and look to goals and not get too involved in

1 the last three lines on the cons list that have to do with
2 my legal interpretation of the issue.

3 Somebody else is going to get to chew on that
4 another day. And I'd be happy to offer my two cents as a
5 reminder to my peers of what the goal of this particular
6 body are. I think you guys all know them, so I don't need
7 to read them out. That's what I think the focus should be
8 on. Are we moving toward those goals consistent within
9 the policy and law. And can we say that the Order meets
10 that criteria at the end of the day, whether it can be
11 legally challenged or not is somebody else's fight another
12 day. It's not my fight today.

13 So, thanks.

14 MR. YOUNG: To that end, I am not in favor of
15 going through the con list and trying to work that in
16 terms of the Ag Alternative. I am in favor of taking the
17 language that I saw that you worked on, I think that that
18 has merit. And I'd like to see that offered up and
19 brought into the recommendation.

20 MR. JOHNSTON: How about this? I think
21 ultimately what we need to do is kind of just decide
22 between one of those two approaches.

23 MR. YOUNG: Right.

24 MR. JOHNSTON: I'm perfectly happy to put that
25 language out now, and we can have a sense of alternatives,

1 if that language works. As I said, I've run it by the
2 Executive Officer and counsel. But I think that that's --
3 I think that's sort of the moving-forward question.

4 Which of those -- I agree with you, Mike. What
5 we need to do is, we need to come out with an Order. We
6 need to do it without further delay, and it needs to be
7 the Order that will best improve water quality. I am very
8 definitely intrigued and interested in the potential for
9 getting better results in some situations from the
10 coalition approach, absolutely.

11 And the question is, what's going to give us the
12 best chance of doing that. If you want me to put that
13 language out, Mr. Chairman --

14 Have we got it on the thumb drive, Angela, or on
15 the computer? Have we got copies of that for people?

16 MS. HUNTER: We can put it up.

17 MR. JOHNSTON: Yeah.

18 There are two different pieces. The first piece
19 is designed to come up with some more specificity as far
20 as cooperative groundwater monitoring. And it starts with
21 some changes on Page 4 of the Order, to Paragraph 11.
22 Page 4, Paragraph 11.

23 MR. JEFFRIES: That's of the Order itself?

24 MR. JOHNSTON: That's of the Order itself.

25 I take it back. It's -- I'm in findings. It's

1 Attachment 1. It's the Order itself. It's Attachment 1.

2 MS. SCHROETER: We're making copies for you.

3 MR. JOHNSTON: Should we just wait for the
4 copies? Would that be easier?

5 MR. YOUNG: Yeah.

6 MR. JOHNSTON: That's awfully tiny to read.

7 MR. YOUNG: I think we need to make more than
8 just for the Board would be helpful.

9 MR. JOHNSTON: I would point out that because
10 this is done in red and black rather than underline
11 strikeout, hopefully the copies will be readable if
12 they're done on a monochrome printer.

13 MR. DELGADO: Just to get going, can we enlarge
14 the --

15 MR. JOHNSTON: Sure. We can go there.

16 MR. DELGADO: Can we enlarge the font, is what
17 I'm suggesting.

18 MR. BRIGGS: Enlarge the font.

19 MR. JOHNSTON: Not zoom in, but change the font.

20 (Discussion held off the record.)

21 MR. JOHNSTON: So this is language regarding
22 encouraging Dischargers to coordinate, and we include
23 cooperative monitoring and reporting efforts. And my
24 intention with the word reporting is not just reporting
25 results. I take it back. It is reporting results.

1 Excuse me.

2 Cooperative monitoring and reporting efforts.

3 And then if you go down, we add, in cases where
4 cooperative water quality improvement efforts were local
5 or regional treatment strategies, and we add in
6 coordinated by a third party group. Example, watershed
7 group, water quality coalition, or other similar
8 cooperative effort, or by a group of Dischargers,
9 necessitate alternative water quality monitoring or a
10 longer time schedule to achieve compliance. The
11 Dischargers can request a different schedule.

12 And then we go on down to, Dischargers may submit
13 an alternative water quality monitoring and reporting
14 plan. And there's some language that we'll get to in the
15 next section as to why reporting is in there.

16 Then it says groups of Dischargers, added
17 language, and/or third party groups. Example, a watershed
18 group or water quality coalition may submit to the
19 Executive Officer for approval of alternative water
20 quality monitoring and reporting programs. An alternative
21 water quality monitoring and reporting program must
22 include collection of data that will provide indicators of
23 water quality improvement or pollution load reduction.
24 And aggregate monitoring and reporting must be on a scale
25 sufficient to track progress in small sub basins and be

1 sufficiently representative of conditions.

2 Aggregate monitoring may apply to surface and
3 groundwater. The Executive Officer will evaluate the
4 alternative monitoring and reporting programs on a
5 case-by-case basis considering the potential effectiveness
6 of the aggregate or alternative monitoring. Example,
7 request to conduct aggregate monitoring for a certain time
8 frame to give new practices or treatment time to maximize
9 effectiveness and other factors such as whether the farms
10 are currently significantly contributing to impaired
11 surface water or groundwater, with drinking water wells,
12 or whether farms are in compliance with other provisions
13 such as enrollment or submittal of annual compliance
14 information.

15 Dischargers who participate in an alternative
16 monitoring and reporting programs maintain individual
17 responsibility to comply with the Order's provisions. And
18 there's just a couple more changes in this, if you go down
19 to the next paragraph.

20 MR. YOUNG: It does say the word conditions, not
21 provisions.

22 MR. JEFFRIES: Yeah, conditions.

23 MR. YOUNG: Mike, is that --

24 MR. JEFFRIES: The word up on the screen was
25 conditions. You said provisions.

1 MR. JOHNSTON: It says conditions. Thank you.

2 MR. YOUNG: Yes.

3 MR. JOHNSTON: Dischargers may continue to
4 implement the alternative treatment or monitoring programs
5 approved, and Dischargers may seek review of E.O.
6 decisions by the Water Board.

7 Let me explain my intent with this. The Order
8 requires basically every farm to do at least one round of
9 groundwater monitoring. And besides the concern that has
10 been expressed by growers around potential liability and
11 other issues regarding disclosing individual results,
12 which has been somewhat dealt with by blurring both the
13 location and identity of the farm the well's on.

14 The question I was raising was, it seems like we
15 need the monitoring to get a good baseline picture of
16 what's going on in the groundwater. And I think that's a
17 mutual interest with agriculture. We don't necessarily,
18 in every situation, need every well. And there's a cost
19 involved in this.

20 And so the concept here is, if you can do
21 monitoring in the sub watershed that's on a fine enough
22 scale geographically -- and that's both north, south,
23 east, west and up/down geographically to get the picture
24 we need, we maybe don't need data from all the wells.

25 I was looking at this as a potential cost savings

1 to be able to get aggregate results on a fine enough scale
2 that it's useful to us and to the affected farmers,
3 frankly. And we may well be able to do that with fewer --
4 with less sampling of wells, or for that matter, there are
5 going to be surface water situations where this is
6 applicable, as well.

7 MR. YOUNG: Why don't you go through the other --

8 MR. JOHNSTON: Yeah. Let me go through the
9 others.

10 Page 13, Condition 10, that is -- we're on into
11 the -- this is the language that already talks about how
12 Dischargers can comply with the Order by participating in
13 different kinds of groups or cooperative efforts. What
14 was added in here is the language including implementing
15 water quality improvement projects and then it references
16 the MRPs.

17 Because, we're providing below, an alternative
18 way to do the monitoring. We're saying, or the
19 alternative monitoring and reporting programs as provided
20 in Condition 11 below. And Condition 11 is a new
21 condition. And what -- you want to page down past --
22 since we're already on this page, we can come back to 72
23 and 73. Actually, let's go back up.

24 72 and 73 are from the Tier 3 MRP. And we're
25 just adding, or alternative monitoring and reporting

1 programs as set forth in Finding 11 and Condition 11.
2 That's just enabling language for what's happening in the
3 new Condition 11.

4 MR. JEFFRIES: Is that date still good,
5 October 1st of '12?

6 MR. JOHNSTON: That date may not be good.

7 MR. DELGADO: Whatever the date is --

8 MR. JOHNSTON: Whatever the date is it is.

9 MR. DELGADO: We've already agreed on it as a
10 change.

11 MR. JOHNSTON: We've talked about. We haven't
12 voted on anything.

13 MR. THOMAS: Mr. Chairman and Mr. Johnston.

14 MR. YOUNG: Yes.

15 MR. THOMAS: I'm sorry I interrupted you.

16 Backing up, it says here, Dischargers may comply
17 with this Order by participating in third party groups.
18 And at the end of that sentence, it says, approved by the
19 Central Coast Water Board. The direction you're going in
20 would be -- that would have to be changed to, approved by
21 the Executive Officer.

22 MR. JOHNSTON: I would -- yeah. I would say by
23 the Central Coast Water Board or the Executive Officer.
24 There is an appeal from the Executive Officer in the thing
25 I'm about to get to.

1 MR. THOMAS: The way this is set up, it would
2 have to come back to you.

3 MR. JOHNSTON: I understand. So I would say
4 approved by the Executive Officer or the Central Coast
5 Water Board because what we've got down -- the next thing
6 we're going to go through is the process of getting
7 approval for third party groups. And it goes to the
8 Executive Officer, and it's appealable to the Central -- a
9 decision -- a denial by the Executive Officer is
10 appealable to the Board. So I would assume we would want
11 to put them both in there.

12 Thank you for catching that, Mike.

13 MR. DELGADO: So it would be and/or? It would be
14 the Executive Officer and/or?

15 MR. JOHNSTON: And/or, yes. No, the Executive
16 Officer or.

17 MR. DELGADO: Or.

18 MR. JOHNSTON: Because it may well not come to
19 the Central Coast Water Quality Board at all. The
20 Executive Officer approves it, they're not going to appeal
21 it. It's not going to come to us.

22 So let's go down to the new Condition 11. This
23 is all new language. And basically the point of this is
24 to set up some criteria for third party groups, to set up
25 a process to evaluate proposals for third party groups

1 involving a technical advisory committee, and to set up --
2 which then makes a recommendation to the Executive
3 Officer, and then to set up a process where an Executive
4 Officer denial is appealable to the Board.

5 Do I need to read this whole thing?

6 MS. HUNTER: Yes.

7 MR. JOHNSTON: I can read it.

8 Did people get copies yet?

9 MR. YOUNG: Yes.

10 MR. JOHNSTON: All of what's in Condition 11,
11 while it's not bolded, it's all new language.

12 MR. YOUNG: Right.

13 MR. JOHNSTON: The entire condition is new. It
14 would renumber the Condition 11 that follows to
15 Condition 12 and everything down below it.

16 And it reads as follows: Dischargers may form
17 third party groups to develop and implement alternative
18 water quality management practices, i.e., group projects
19 or cooperative monitoring and reporting programs to comply
20 with this Order. At the discretion of the Executive
21 Officer, Dischargers that are a participant in a third
22 party group that implements Executive Officer approved
23 water quality improvements projects or Executive Officer
24 approved alternative monitoring and reporting programs may
25 be moved to a lower Tier. Example, Tier 3 to Tier 2, or

1 Tier 2 to Tier 1, and/or provided alternative project
2 specific timelines and milestones.

3 To be subject to tier changes or alternative
4 timelines, projects will be evaluated for, among other
5 elements, project description. The description must
6 include identification of participant's methods and
7 schedule for implementation.

8 Purpose. Proposal must state desired outcome for
9 goals of the projects. Example, pollutants to be
10 addressed, the amount of pollutant load to be reduced,
11 water quality improvement expected.

12 Scale. Solutions must be scaled to address
13 impairment.

14 Chance of success. Projects must demonstrate a
15 reasonable chance of eliminating toxicity within the
16 permit term, five years, or reducing discharge of
17 nutrients to surface and groundwater, long-term solutions
18 and contingencies. Proposals must address what new
19 actions will be taken if the project does not meet goals
20 and how the project will be sustained through time.

21 Accountability. Proposals must set milestones
22 that indicate progress towards goals stated as above in
23 purpose.

24 Monitoring and reporting. Description of
25 monitoring and measuring methods and information to be

1 provided to the Water Board. Monitoring points must be
2 representative but may not always be at the edge of farms
3 so long as monitoring result demonstrate water quality
4 improvement and the efficacy of a project.

5 In addition, monitoring must, one, characterize
6 and be representative of discharge to receiving water.
7 Two, demonstrate project effectiveness. Three, and verify
8 progress towards water quality improvement and waste water
9 production.

10 Project proposals will evaluated by a technical
11 advisory committee comprised of two researchers or
12 academics skilled in agricultural practices and/or water
13 quality, one farm advisor NRCS or RCD, one grower
14 representative, one environmental representative, one
15 environmental justice or environmental health
16 representative, and one regional Board Staff.

17 The TAC must have a minimum of five members to
18 evaluate project proposals and make recommendations to the
19 Executive Officer. The Executive Officer has discretion
20 to approve any project after receiving project evaluation
21 results and recommendations from the committee.

22 If the Executive Officer denies approval, the
23 third party group may seek review by the regional Board.
24 As stated in the NPS policy, management practice
25 implementation is not a substitute for compliance with

1 water quality requirements. If the project is not
2 effective in achieving Water Quality Standards, additional
3 management practices by individual Dischargers or third
4 party groups will be necessary.

5 The point of this is to -- is to -- if we choose
6 not to use the Ag Proposal as a framework and give -- make
7 a set of decisions today on a detailed program to give a
8 framework within which such proposals can be brought to
9 the Board -- or excuse me -- can be brought to the
10 Executive Officer after evaluation by a technical advisory
11 committee -- and we know that the technical advisory
12 committee, back before this process became so polarized,
13 was a functional group that got some stuff done. And my
14 hope in proposing this is that it would provide some
15 balanced way to evaluate stuff, provide input to the
16 Executive Officer and to the Board as well stuff that's
17 appealed to the Board.

18 MR. YOUNG: I think it's a great proposal. I
19 think what you've done is taken what Staff has always said
20 was achievable as part of what they have been proposing,
21 and essentially put down in writing what it might look
22 like, and make that part of what we're going to
23 incorporate in the Order and the Monitoring Program.

24 So how much of this did you write?

25 MR. JOHNSTON: About half.

1 MR. YOUNG: Good. It's great.

2 MR. BRIGGS: Mr. Chair.

3 MR. YOUNG: Yes.

4 MR. BRIGGS: Mr. Johnston asked --

5 MR. JOHNSTON: In answer to your question about
6 what I wrote, this was a back and forth between --

7 MR. YOUNG: I understand.

8 MR. JOHNSTON: -- myself, Roger, Frances. And I
9 would imagine that Roger was consulting other Staff on it.

10 MR. YOUNG: Right.

11 Is this acceptable to Staff?

12 MR. BRIGGS: That was the reason Mr. Johnston
13 wanted to vet it instead of dropping it here was to see if
14 it would be acceptable. Mr. Johnston asked me to help
15 flesh out some ideas for a technical advisory committee.
16 But I wanted just one -- I think it's a typo type of
17 admission. In the last paragraph that you just referred
18 to, the second line, that parenthetical -- I think my
19 intent was for that to be an, e.g., for example NRCS, or
20 RCD. And we should spell that out, too, instead of using
21 acronyms.

22 MR. DELGADO: Can I ask a specific question?

23 MR. YOUNG: Yes.

24 MR. DELGADO: On New Condition 11, all new
25 language, there's about seven black dot bullets. And the

1 fourth bullet is Chance of Success. It says, must
2 demonstrate reasonable chance of eliminating toxicity
3 within the permit term of five years. And I just wondered
4 if you meant to say eliminate toxicity or more
5 realistically would substantially reduce or reduce or
6 something?

7 MR. JOHNSTON: It says, within the permit term or
8 unless this got -- let me compare.

9 MR. YOUNG: The first part deals with toxicity;
10 the second part deals with nutrients.

11 MR. JOHNSTON: Right.

12 MR. DELGADO: Toxicity theoretically could remain
13 high, low, or medium. But then if you reduced nitrates to
14 surface and to the groundwater, the toxicity would be let
15 lie.

16 MR. JOHNSTON: What it says is, if these are
17 the -- it says that it has to demonstrate a reasonable
18 chance of eliminating toxicity within the five years,
19 which is a goal of this, or reducing the nutrients.
20 Everybody knows we're not going to eliminate those
21 nutrients in five years. That's no secret.

22 Go ahead, Roger. You look like you're about to
23 jump --

24 MR. BRIGGS: I was going to point out that there
25 could very well be projects -- most likely will be

1 projects that are geared towards one or the other. You're
2 likely to not have the perfect silver bullet for both
3 toxicity and nutrients.

4 So, for example, the wood chip, pretty simple
5 technology that can be pretty effective with nitrates, but
6 it's not really targeting toxicity.

7 MR. JOHNSTON: So what could fit within this
8 framework is a variety of things, from something like what
9 Ag was proposing, which was a large scale coalition
10 across -- I would suspect they were looking at across
11 multiple growing areas, multiple crops that could fit
12 within this. But what could also fit within this is a
13 much more limited scale project that's addressing -- maybe
14 not even addressing every issue in the Order, but
15 addressing certain issues in the Order.

16 It may be that such -- now, the Ag Proposal calls
17 for -- participation in that proposal brings you to
18 Tier 1. This says it can drop you down Tier 3 to Tier 2,
19 Tier 2 to Tier 1. So it could be that this is a very
20 limited scope project that tries to accomplish one thing,
21 and it moves you from Tier 3 to Tier 2. There's the
22 ability to propose a lot of different kinds of projects in
23 here.

24 MR. YOUNG: Okay.

25 MR. JEFFRIES: Good job.

1 MR. YOUNG: Good job. All right.

2 So what would we like to do? Do you want to have
3 a motion put on the table? Is there more discussion
4 needed?

5 Dr. Hunter.

6 MS. HUNTER: Well, I do appreciate this last
7 conceptual and also very well-defined and spelled-out
8 opportunity to open the door to the intent New Part E. So
9 I really appreciate that language, and I believe -- and
10 I'm glad to know that there was time for Staff and
11 Mr. Briggs and Frances McChesney to also consider the
12 language. Knowing that, I would like to propose that we
13 accept those suggest revisions wholesale.

14 With that in mind, I would like to move the
15 motion to approve. So unless others have anything they
16 want to add to that.

17 Mr. Johnston.

18 MR. YOUNG: As part of your motion, are you
19 incorporating the Staffs' recommendation?

20 MS. HUNTER: Why don't I go ahead and make the
21 motion.

22 MR. JORDAN: Okay.

23 MS. HUNTER: I want to move to approve the
24 renewal of the Conditional Waiver of Waste Discharge
25 Requirements for discharge from irrigated lands, which is

1 Order Number R3-2012-0011. And that's the revisions
2 listed by Staff and reviewed by the Board today, as well
3 as the changes in language noted by Ms. McChesney to
4 insert specific language that is consistent with language
5 in the Non Point Source Policy. And that the revisions to
6 the Order -- pardon me -- and that revisions to the Order
7 with noted corrections submitted by Mr. Johnston be
8 incorporated into the final language of the Order.

9 So I'm proposing that the motion to approve
10 include all of the Staff edits that we reviewed and
11 discussed today, that Ms. McChesney's noted consistency
12 with Non Point Source Policy, and then your printed and
13 written out, submitted revisions that we just reviewed,
14 that all of those changes be incorporated into the permit
15 and that we ask Mr. Briggs to oversee the final revisions
16 to ensure accuracy and that they be taken from the record.

17 MS. McCHESNEY: Can I just add one more thing?

18 MR. YOUNG: Yes.

19 MS. HUNTER: Yes.

20 MS. McCHESNEY: I did check the Non Point Source
21 Policy and the quote is actually accurate from the policy.

22 MR. JEFFRIES: That's good.

23 MS. McCHESNEY: The second thing is that the
24 Staff had agreed that the Order part of the Order number
25 46 that referred to the authority to issue Orders and

1 require groundwater stuff would be moved into a finding
2 instead of in the Order part, which would be Number 46.
3 That wasn't specifically included in the Staffs' proposal.

4 MS. HUNTER: We would want to include that
5 correction, as well -- or that revision?

6 MS. McCHESNEY: It's Page 21 of the Order, and
7 it's Number 46 would be moved to a finding. I don't know
8 what finding number, but that's okay.

9 MR. YOUNG: Okay.

10 MS. McCHESNEY: And then Roger did have something
11 he does need to add. Right?

12 MR. BRIGGS: I think you actually covered a
13 couple of logistics things because you said all edits that
14 we discussed today, which includes the two -- the changes
15 in the Staff report as well as the supplemental sheet that
16 was in your folders, we want to point out that this
17 item -- consideration of this item includes the entire
18 record for this matter.

19 MS. McCHESNEY: Right. From -- the 2004 adoption
20 until today including all the written comments, Staff
21 reports, audios, and everything else.

22 MR. BRIGGS: I also want to point out that I
23 think with the motion it would be a good idea to direct me
24 to have Staff monitor the implementation of this Order.
25 And after a quarter, perhaps four months, something like

1 that, "agendize" a status report for the Board so that you
2 can see how things are going. Others would have a chance
3 to address you in terms of how things are going and at
4 probably some regular intervals after that.

5 I do think that from my perspective of having
6 worked on a lot of contentious issues in a few decades
7 here that in 6 months -- 3 months, 6 months, whenever,
8 that you will probably look back and say, gee, what was
9 all the fuss about? Because we've prompted management
10 practices that are more effective. We've acquired some
11 accountability for those. And we're on the road to
12 improvements.

13 When you consider that perspective, if you can
14 find yourself to accept that, and you weigh that against
15 the urgency of acting in the face of severe toxicity
16 problems we have throughout the region, as we discussed
17 over and over again, and severe public health threats that
18 are unprecedented in their scope in this region,
19 unprecedented in this region's history, it's clear to me
20 now is the time to act on this motion.

21 MS. McCHESNEY: I want to make sure your motion
22 includes a certification of the subsequent EIR -- right --
23 include certification of the subsequent EIR that's part of
24 the Staffs' --

25 MR. THOMAS: It's on the screen.

1 MS. McCANN: Okay. Good.

2 MR. THOMAS: Also the MRP.

3 MS. McCHESNEY: Also I wanted to clarify that
4 yesterday there were quite a few slide presentations that
5 included slides about the report that came out on Tuesday.
6 And I want to make clear that the record does not include
7 those slides that were -- the record generally includes
8 the slide -- it includes the slide presentations, but
9 we'll specifically delete those slides that had anything
10 to do with that.

11 MR. YOUNG: Which report? Can you be more clear.

12 MS. McCHESNEY: The -- I -- what's the --

13 MS. HUNTER: Davis --

14 MR. THOMAS: The U.C. Davis Harter SBX2 Report.

15 MR. YOUNG: I just want to make sure the record
16 is clear.

17 MS. McCHESNEY: And I made a list of those slide
18 numbers and presentations to be sure that Staff --

19 MR. YOUNG: Okay.

20 MS. McCANN: -- excludes those from the record.

21 And then the other thing to clarify is that the
22 record -- it starts with the 2004 Order and goes through
23 today. There are some things that may be necessary
24 preceding 2004 in order to make the record complete. For
25 example, with respect to CEQA. But generally the record

1 preceding the 2004 adoption is not part of this record.

2 MR. YOUNG: Are those changes acceptable?

3 MS. HUNTER: Yes.

4 MR. THOMAS: Mr. Chairman.

5 MR. YOUNG: Yes.

6 MR. THOMAS: No one has said out loud yet, but we
7 are also recommending adoption of the monitoring and
8 reporting program that goes with this Order.

9 MS. HUNTER: I would add to my motion that we
10 adopt the monitoring and reporting program Number
11 R3-2012-0011.

12 MR. THOMAS: And the CEQA resolution.

13 MS. HUNTER: I'm sorry. I thought we already
14 agreed to that. Yes, the CEQA resolution.

15 MR. YOUNG: Mr. Jordan.

16 MR. JORDAN: Not to stop the momentum, but I'll
17 be happy to support the direction we're going and to thank
18 Mr. Johnston for his efforts, but I'll continue to want to
19 note the significant giveback that Staff made on the
20 nitrate loading. I continue to feel that that was
21 significant concession on the part of Staff.

22 One of the provisions of Board work alone is not
23 just to improve but to protect from degradation. I take
24 that phrase as an aggressive statement, not a reactionary
25 statement, but one that puts the burden on this Board to

1 act to protect rather than just seek actions to improve
2 situations. In fact, along with outside the box, I think
3 improving water quality is probably one of the misused
4 phrases because it infers that water quality is already at
5 some level of acceptability, and you're just ratcheting it
6 up a little better.

7 The fact of the matter is, it's really at a
8 degraded point right now. We're really trying to catch
9 up. I think the ball clearly should be in the
10 Discharger's court now. You've been given some
11 significant concessions and significant tools to work
12 with. And in five years from now, we hope to see better
13 results. I hope that we don't have to go through this
14 process again and talk about some of these more stringent
15 give-ups that we did today.

16 Thank you.

17 MR. YOUNG: Is that a second to the motion?

18 MR. JORDAN: I'd be happy to second it with those
19 comments.

20 MR. YOUNG: We're not going to vote yet on it.

21 MR. JORDAN: Okay.

22 Go ahead.

23 MS. McCHESNEY: I just want to make one
24 clarification. Your MRP number, that includes all three
25 MRPs, that number? Because in the draft, they had three

1 different numbers.

2 MS. SCHROETER: It has a dash 01, 02 and 03 --

3 MS. McCHESNEY: Okay.

4 MS. SCHROETER: -- in all of them.

5 MS. McCANN: The numbers are consistent.

6 MR. YOUNG: Mr. Johnston and then Mr. Jeffries.

7 Go ahead.

8 MR. JOHNSTON: I hate to tie myself on the tracks
9 in front of the train here. I know we all want to go
10 home. But, quite frankly, my purpose in running through
11 that language was to lay out a choice for the Board for
12 two alternatives that we take to move forward on passing
13 an Order tonight.

14 And given the -- everybody on all sides has put a
15 huge amount of work into this. But given the work that
16 went into what was put before us yesterday, I still think
17 it appropriate to see if there is interest on the Board
18 in -- and I'm prepared to stay tonight as late as I need
19 to -- in working through the Ag Proposal and seeing if we
20 can accommodate and resolve the policy issues raised by
21 Staff and the legal issues raised by Staff.

22 I am interested in extracting the maximum amount
23 of collaboration possible without diminishing our results
24 in terms of water quality -- can add to our results in
25 terms of water quality. So I mean, I'm mentally counting

1 noses and suspecting that there's not support on the Board
2 for that, but it's a question I'd like to ask.

3 And I'd hoped to ask it before a motion was made.
4 Perhaps I can be advised as to if there's an appropriate
5 parliamentary way. I suppose I could propose to amend the
6 motion. That's kind of clumsy to something that's
7 completely different.

8 Frances.

9 MS. McCHESNEY: I just looked at the rule. This
10 is what's called a main motion, and you can debate the
11 main motion, and then, I assume, included in the debate is
12 whether to -- what to do about that motion and then vote
13 on it and then do something else.

14 MR. JORDAN: What you're saying is that --

15 MS. McCHESNEY: Let me look some more about what
16 to do about that.

17 MR. JOHNSTON: -- is that the only way to address
18 on the Board before we vote on Dr. Hunter's motion,
19 whether there's interest in the Board in going through and
20 attempting to revise the Ag Proposal, is to first vote
21 down Dr. Hunter's motion?

22 MS. McCHESNEY: No. That's not what I said. You
23 can discuss your idea, and I'll keep looking.

24 MR. YOUNG: Let's have everybody speak to the
25 motion, and we can address, I think, the questions.

1 She'll provide the answers.

2 MR. JORDAN: We can count noses that way.

3 MR. YOUNG: Yeah, yeah.

4 Let me just state how I feel about this. I know
5 Russ and I have been through this from the beginning. We
6 enjoy the experience of having seen the development of
7 this whole process from its very beginning to where it is
8 today.

9 There's been a huge amount of effort put into
10 this by everybody, both the Ag community, the
11 environmental community, and now we have the environmental
12 justice interests involved in this, which we've never had
13 before. That wasn't part of our first permit. This is a
14 new element.

15 We've had the revelation of the extent of the
16 groundwater contamination with nitrate that was not there
17 before. We had a little bit of indication that it was
18 there, but it had become really apparent with a lot of
19 data that it is quite widespread, and people are drinking
20 water that needs to be addressed in terms of, you know,
21 remediation, source control.

22 The list of the cons, I'm not interested in going
23 through and trying to piece by piece address them. I
24 appreciate the offer up of the choice that we could do
25 that and spend the time to do it. I think there are some

1 fundamental differences when you really boil everything
2 down to what Ag has proposed that I don't think we're
3 going to be able to reconcile.

4 I think what we've had for many years is an
5 approach that takes the data and keeps it, to some degree,
6 from public scrutiny, kind of camouflages it somewhat. I
7 know Tess Dunham is of the opinion that that can be done.
8 It can be done through coalitions. It can be aggregate
9 collection and then reporting summaries.

10 I'm just not comfortable with that approach.
11 Fundamentally I'm not comfortable with that. I read the
12 Water Code statute, and my take from that is that this
13 agency has a responsibility to be transparent to the
14 public process in terms of requiring efforts that will
15 change over time these sources of contamination, that
16 there will be accountability to those that are making
17 changes on the ground.

18 And it's a public -- these are public resources
19 that we are addressing and are statutorily mandated to
20 protect both the groundwater, surface waters. We're the
21 only agency in this State for this region that has that
22 responsibility. It's not going to be the Department of
23 Pesticide Regulations.

24 We have had them come before us -- actually,
25 before the three of you came on board, but they did tell

1 us their focus was in labeling and application of
2 pesticides. It's not in looking at protecting beneficial
3 uses.

4 We have had Fish and Game come before us and tell
5 us they -- and the Department of Health all really in
6 concurrence with what we're trying to do. So I appreciate
7 ag's added effort. I mean, they have moved this process,
8 I think, immensely in a direction to where they'd like to
9 go. I know they'd like to get it further, but I think,
10 practically speaking, we're at a point now where we can go
11 ahead and vote and adopt what's being proposed.

12 I feel comfortable with it. I think my only
13 remaining issue would be -- and this is something
14 Dr. Wolff had mentioned.

15 I wish you would have approached Roger, which you
16 could have done before the Board meeting, that this may be
17 a huge implementation task for the agency in terms of
18 getting everybody on board, making sure we have all the
19 growers, making sure they know what they're supposed to be
20 doing, and making sure that the agency has shifted some
21 Staff, at least, to get the ball rolling in this, and that
22 there should be some kind of an additional technical
23 advisory committee, if you want to call it that. I think
24 Dr. Wolff called it a management advisory committee.

25 MS. McCHESNEY: Can I just interrupt to --

1 MR. YOUNG: Yes.

2 MS. McCHESNEY: Dr. Wolff had -- his conflict of
3 interest precluded him from discussing this with Staff.
4 You mentioned him talking to Roger, and he couldn't do
5 that.

6 MR. YOUNG: He couldn't? I thought he could.

7 MS. McCHESNEY: No. He can only comment as an
8 individual representing himself. He could not discuss --

9 MR. YOUNG: He could never have discussed it?

10 THE WITNESS: No.

11 MR. YOUNG: Okay.

12 MS. McCHESNEY: I just wanted to clarify that.

13 MR. WOLFF: So I'm off the hook.

14 MR. YOUNG: But after today, there will be no
15 pending matter, and he could participate in --

16 MS. McCHESNEY: Yeah. I'll check on that, but I
17 don't think we need to go there right now.

18 MR. YOUNG: That would be my -- I think he made a
19 good suggestion with that, to make sure that things get on
20 board and implemented properly.

21 To answer your question, Mike, I'm in favor of
22 the motion as it stands. But let's hear --

23 Russ has a keen interest in this issue. I do
24 because of how far back we go with this firm's origin.

25 How do you feel?

1 MR. JEFFRIES: I have mixed emotions. I was
2 really in favor after I heard all the testimony yesterday
3 ask what the Ag presented and all the testimony. I was
4 really -- after I heard all the testimony because I'm the
5 type of person -- it's a public hearing. I like to hear
6 all the information before I make a decision. I was
7 really leaning toward the Ag Proposal, and then the
8 legality issues came up.

9 And, Mike, if you're looking for an answer, I'd
10 be willing to stay here and iron this out. But I don't
11 know if we would be that much further along than we are
12 today, what you've just proposed and what the motion is in
13 front of us.

14 We have to remember that there's always the
15 opportunity, if there's some refinement that can be
16 brought to the Executive Officer and to the Board for us
17 to open up the Order again and change the Order to make it
18 better.

19 Orders are always in flux because each time that
20 they come up for renewal, there's a little bit of changes
21 and hopefully they're for the better. So I'm looking --
22 you know, you'd like to have a win-win situation for
23 everybody.

24 And I think the -- from where the first Order the
25 Staff proposed for us and for what they've done today, the

1 Staff has conceded considerably.

2 I think what Ag has proposed, from what they
3 originally proposed, they have conceded some and made some
4 moves in the right direction.

5 So my interpretation of this is that it is kind
6 of a win-win type situation. Again, I think it's time --
7 I think I said this a couple meetings back -- I'd like to
8 have this Order completed before I leave the Board -- that
9 we can move forward.

10 I think that if we give that direction -- and I
11 like the cooperative monitoring. I really like that. I
12 think it's got some real merit in there. Not only that,
13 but it really puts responsibility back on to the people
14 that are using it. And I think that's kind of good. And
15 I think they kind of proposed that and said, look at, you
16 know, we'll take that responsibility on, and we'll be the
17 ones that monitors that.

18 It would relieve the Staff. And I questioned
19 yesterday and I've questioned before, do we have enough
20 Staff to handle all this to implement it. And, quite
21 frankly, I still have that question. And I'm not really
22 sure. But I guess I'm going to find out pretty soon
23 because if it doesn't work, all these folks that are here
24 today and the ones that were here yesterday are going to
25 be back here pounding on the table and saying, look, it

1 doesn't work. You've got to do something. We need some
2 help. We need some direction from Staff, and we're not
3 getting it.

4 I thank Mr. Johnston for doing what he's done. I
5 think it's a great compromise. But I think you and I are
6 probably thinking on the same lines. I'll stay here and
7 hammer it out if you want to.

8 MR. YOUNG: He just offered it up as an option.

9 MR. JEFFRIES: I know he did. I'm trying to tell
10 him --

11 MR. YOUNG: Right.

12 MR. JEFFRIES: -- there's still the opportunity
13 to have that happen. And those folks can come back and
14 say, these are the areas that we're having problems with,
15 and this is what we're proposing to make that better.

16 So I'll stop.

17 MR. YOUNG: Mr. Delgado.

18 MR. DELGADO: If I was an Ag member or a
19 grower -- and I considered the Ag Proposal -- I had some
20 ownership. It's kind of like my preferred alternative;
21 it's my plan. I might feel some relief that there seems
22 to have been some changes in my direction and fairly
23 significant ones.

24 We now have the spelled-out option of aggregate
25 monitoring and aggregate reporting being a potential which

1 wasn't part of the plan, you know, half an hour ago.

2 We have some extensions on some of the -- the
3 most immediate near-term deadlines. Something that they
4 were asking for. We have a new carrot process to move
5 down from Tier 3 or down from Tier 2. That was a big
6 message that we heard. So that would give me some relief
7 and hope if this was my Ag plan that I wanted. I would
8 want more. But I would be getting more than I had when I
9 came in this morning or came in yesterday and that would
10 make me feel good.

11 If I was a member of the environmental justice
12 community or the environmental community, I would think,
13 oh, God. Now they've moved further toward Ag and further
14 away from what I wanted. I wanted something that was
15 similar to 2010. And we've made so many changes in the Ag
16 direction before today. Now there's more changes, more
17 significant changes. I would feel frustrated in hearing
18 this option to stay later tonight to potentially adopt the
19 Ag Alternative.

20 As an environmental justice or environmental
21 member, I'd feel the opposite of relief and hope. But I
22 am willing personally now to stay until midnight if need
23 be. But I think one option is to approve the motion
24 before us with a friendly amendment that subsequent to
25 that approval, and as soon as we're done approving it,

1 that we take a shot at staying tonight to address the
2 fundamental differences that remain between what we
3 approved in the Ag Alternative with the option of a second
4 vote later tonight to accept a revised Ag Proposal.

5 Yesterday we talked about non-negotiability and
6 whether there were any nonnegotiable items. And Sam Farr
7 and others seemed to indicate, well, maybe they're not if
8 you get down to it. But we left that question unanswered.

9 If we can negotiate those fundamental differences
10 to our satisfaction -- I don't mind staying later, but I
11 really like the idea from an environmental justice and
12 environmental perspective to get something done today
13 that's been in motion for a long time.

14 MS. HUNTER: Can I speak to my own motion?

15 MR. DELGADO: That wasn't a friendly amendment.

16 MR. YOUNG: I want to know if you were facetious
17 with that amendment.

18 MR. DELGADO: No, it wasn't facetious.

19 MR. YOUNG: Okay.

20 Dr. Hunter.

21 MS. HUNTER: I will speak to my own motion. I
22 will be very brief.

23 I am with you on that last element. What I'm
24 satisfied in is the way this Order has taken shape at this
25 point in time. What satisfies me is that now we'll start

1 to see some groundwater data coming out of the program.

2 And that has been my priority all along.

3 I also have tried to be, along with the other
4 Board members, prior to your all joining us, as responsive
5 as we could be to the sensitive issues that emerged from
6 the stakeholder process.

7 As Chair Young led in his leadership in
8 recognizing that the Board needed to be more involved and
9 opened up the process to workshops and some other ways in
10 which we supported Staff to get things back on track, that
11 we've seen this process come an enormous distance back to
12 a place where I think we -- at least I believe we all see
13 the potential and the openings that have been discussed
14 both conceptually. To some degree, there's been more
15 specificity that's emerged in that process and then the
16 potential involvement of very talented individuals like
17 Dr. Marc Los Huertos.

18 That all gives us great energy now; whereas, we
19 were all weary, I feel like there's some energy back in
20 the room. I want to thank Ms. Dunham for her
21 extraordinary work in moving the Ag Proposal to a point
22 where we could see the connections.

23 I hope that's true for all of you who support --
24 in support of the Ag Alternative.

25 At the same time, I want to say to the

1 environmental side and the E.J. side, I think we're going
2 to start to see and develop greater understanding of our
3 watersheds in coastal systems that are both contributing
4 to marine degradation as well as to the fresh water
5 issues.

6 So for that reason, I do believe we are ready to
7 implement this permit program now. And I don't think that
8 it would serve any of us to try to now address this kind
9 of parking lot of elements that we know are not being
10 accommodated at this point; however, I want to thank
11 Mr. Jordan for pointing out -- some important changes have
12 occurred. I think Reese Nelson said the same thing, and
13 in spirit, of course, Mr. Johnston.

14 Some important changes have occurred in a very
15 short period of time. And the framework that we have now
16 before us allows us to do all of these positive and
17 progressive things in the right direction. So I would
18 urge my fellow Board members to support the motion and
19 that we look forward to -- Mr. Briggs suggested that we
20 regularly schedule updates and presentations to the Board
21 in a way that Staff could accommodate that mode. Because,
22 again, we're working with great limits right now.

23 But that we want to shepherd the implementation
24 of this. And the Board will have a good and close sense
25 of how it's working. And that there will be opportunity

1 for stakeholders to come to us with feedback and where are
2 the gaps and where they need some assistance.

3 So I fully anticipate that we're going to
4 continue in that spirit which started about a year and a
5 half ago when the Board became more engaged.

6 So that's my final statement.

7 MR. YOUNG: Before I call for a vote on
8 Dr. Hunter's motion, I just want to say to the Ag
9 community and the public that I certainly don't expect to
10 see possibly even immediate, you know, water quality
11 changes. I don't care if it says five years in there.

12 What I'm looking for -- and this is my own
13 personal opinion with this and perspective -- is that
14 we're seeing a good faith effort to work towards improving
15 the water quality degradation. That's what I'm looking
16 for.

17 I know that this is going to take in some
18 regions -- some part of our regions years and years and
19 years to get to where we want to be. And I know that
20 we're at the point we are because of decades of acceptable
21 practices. And these have been culturally acceptable.
22 The public has been okay with them. There hasn't been
23 scrutiny on them before. And I think we have to recognize
24 that to expect a huge, diverse complex entity, if you want
25 to call it an entity, is Ag, to be able to change so

1 quickly, I'm not expecting that in terms of the
2 groundwater and surface water improvements. But I am
3 looking for the good faith effort to make progress in that
4 end.

5 Having said that, Mr. Johnston.

6 MR. JOHNSTON: Couple of things.

7 First of all, the question I posed to Staff
8 before the break regarding Paragraph 27, Page 7, the
9 coupling between filing a pesticide use permit and being
10 required to submit a Notice of Intent.

11 Did you guys have a chance to take a look at
12 that? If so, what is your recommendation?

13 MS. SCHROETER: I think the changes that you
14 suggest, I think are fine. I don't have any objection to
15 the changes.

16 MR. YOUNG: Is that included in your motion,
17 Dr. Hunter?

18 MS. HUNTER: Yes. I would ask that Staff include
19 that in the list of revisions.

20 MR. JOHNSTON: Speaking to the motion, were there
21 four votes for proceeding to try and see if we can make
22 sausage out of the Ag Proposal. I think that would have
23 been the appropriate way to proceed. It does not appear
24 there are. So I will support Dr. Hunter's motion.

25 MR. YOUNG: All those in favor of the motion say

1 aye.

2 MR. JORDAN: Aye.

3 MS. HUNTER: Aye.

4 MS. McCHESNEY: Aye.

5 MR. JEFFRIES: Aye.

6 MR. JOHNSTON: Aye.

7 MR. DELGADO: Aye.

8 MR. BRIGGS: Aye.

9 MR. YOUNG: Any opposed?

10 The motion is carried unanimously.

11 Is there another motion being proposed,
12 Mr. Delgado?

13 MR. DELGADO: Sure. I'll throw it out there.

14 MR. YOUNG: You can throw it out there.

15 MR. DELGADO: It was my friendly amendment. I'll
16 motion that we stay tonight to address the fundamental
17 differences that remain between the approved motion that
18 we just heard and the most recent version of the Ag
19 Proposal that Tess brought to us yesterday with the option
20 of taking a second vote later tonight on a revised Ag
21 Proposal -- on acceptance of a revised Ag Proposal.

22 MR. YOUNG: Do we need a second for that?

23 MS. McCHESNEY: No, you're not required to have a
24 second.

25 MR. YOUNG: The effect of that is what? We've

1 already passed the recommendation by Staff.

2 MR. JOHNSTON: The motion for reconsideration.

3 MR. YOUNG: Okay. Well --

4 MR. DELGADO: I don't know if it's a motion for
5 reconsideration. It's a motion for a subsequent step to
6 the last motion passed.

7 MR. BRIGGS: May I speak on that?

8 MR. YOUNG: Yes. Go ahead.

9 MR. BRIGGS: I really think that what you're
10 doing is talking about doing Staff work, not only that, at
11 a late hour. And, actually, I think maybe the ball would
12 be in the court of Ag to take a look at the cons, see if
13 they're interested in talking about those cons.

14 And as I said before, what we have adopted now
15 allows the flexibility for that proposal to come forward.
16 I think it makes a lot more sense for that proposal to be
17 developed by the folks on the ground who have proposed
18 that in the first place. And if -- you know, if the Order
19 being adopted allows for it to come to the Board, if it's
20 stymied, in other words, if a proposal comes to me and I
21 say, no, it's still not there, you have the option to come
22 to the Board, but then it would be a cooked proposal.

23 A proposal that is fleshed out, that is not a
24 moving cloud, as I said. I think that is appropriate. I
25 don't think it makes sense for this Board to not only take

1 your time -- I appreciate your offer to do that -- but
2 basically you would be taking everybody else's time, too,
3 after two very long hearing days, and I just don't think
4 that is reasonable.

5 MR. YOUNG: Also, I think that there are some
6 things that aren't reconcilable with the cons.

7 MR. BRIGGS: Yes.

8 MR. YOUNG: There are some that may be; there are
9 some that are not.

10 MR. BRIGGS: By the way when I mentioned taking
11 everyone's time, I'm willing to stay here myself. I'm
12 talking about everyone else here, the folks out there,
13 it's not fair to them.

14 MR. JORDAN: Mr. Chair.

15 MR. YOUNG: Yes.

16 MR. JORDAN: I'd also point out that I think
17 there's an issue of noticing involved with that motion.
18 The action that we just took was noticed, but we certainly
19 did not notice that we were going to pass that motion and
20 then the work on revising that action. That certainly
21 wasn't publically noticed.

22 MR. DELGADO: And I'd like to counter it. Within
23 the sideboards of what was listed on the agenda, we could
24 have ditched that Ag Order and rubber-stamped the
25 alternative, the Ag Alternative component. So to consider

1 modifying the Ag Alternative for approval would be within
2 those same sideboards.

3 MS. McCHESNEY: I am looking at this. So when
4 you adopt -- when you make a motion and you vote on the
5 motion, you can make a motion to reconsider at your same
6 meeting if the main motion is carried or lost. There was
7 a motion. It was carried. You could make a motion to
8 reconsider your motion. But to make the motion like you
9 did, you know, isn't in the list. You could rescind your
10 motion or repeal your motion, whatever you --

11 MR. YOUNG: What are you reading from, Frances?
12 Roberts?

13 MS. McCHESNEY: No. Sturgis rules that apply to
14 your proceedings.

15 MR. DELGADO: I'd like to ask the Chair -- you
16 just mentioned that you thought there might be some
17 irreconcilable differences between the Ag Alternative and
18 what we approved just a few minutes ago. I thought -- I
19 don't know what those are, but they sound like the
20 nonnegotiable potential that we heard last night and we
21 discussed last night.

22 Are there really irreconcilable differences? And
23 if there are, I would think it would be a short list. I
24 would like to know what that short list was, and then my
25 motion was to stay tonight to work on that short list to

1 see if Ag was willing to change their alternative so that
2 those irreconcilable differences were resolved.

3 MR. YOUNG: Dr. Hunter.

4 MS. HUNTER: Okay. I'm with you on that, the
5 idea that we need to explore and really understand where
6 those irreconcilable differences fall. In order to have
7 that discussion, however, we need stakeholder input, and
8 we need to have a thoughtful process. And I think the
9 review that created that set of pros and cons was the
10 result of Mr. Johnston's request to the Staff. And I
11 think that satisfied his request. But I don't believe
12 that that set of points was intended to drive the changes
13 or the building out, if you will, the filling in of the
14 details of the permit that is to be implemented.

15 So I would hesitate to take that summary which
16 was created for a different purpose and use it now to
17 drive a new discussion, or at least the next generation of
18 this discussion, and expect that both the regulated
19 community and interested stakeholders are going to be able
20 to participate in a discussion at this point in the
21 evening really fully prepared. So what would we
22 accomplish?

23 I think we'd hear a lot of the ideas that have
24 already been stated over the last three years. We've been
25 hearing these things evolve forward, and I think we're

1 clear on the positions that are reflected among the
2 stakeholders that are involved, that have been involved,
3 that have engaged in this process.

4 I want to see that discussion take place over
5 time in a thoughtful and productive way. I don't see that
6 occurring in the course of the next few hours.

7 I would urge you to reconsider.

8 MR. YOUNG: Mr. Johnston.

9 MR. JOHNSTON: I do not believe that it would be
10 appropriate tonight for us engage in a discussion with
11 agricultural stakeholders about whether they're willing to
12 modify their Proposal. We have closed public comment.
13 And we're at the point that it's -- we can ask questions
14 of Staff, or whatever. We're at the point where it's us,
15 the Board, figuring out what we're going to do. And --

16 MS. McCHESNEY: Right.

17 MR. YOUNG: Yeah.

18 MR. JOHNSTON: Let me just finish, Counselor.

19 I think that if we were to pass a motion to
20 reconsider, really our only option would be, can we now
21 sufficiently amend what was offered in order to make it
22 satisfy our policy and legal concerns. I think it would
23 be patently unfair to all of the stakeholders for us to
24 start discussion with one group of stakeholders hoping --
25 that's not practical.

1 MR. YOUNG: Right.

2 MS. McCHESNEY: What I was just going to say is
3 that it would be hard for me to give you advise given that
4 we got the Proposal yesterday, and I would rather be able
5 to sit down with Ms. Dunham and others. If you want to
6 schedule that for some other time, to have a discussion,
7 then you can do that. It's not noticed to have that
8 discussion with stakeholders participating so they're not
9 all here.

10 MR. YOUNG: Right.

11 MS. McCHESNEY: So, anyway.

12 MR. DELGADO: I appreciate that, what you just
13 said, Frances.

14 I'll withdraw my motion. What I wouldn't want is
15 to leave tonight and not start implementing what's been
16 approved because there might be something else coming down
17 the pipes. Everyone just remains in limbo.

18 I would hope that if we stay later tonight, we
19 would either learn more that is helpful to everybody or we
20 would come up with a revised product that we are even
21 happier with. I do understand that that's highly
22 unlikely, but I just thought the time spent trying would
23 be of benefit.

24 MR. YOUNG: Okay. So you're withdrawing your
25 motion?

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MR. DELGADO: Yes.

MR. YOUNG: All right.

I think that concludes this agenda time.

Thank you very much.

We are off the record.

(Proceedings were concluded at 6:09 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the 29th day of March, 2012.

DEBORAH L. HOLDEN, CSR No. 8885

1 **PROOF OF SERVICE**

2 At the time of service I was over 18 years of age and not a party to this action. My
3 business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814. On April 16,
2012, I served the following document(s):

4 REQUEST FOR STAY AND PETITION FOR REVIEW OF CALIFORNIA REGIONAL
5 WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION, ORDER NOS.
6 R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02, AND R3-2012-0011-03, AND
7 RESOLUTION NO. R3-2012-0012

8 **By fax transmission.** Based on an agreement of the parties to accept service by
9 fax transmission, I faxed the documents to the persons at the fax numbers listed
10 below. No error was reported by the fax machine that I used. A copy of the record
11 of the fax transmission, which I printed out, is attached.

12 **By United States mail.** I enclosed the documents in a sealed envelope or package
13 addressed to the persons at the addresses listed below (specify one):

14 Deposited the sealed envelope with the United States Postal Service, with
15 the postage fully prepaid.

16 Placed the envelope for collection and mailing, following our ordinary
17 business practices. I am readily familiar with this business's practice for
18 collecting and processing correspondence for mailing. On the same day that
19 correspondence is placed for collection and mailing, it is deposited in the
20 ordinary course of business with the United States Postal Service, in a
21 sealed envelope with postage fully prepaid.

22 I am a resident or employed in the county where the mailing occurred. The
23 envelope or package was placed in the mail at Sacramento, California.

24 **By personal service.** At ____ a.m./p.m., I personally delivered the documents to
25 the persons at the addresses listed below. (1) For a party represented by an
26 attorney, delivery was made to the attorney or at the attorney's office by leaving the
27 documents in an envelope or package clearly labeled to identify the attorney being
28 served with a receptionist or an Individual in charge of the office. (2) For a party,
delivery was made to the party or by leaving the documents at the party's residence
with some person not less than 18 years of age between the hours of eight in the
morning and six in the evening.

By messenger service. I served the documents by placing them in an envelope or
package addressed to the persons at the addresses listed below and providing them
to a professional messenger service for service.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
400 CAPITOL MALL, SUITE 1650
SACRAMENTO, CALIFORNIA 95814

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By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**Roger Briggs, Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 16, 2012, at Sacramento, California.



Linda Graham