



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Indian Wells  
(760) 568-2611  
Irvine  
(949) 263-2600  
Los Angeles  
(213) 617-8100  
Ontario  
(909) 989-8584

500 Capitol Mall, Suite 1700, Sacramento, CA 95814  
Phone: (916) 325-4000 | Fax: (916) 325-4010 | www.bbklaw.com

Riverside  
(951) 686-1450  
San Diego  
(619) 525-1300  
Walnut Creek  
(925) 977-3300  
Washington, DC  
(202) 785-0600

**William J. Thomas**  
(916) 551-2858  
william.thomas@bbklaw.com  
File No. 82418

September 3, 2013



**Via Email to:**

[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor 95814

Re: **Comments to A-2209(a)-(e) – September 10, 2013 Board Meeting**  
Central Coast Agricultural Waiver

Dear Ms. Townsend:

On behalf of Ocean Mist Farms and RC Farms, the following comments are submitted relative to the revised proposed agricultural waiver for the Central Coast.

**THE PETITIONERS**

**Ocean Mist Farms**

Ocean Mist Farms is a major vegetable grower and packer based in Castroville and with farms also in the Salinas Valley and Pajaro Valley areas of the Central Valley region. Ocean Mist Farms actively participates in the Presentation, Inc.'s monitoring program and has aggressively engaged in water quality management on its farm properties. Ocean Mist is implementing the most recent version of the Central Coast Agriculture Waiver and has been an active party to this appeal.

**RC Farms**

RC Farms is a major vegetable grower based in the Salinas Valley area of the Central Valley region. RC Farms actively participates in the Presentation, Inc.'s monitoring program and has aggressively engaged in water quality management on its farm properties. RC Farms is enrolled in the 2004 Ag Waiver and its operations and management of its farms would be significantly impacted by the 2012 Ag Waiver. RC Farms is implementing the most recent version of the Central Coast Agriculture Waiver and has been an active party to this appeal.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013  
Page 2

**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. Follows are our written comments regarding nine sections of the proposed waiver, which we will summarize at the September 10 hearing.

**COMMENTS**

1. Page 12, Footnote 36; and Pgs. 13 and 14 – Monitoring and Reporting.

The new footnote language states:

“In the new language describing third party monitoring and reporting programs, we state that "aggregate monitoring and reporting must be on a scale sufficient to track progress in small sub-basins and be sufficiently representative of conditions in the sub-basins." The program proponents have flexibility to propose the appropriate scale for such sub-basins... We expect small sub-basins to be areal representations that are dictated by local conditions and constitute a reasonable unit for follow-up practice implementation for water quality improvement.”

We support regulatory flexibility in the monitoring and reporting programs. Similarly, we support those express amendments in provision 11, which include “milestones,” “programs,” “reducing pollutant loading,” and those that clarify that such monitoring may be representative monitoring engaged by third parties. Therefore, we support the clarification in Footnote 36 and provision 11.

2. Pgs. 23, 24, ¶ D, Provisions 22-23 – Compliance.

A. The Board added considerable new language dealing with enforceability and compliance. The Board made several statements which should control the Regional Board from being unreasonable. We support such clarification; however, there is a problem in the language of Provision 22 where the Board compels that discharges” shall not cause or contribute to exceedances.” This “contribute” language is a problem.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013

Page 3

The use of the language prohibiting “dischargers shall not cause or contribute” is problematic. This would subject a farmer to enforcement if he contributed 2ppm of a contaminant in an agricultural discharge if it added to a water body that was at 99 ppms and the objective was 100 ppm. An even worse abuse would be if only a few molecules were discharged into an already exceeding water body. This language is therefore unreasonable. We can understand the Board’s reluctance to using only the word “cause” because a farmer discharging 90 ppm could defend his discharge saying he did not “cause” the exceedance; however, further qualifying language is necessary to appropriately condition against possible abuse of the term “contributing.”

3. Pgs. 24 and 25, Provision 87A – Management Practices.

We support the reasonable clarifying language to provision 87A addressing the interpretation of provisions 22, 23, 84-87. These amendments acknowledge the adequacy of management practices that “reduce discharges of waste.”

4. Page 27, Footnote 70 – Tile Drains.

It is very troubling that the Board totally disregarded our comments on our tile drains. In our written submittals and testimony at the State Board hearing each Dale Huss of Ocean Mist Farms and I pointed out in detail how this waiver directly puts at risk the renowned and highly credited water recirculation and reuse system on Ocean Mist properties which serves several coastal cities. In total disregard for that renowned recirculating system and for this principal point we addressed in our submittals the Board’s Order brushes them aside with only a dismissive footnote #70 on page 27.

The Board totally fails to distinguish between traditional tile drainage and this Ocean Mist elaborate and model reclamation and recirculation system. This system improves water quality. Compelling this drainage to be monitored and held against basin plan standards will not just put at direct jeopardy some of the most productive ag land on the coast, but will turn the clock back decades and result in those cities having no alternative but to further treat and dump to the ocean. Failing to address this situation is frankly irresponsible.

As a result of tile drains, Ocean Mist was able to receive recycled water from the neighboring cities, which otherwise would drain to the ocean and also counter salt water intrusion. This program has received worldwide acclaim from municipal users, regulators, environmentalists, and all other parties interested in water conservation and reuse. Farmers in Monterey County have taken low quality municipal discharges, otherwise bound for the ocean, and used them for irrigation, dramatically improving the quality of the water as it returns to the environment. Through these efforts, we are able to (1) conserve water, (2) reuse water, (3)



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013

Page 4

take problem discharges from municipalities, and (4) discharge water far cleaner than what was received.

This water comes to Ocean Mist with average levels of sodium in the 175 to 200 ppm range and chloride levels of 250 ppm or greater. The Castroville Seawater Intrusion Project (CSIP) began delivering recycled water to approximately 12,000 acres of some of the most fertile farmland in the north Salinas Valley in 1998. Tile drains remove these excess harmful ions from the root profile, allowing for the long term sustainability and productivity of these soils.

The Regional Board's authority extends to issues of water quality, not the control of farm irrigation infrastructure improvements like drain ditches, return ponds, tile drains, or irrigation devices.

Further, monitoring these tile waters is unnecessary. The tile drains do not directly discharge to the ocean. Rather, tile drains terminate in the area's surface drains (i.e., Blanco Drain), which themselves are part of the waiver water monitoring program. Therefore, these tile waters are monitored once they become part of the waters of the state. Consequently, attempting to monitor these drain structures when they are a part of the field irrigation/drain structural network is both unnecessary and a stretch of the State Board's authority.

The order should, similar to its waiver provisions which clarify that farmers need not monitor containment structures if they discharge to surface water, make that same proviso as to tile drains.

The Board should also consider language such as:

“The State Board recognizes that there are various types of tile drains systems and that some are part of water recirculation systems designed and operated to improve water quality. This Board directs the Regional Board to recognize the importance of tile drains and that some such systems are integral to solving or mitigating water quality issues.”

5. Pages 30, 31 and 32; ¶ G, Section A.6 Tiers 1, 2, 3 MRPs – Groundwater Monitoring

We do not oppose the proposed requirement that individual farms and the cooperative monitoring program monitor all drinking water wells.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013

Page 5

6. Pages 31, 32, and 33, ¶ G, Section A.6, and Tiers 1, 2 and 3 MRP – Groundwater Monitoring and Reporting.

Similarly, we do not challenge the reasonableness of requiring landowners supplying domestic water to tenants to inform the user if the supplied water violates drinking water standards due to nitrates. The Board should, however, recognize that this requirement will further motivate landowners in these nitrate contaminated areas to abandon those residences and/or abandon the wells.

The requirement, however, to report on every primary or secondary MCL is overreach and improper as many such levels are not whatsoever health related. Further, the issue throughout these proceedings is nitrate and the record is absent as to the need to address any other constituent. There is no supportive rationale to require the reporting of exceedances on all primary or secondary MCL exceedances because many such levels are totally unrelated to human health.

There are over 60 listed MCLs and the absurdity of mandating the monitoring and reporting a health risk notice is apparent by quickly reviewing some of them. Some of the listed MCLs have no limit whatsoever (merely treatment techniques); others are exceedingly low, such as .00001 ppm or even .000000003 ppm; or others, like color, are listed as “3 units”. This underscores that now for the first time focusing on all MCLs is the wrong approach. We need to stay focused on nitrate.

7. Pgs 42, 43 and 44; Section 2, Provision 70 – Tier 2 and 3 – Nitrates

We do not challenge the reporting of nitrate applied to Tier 3 properties; however, we implore the Regional Board to recognize the extent of differences in soils, application strategies, effects of weather, double cropping, etc. Further, because this is a large undertaking, perhaps it should be limited only to Tier 3 properties which have the high nitrate risk. Further, perhaps this information can be retained on the farm, but subject to Board inspection.

8. Pgs. 45, 46, 47, Section 3, Provisions 74-77 and 79 – Nutrient Management Plan.

The State Board wisely and appropriately strikes a couple of the elements of the Nutrient Management Plan (the calculation of the nitrate balance ratio (nitrate applied to nitrate uptake) and also strikes the estimation of annual nitrate loading to groundwater).

The Order, however, states:



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013  
Page 6

“We will retain the requirement to determine crop nitrogen uptake values as part of preparation of the INMP.”

It has never yet been explained how the Regional Board will interpret this requirement and thus demand farmers to “determine crop nitrogen uptake.” Therefore, it is unclear how actually farmers must undertake this calculation. A plant’s capacity to and its actual uptake of a particular ion is dependent on many factors in the soil (fertility, pH, effect of other soil chemicals, electrostatic influences, soil microbes, etc.). Similarly, there are an array of biological influences on the crop side (i.e., vigor, growth stage, moisture, photosynthesis, etc.). Consequently, is the Board merely looking for typical nutrient uptake information from University publications, or from past grower experience, or are they seeking some calculation based on all the variables? It therefore seems prudent that any such “nitrate determination” should probably also be stricken from this section, or at the very least, these determinations should be retained on the farm.

9. Pgs 65, 66, ¶ 2 – Antidegradation

When the Antidegradation Policy was adopted in 1968, at the behest of the federal government, there was absolutely no discussion of agricultural discharges and likewise no mention of it ever applying to groundwater. Consequently, this is an entirely new area presently being reviewed. The proposed waiver appropriately sets forth the language of the policy.

The Antidegradation Policy requires that high quality waters be maintained unless it can be demonstrated that any change in water quality (1) will be consistent with maximum benefit to the people of the state; (2) will not unreasonably affect present or probable future beneficial uses of such water; and (3) will not result in water quality less than prescribed in water quality control plans or policies. Further, discharges to high quality waters must meet waste discharge requirements which result in the best practicable treatment or control (BPTC) necessary to assure that no pollution or nuisance will occur and the highest water quality consistent with the maximum benefit to the people of the State will be maintained.

The Board wisely rejects any challenge to this waiver based on the Antidegradation Policy.

... [W]e reject that argument on the merits. The incremental changes made to the Agricultural Order by the State Water Board do not alter the fundamental water quality protections and will not independently lead to any increases in volume or severity of the

**BBK**  
**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

September 3, 2013  
Page 7

discharges already authorized by the Agricultural Order or any lowering of water quality.

The Board correctly states that:

“We have substituted expanded total nitrogen reporting for reporting of the balance ratios to provide an alternative mechanism for the Central Coast Water Board to identify excessive nitrogen application. Further, we have retained all monitoring necessary to detect and track any degradation in surface water and groundwater, and, as a result, the Central Coast Water Board can require more stringent management practices where it determines that degradation is in fact occurring. Therefore, we are not obligated to make any additional findings regarding Antidegradation in this Order.”

CONCLUSION:

We appreciate the Board’s consideration of these comments.

Sincerely,



William J. Thomas  
for BEST BEST & KRIEGER LLP  
on behalf of Dale Huss of Ocean Mist Farms and  
Dennis Sites of RC Farms

WJT:lmg

Cc: Ocean Mist Farm  
RC Farms