



January 4, 2017

Mr. Chris Rose
Irrigated Lands Program Manager,
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

VIA: Email to AgNOI@waterboards.ca.gov

**RE: Proposed Conditional Waiver of Waste Discharge Requirements for
Discharges from Irrigated Lands (R3-2017-0002)**

Dear Chris:

Monterey County Farm Bureau represents family farmers and ranchers in the interest of protecting and promoting agriculture throughout our County. We strive to improve the ability of those engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of our local resources.

Throughout the adoption and implementation of the Conditional Waiver approved in March 2012, Monterey County Farm Bureau has served as a technical advisor to our membership on the provisions and compliance requirements for water quality objectives. We have observed the considerable amount of time, resources, and money put into this process by individual landowners and farm operators to comply with the requirements of this Conditional Waiver. Overall, we must state up front that this process has dedicated valuable resources to compliance reporting and data retention in excess of the estimates we provided as the regulated community at the time of adoption.

As we originally understood the intent of adopting the new Conditional Waiver (Ag Waiver 3.0), there were to be minimal changes to the requirements as there are a number of pending circumstances that could substantially change the Conditional Waiver paradigm contemplated for 2020 and beyond. Items such as the compliance date reporting and other 'housekeeping' items were what we were led to believe would be the substantial efforts for this Ag Waiver 3.0 adoption.

Instead, proposed changes to Ag Waiver 3.0 will further complicate the compliance process for many farm operators, particularly Tier 2 farms, adding to the burden that these regulations carry financially. The increased reporting requirements for these farms will not provide the best pathway forward to achieving the water quality objectives of the Regional Water Board.

We appreciate the opportunity to make comment on many of the proposed changes and offer perspectives as we hear it from our members, the landowners and farm operators.



Total Nitrogen Applied Reporting Expansion

These proposed changes will require many more farms to report their total nitrogen applied, regardless of risk to groundwater impairments, which penalizes the farm operators who are doing a good job of managing both their nitrogen and irrigation applications. We question that this additional information will provide any higher degree of protection for human health, which is the overall objective of groundwater quality management. Many Tier 2 farms will now be required to report annually their total nitrogen applied (TNA), which will lead to inconsistencies in the database and making trending comparisons difficult. Will more information lead to a better data set on groundwater risks? What will happen when the baseline for total nitrogen applied becomes the data collected in 2018 or 2019 when years of reduced application rates have already been in effect?

We see reductions in nitrogen use as finite; at some point, no further reductions will be possible in order to maintain a market-quality product. As we see the data collection ultimately leading to nitrogen application standards being established by crop, how will farm operators gain credit for the reductions already made prior to the larger data set being gathered through additional TNA reporting?

Just how will all the variables for nitrogen reporting be taken into account when determining any nitrogen application standards or applied/removed ratios? With variations of soil types, planting timing and seasons, crop varieties, planting depths, crop rotation cycles, and weather attributes so varied, is it even possible to determine what is to be considered an over application of nitrogen? This science is still yet to be developed for many of the crops grown in the Central Coast fields, and will take many years of research to complete accurately.

Expected during this process will be fine-tuning as the data is collected, realizing that data anomalies that may occur and gaps of insufficient data will occur as analysis is performed; thus, conclusions will be drawn from preliminary data points. Note that many of these farm operators have not reported their total nitrogen applied in prior annual compliance cycles, so there may be gross irregularities in the information reported (until there is sufficient time for the farm operators to gain the knowledge needed to provide consistent data sets).

Is it proper to request this data in retrospect to the adoption date of the Ag Waiver 3.0 adoption? Many farm operators are not aware yet that this new requirement will be thrust upon them and may not be properly developing data retention records within their office operations. This could lead to additional gaps and deficiencies in the data set reported in 2018. We suggest that reporting requirements be mandated as of the date Ag Waiver 3.0 is adopted, not retroactively.

Our overall concern is the baseline that will be drawn at some point after all this additional data is collected. With so much uncertainty over who and how the data will be reported, it may be best to delay additional requirements in this area until the next Conditional Waiver process is negotiated and put into place in 2020 or later. We see no additional benefit to gathering data from Tier 2 farms that have already demonstrated their risk to water impairments is low.



Technical Capacity

Including many more farm operators in compliance reporting requirements will mean many more will be seeking out professional technical assistance to file their compliance reports annually. Development of additional reports, such as the Irrigation and Nutrient Effectiveness Plan will require technical assistance to develop the required elements for meeting the reporting requirements. This will impact smaller farms more disproportionately than larger farm operators who may have this technical expertise in-house. Quite simply, there may be insufficient technical assistance available to go around; we have stated this at past meetings and in prior comments on other aspects of the Conditional Waiver process.

There are concerns expressed about the ability of anyone, a technical expert or otherwise, to adequately address the 'estimated' projection of groundwater impairment due to the continued use of nitrogen in any quantities. There is no science developed yet to provide guidance how this estimate is to be developed, quantified, or verified. We doubt that any technical expert would be willing to sign their name to such an estimate for fear of future liability. This seems like an unreasonable request based on current available science and research on future groundwater impairments based on current nitrogen application management practices.

As to the frequency of requiring effectiveness reports, annual cycles for reporting would be a financial hardship on those farm operators who are required to make such a filing. Farm operators will seek the assistance of agronomists, watershed specialists, soil experts, and attorneys who specialize in writing reports that contain water quality and intellectual property. These experts add up to a tidy sum each reporting cycle. We suggest that effectiveness reports be required only once during the entire Ag Waiver 3.0 timeframe, instead of annual reporting requirements.

Monitoring and Testing for Additional Toxicants

There appears to be no nexus that clearly indicates that additional toxicants need to be included in monitoring programs, such as phenol and metals. Prior sampling has not indicated that these are constituents of concern and mandates expensive laboratory tests for items that most likely will not indicate watershed impairments. Removing constituents from sampling and testing requirements that are not currently indicative of impairments should be prioritized from Ag Waiver 3.0 monitoring requirements.

We express serious concerns of including five neonicotinoids in water quality sampling requirements. There are no findings that support the requirement for additional monitoring of insecticides, along with no findings that show an additional burden of compliance is reasonable compared to the benefit to be conferred. This is most likely a violation of California Water Code Section 13267 that requires benefit assessment of scientific detections of toxicants to water quality impairments against the burden of regulatory impositions. There is no evidence that this burden exists; if Regional Water Board staff has indications that this class of insecticides are detrimental to surface or groundwater quality, that science has yet to be shared with the regulated community.



The frequency of monitoring for pyrethroid pesticides from once per term of the Ag Waiver to twice annually is not demonstrated through supportive scientific data that this change is warranted nor justified. Again, California Water Code requires a correlation between increased monitoring requirements and derived benefits from those actions; there has been no evidence provided that there will be any additional benefit to water quality objectives should this monitoring frequency be included in Ag Waiver 3.0.

Groundwater and Surface Sampling Requirements

Further clarification is required on the sampling of all wells within the boundaries of any farm or ranch; farm operators are often not responsible for all wells within the parcel when negotiating their lease contracts. If requirements are included to sample all wells on a farm or ranch, this will initiate a conflict with their landlord as well as impose a possible trespass violation on that farm operator. We question that this language is clear enough to avoid any potential legal risks for farm operators enrolled in the irrigated land program because they are lessees and not land owners of the farm or ranch. We know of one situation where a landowner threatened his leaseholder with legal action for such a well testing not included in their lease contract.

We express concern about the increased costs imposed due to groundwater well monitoring activities, testing for additional constituents, and frequency of sampling. Already, those farm operators participating in the groundwater cooperative are paying a premium for this program compared to individual sampling; additional costs imposed could jeopardize the viability of the groundwater cooperative, particularly since the recent legal decision on data confidentiality took away the major benefit of participating in the cooperative. We sense that increased costs for groundwater monitoring will impact the future relevance of any cooperative efforts on the part of the regulated community to meet Ag Waiver 3.0 requirements.

As to monitoring costs for the surface water cooperative program, farm operators are already experiencing a 69% increase in their fees for 2017 monitoring and testing. This is contrary to the original intent of the cooperative monitoring program when established in 2005, which was to reduce overall monitoring expenses and ease the burden of Regional Water Board staff for sampling analysis. This paradigm is dramatically shifting and many farm operators are now questioning the wisdom of a surface water cooperative monitoring program due to the escalating expenses annually.

If not supported with proper incentives, such as reduced costs and monitoring requirements, as well as data protections, the advantage of cooperative monitoring programs will be diminished in the viewpoint of landowners and farm operators and could result in failure of these programs. It would be in the best interest of Regional Water Board staff to support these programs by providing farm operators with incentives to participate, not increased cost burdens each year.

The balance of achieving water quality objectives involves management of these directives to ensure that cost containment is a priority, and that sampling for constituents is warranted by the balance of benefits derived from such an activity. Without cost controls the program will



jeopardize the viability of the small family farms struggling against the continuous increases in water quality compliance activities.

eNOI Notifications

We urge that there be leniency with the reporting time frame for eNOI updates, either for new parcel enrollments or farm terminations. The regulated community has previously expressed interest in a 60 day time frame due to field activities and harvest schedules. Any change in eNOI reporting schedules will result in missed submissions and further exasperate the non-compliance issues for the regulated community; allowing an additional time frame to make these changes/notifications would benefit both farm operators and the Regional Water Board staff as farm operations adjust to a new schedule requirement.

Related to termination of ranches and the reporting of total nitrogen applied within 30 days of the termination, we request that this also be allowed to be submitted within a 60 day time frame for the same reasons noted previously.

The removal of the requirement for farm operators to name surface water bodies adjacent to their enrolled ranches is appreciated.

Annual Compliance Form Filing Date

While we applaud the change of the reporting date to timing in the early months of a calendar year, we still expect that many farm operators may have difficulty with the revised schedule of March 1st. We suggest that the Annual Compliance Form filing date be on March 1st with an additional 30 day period allowed for the other reporting requirements such as the Effectiveness Reports. This eases the burden of reporting all information on one date, which many small farm operators may not have the capacity to manage.

We agree that the photomonitoring requirement should be removed as other technology exists to manage habitat and other streambed environmental verifications.

Findings in Ag Waiver 3.0 Attachment A

We note that a number of these findings continue misrepresentations that were adopted into Ag Waiver 2.0. For example, specific statements about number of impaired drinking water wells and summary findings about nitrogen applications are troublesome to the regulated community and inaccurate in their representation. We request that these findings be addressed in a separate track, aside from the approval of Ag Waiver 3.0, so the regulated community can meet with Regional Water Board staff to resolve the inaccuracies presented in Attachment A (and most importantly, before development of Ag Waiver 4.0).



Conclusion

While we are disappointed that Ag Waiver 3.0 is not the promised program of little change from Ag Waiver 2.0, we trust that our comments will be incorporated to ease the burden proposed for this revised Ag Waiver program. Consideration must be given to the cost/benefit when assessing burdens to be placed on the regulated community.

The landowners and farm operators of the Central Coast remain committed to water quality objectives and have indeed made quantified progress in attaining many of these objectives. Credit should be provided in the form of incentives to those watershed areas that demonstrate improved water quality parameters through balanced and effective compliance requirements.

We thank you for the opportunity to provide these comments on the Ag Waiver 3.0 proposal.

Sincerely,

Norman C. Groot
Executive Director