

# County of San Luis Obispo Agricultural Liaison Advisory Board



Agricultural Liaison  
Advisory Board (ALAB)

## Positions/Members/Terms

CHAIR: Dee Lacey

VICE CHAIR: Jean-Pierre Wolff

District One: Mecham Appt.

Dee Lacey (1/13)

District Two: Gibson Appt.

Lisen Bonnier (1/11)

District Three: Hill Appt.

Tom Ikeda (1/13)

District Four: Achadjian Appt.

Bill Struble (1/11)

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Noah Small (1/13)

Ag. Finance Rep.

Mark Pearce (8/10)

Cattlemen Rep.

Dick Nock

Coastal San Luis RCD Rep.

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Eric Michielssen (4/12)

Environmental Rep.

Debra Garrison (1/11)

Farm Bureau Rep.

R. Don Warden

Nursery Rep.

David Pruitt (4/12)

Upper Salinas-Las Tablas RCD Rep.

Charles Pritchard (1/14)

Vegetable Rep.

Richard Quandt (4/12)

Wine Grape Rep.

Neil Roberts (4/12)

County Agricultural Commissioner

Bob Lilley

*Ex-Officio*

U.C. Coop. Extension Farm Advisor

Mary Bianchi

*Ex-Officio*

## MEETING AGENDA

**Monday, April 5, 2010**

**6:00pm**

**Location:**

Farm Bureau Office  
651 Tank Farm Road  
San Luis Obispo

1. 6:00pm Call to order, introductions, quorum determination:  
Chair Lacey
2. 6:05pm Open comment: (for items not on the agenda)  
Chair Lacey
3. 6:15pm Announcements from Co. Ag. Dept. Staff: see handout available at meeting. Announcements from members: "Reports from the Trenches":
4. 6:25pm Review/approval of previous meeting minutes:  
Chair Lacey
5. 6:30pm Review/possible action: Update on Grading Ordinance Revisions  
Chair Lacey
6. 6:50pm Review/possible action: RWQCB draft order for irrigated ag:  
Richard Quandt, Joy Fitzhugh
7. 7:30 pm Review/possible action: discussion of scope of ALAB's advisory role: Who does ALAB advise? What topics should be placed on ALAB's meeting agendas?  
Chair Lacey
8. 7:45pm Future agenda items/meeting dates:  
Chair Lacey
9. 8:00pm Adjournment:  
Chair Lacey

## ALL TIMES ARE APPROXIMATE

**MEMBERS:** Please contact Lynda Auchinachie in the County Department of Agriculture at 805-781-5914 if you can NOT attend.

### *Scope of the Agricultural Liaison Advisory Board (ALAB):*

*The ALAB is advisory in nature and is recognized as a forum for discussion of matters that relate to local agriculture and land use or as directed by the County Board of Supervisors. ALAB members serve at the pleasure of the Board of Supervisors. Meetings are open to the public. Monthly agendas, minutes and supplemental handouts for agenda items can be accessed at [www.slocounty.ca.gov/agcomm](http://www.slocounty.ca.gov/agcomm) or at the County Department of Agriculture – 2156 Sierra Way, Suite A, San Luis Obispo.*

## ALAB Correspondence Since Last Meeting

# County of San Luis Obispo Agricultural Liaison Advisory Board



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U.C. Coop. Extension / Farm Advisor  
Mary Bianchi, *Ex-Officio*

February 26, 2010

RE: March 2, 2010 Item C- Amendments to the County Grading Ordinance

Dear Chair Mecham and the County Board of Supervisors:

ALAB is pleased to provide you with its input into this important discussion relating to the update of the County's inland and coastal grading ordinances. Members of the Agricultural Liaison Advisory Board (ALAB) have met three times since the Planning Commission completed its review of the ordinance revisions including one meeting subsequent to the Board deliberations in January (December 5, 2009, January 4 and February 22, 2010). ALAB has made total of nine motions regarding the ordinance revisions. A prior letter detailed the earlier eight motions. However they are included with this letter (Motions 2-9) for your convenience. Please note that the term "clean" was added to Motion 4 at our February meeting.

### **MOTION 1: ALAB supports the following:**

**(1) an agricultural exemption of up to 1,500 cubic yards where the materials moved are not cumulatively (counted only once rather than at the time of excavation and the time of fill).**

**(2) the use of a certification process for certain practices such as upland restoration and associated import of fill.**

**(3) Change the term from "land" to "site" in Section 22.52.070.B.11.b. Native Vegetation.**

**(4) clarifications to the language regarding repair and maintenance and other sections of the proposed ordinance**

This motion followed discussion about your January hearing and a subsequent meeting of a group of farmers and ranchers with County staff on February 10. At this meeting potential changes and clarifications related to portions of the ordinance of most relevance to agriculture.

### **MOTION 2: Ag grading activities related to the Alternative Review**

**process within the County Grading ordinance should apply to the Resource Conservation District (RCD) for initial review.**

The second motion focused on the proposed revisions to the Alternative Review process for farmers and ranchers working with the local RCD. ALAB members supported revisions to the ordinance language which would allow applicants to initiate the process with the RCD rather than having to first apply to the Planning and Building Department using the Alternative Review Form.

**MOTION 3: Reword ordinance language in §22.52.070.B.1. Drop the term “Hillside Benches” and rewrite to state: “For crop production including orchards and vineyards on slopes over 30%.”**

The third motion focused on one of the allowed alternative review practices, item 22.52.080.B.1. which currently states: “**Hillside Benches:** Hillside benches and other appropriate methods for planting orchards and vineyards on slopes over thirty percent.” There was a concern that the specific language about benches for vineyards and orchards unnecessarily limits this practice and would not allow other crops, including new or emerging crops, to utilize the Alternative Review process to grade on slopes above thirty percent.

**MOTION 4: Reword ordinance §22.52.070.B.11.c: “No importation or exportation of fill materials from/to off-site parcels shall occur” by adding “...except for necessary agricultural practices required to maintain and continue crop production operations so long as the clean fill does not exceed one foot in depth” to the conclusion of the sentence.**

The fourth motion resulted from an extended discussion regarding the proposed limitation on grading in excess of 50 yards. Some members noted the existing ordinance allows unlimited amounts of cuts and fill and earth movement on a site as long as certain thresholds (three feet of fill, excavations up to two feet in depth, five foot cut slope) are not exceeded. There was a concern that the elimination of this broad exemption from grading permit oversight would unnecessarily limit agriculture’s ability to rapidly respond to unforeseen circumstances such as pest quarantines necessitating on-site agricultural processing (cleaning, sorting, packing) operations, which in turn could require more than 50 yards of fill or other earth movement.

**MOTION 5: Reword ordinance §22.52.070.C.1.c by deleting the final sentence in referencing Low Impact Development, as the topic of erosion and sedimentation control is addressed in item B by implementation of NRCS Field Office Technical Guide standards and practices.**

The fifth (and final motion from December 5) was a housekeeping measure to address an apparent language oversight which would require consistency with Low Impact Development Handbook measures for agricultural grading.

**MOTION 6: ALAB does not support the use of the Agriculture Grading Form, §22.52.070.C.**

The sixth motion (first motion on January 5) relates to the proposed exemption granted for grading associated with new fields up to thirty percent slopes and small in-ground ponds. As proposed, this exemption would require growers to first submit a form with site information, a description of the proposed grading, and an acknowledgement that the grading would meet certain standards. ALAB was primarily concerned with acknowledging that it is the operators’

responsibility to obtain all necessary permits from state and federal agencies prior to starting grading and thought the form unnecessarily impinged upon growers.

**MOTION 7: Reword §22.52.070 and §22.52.080 under Note: “While the activities under this section are exempted from a grading permit for the purposes of this County’s ordinance...” by replacing “...it is the owner’s and/or applicants responsibility to contact all other regulatory agencies, including, but not limited to, the California Department of Fish and Game, Regional Water Quality Control Board, Army Corps of Engineers, U.S. Fish and Wildlife Service, or the California Department of Forestry (Cal Fire) to ensure the activities comply with their permit or license requirements” with the following “...it is suggested that owners and or applicants contact the local Natural Resource Conservation Service (NRCS) or Resource Conservation District (RCD) for information regarding other agencies’ permit or license requirements.”**

The seventh motion builds upon the previous motion and requests removing language which notes that other agencies may have permitting requirements for exempt grading. Instead, ALAB supported replacing this language with alternative language suggesting that applicants seek assistance and information from non-regulatory assistance agencies (NRCS or RCD).

**MOTION 8: Change the proposed ordinance language in §22.52.080.A.5. and on any associated county form] and note that the Resource Conservation District (RCD) shall be the lead agency with the Alternative Review process and, in order to avoid any duplication of process, shall not include the County Agriculture Commissioner.**

The eighth motion is intended to streamline the Alternative Review process by eliminating a formal role for the County Agriculture Department. Discussion after the motion clarified that the RCD or the Planning Department could still consult with or report to the Agriculture Department regarding Alternative Review projects.

**MOTION 9: Expand the language under §22.52.070.B Exempt Grading: “The following grading does not require a grading permit” by adding the following: “...nor does the 50 cubic yard limitation apply.” Additionally, make the same clarification in §22.52.070.C Agricultural Grading through an italicized note.**

The final motion relates to the concern that grading which is exempt from a county grading permit may still be subject to the 50 cubic yard limitation which is one of the triggers for a county grading permit.

ALAB appreciates the Board’s consideration of the issues addressed in this letter. ALAB members look forward to continuing to provide input on this and other critical agricultural issues.

Sincerely,

Dee Lacey  
Agricultural Liaison Advisory Board Chair

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U.C. Coop. Extension Farm Advisor  
Mary Bianchi  
*Ex-Officio*

March 15, 2010

RE: Farmers' Markets

Dear Chair Mecham and the County Board of Supervisors:

At our February 22, 2010 meeting, we heard a presentation about the recent controversy regarding the certified farmers' market which occurs as part of the Thursday night promotions in downtown San Luis Obispo. The Direct Marketing representative to ALAB, Eric Michielssen, along with Peter Jankey of the San Luis Obispo County Farmers' Market Association, provided the presentation.

Following the presentation, ALAB discussed the need for the County to support the direct marketing efforts of growers at established and successful marketing outlets. ALAB made the following motion:

**ALAB strongly supports farmers' markets throughout the County, supports that these markets be operated by the farmers themselves, and further recommends that the Board of Supervisors encourage the City of San Luis Obispo to do likewise.**

ALAB appreciates the Board's consideration of this issue. ALAB members look forward to continuing to provide input on this and other agricultural issues.

Sincerely,

Dee Lacey  
Agricultural Liaison Advisory Board Chair

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U.C. Coop. Extension Farm Advisor  
Mary Bianchi  
*Ex-Officio*

DATE: March 17, 2010

TO: Karen Nall, County Planning and Building Department

FROM: Michael Isensee, ALAB Secretary

RE: Ministerial Standards for Events

At the February 1, 2010 meeting of the Agricultural Liaison Advisory Board the concept of a ministerial level of events permit which would allow events to be held on sites throughout the county without any agricultural use was discussed. ALAB reviewed the list of staff's previously proposed events standards in addition to other possible agriculture-related measures suggested by Agriculture Department staff.

The following motion was unanimously adopted with regard to a ministerial level of temporary events in rural agricultural areas:

### **ALAB supports the following proposed standards:**

- 1) 200 foot buffer to property line,**
- 2) parking to be free of combustible material,**
- 3) no parking within public right of way, and**
- 4) notification for nearby property owners.**

### **ALAB recommends the following revisions:**

- 1) elimination of preclusion of parking on Class 1 soil,**
- 2) frequency of events should be limited to no more than 6 events per year;**
- 3) number of attendees should be reduced to [between] 50 – 200 (excluding staff), and**
- 4) no new permanent structures be allowed for use.**

# ALAB Agenda 6

April 5, 2010

**DRAFT MESSAGE POINTS (Short Version)**  
**STAFF RECOMMENDED AGRICULTURAL ORDER**  
**(IRRIGATED AGRICULTURE CONDITIONAL DISCHARGE WAIVER)**

**Date: February 22, 2010**

**By: Joy Fitzhugh,**  
**San Luis Obispo Co. Farm Bureau**

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**The Regional Water Quality Control Board Staff released a Draft Order on February 1, 2010 designed as a renewal of the current Irrigated Ag. Discharge Waiver. There are significant issues with the draft. Below are some message points that can be addressed in letters or to the media.**

**Where does agriculture stand with water quality protection:**

- Two important things to understand about farmers – we tend to take a long-term view of everything; and we want to do things that work and will solve a clear problem.
- The original Irrigated Agriculture Conditional Discharge Waiver regulation adopted in 2004 was reached through a cooperative process between stakeholders (agriculturalists, environmentalists and various agency representatives) and the Regional Staff and Board.
- We have been working in a collaborative mode, throughout the term of the waiver, with the Regional Board, the Monterey Bay Sanctuary, USDA, RCDs, and others to apply science and research, to get real answers about what growers can do that will work and lead to long-term water quality improvements.
- We don't plan to stray from that road because we see that it works.
- Each watershed is unique – some are very mixed with more urban than agriculture; others are more agriculture. You have to look at differences in soil types, hydrology, climate and lots of other factors that need to be considered to really make a difference.
- We on the Central Coast have already seen enough success to know we are moving in the right direction with water quality. We can't let a new, command and control regulatory attitude de-rail us from continuing to make progress.

**The Draft Order:**

**The Draft Order is an in your face and (as Kirk Schmidt of Preservation Inc states) is “remarkably hostile to agriculture giving scant reference to water quality improvements through our farm management practices implemented over the past 5 years.” In fact the Order paints an ugly picture of agriculture, creating widespread pollution (Page 11) and causing critical water quality problems throughout the Central Coast Region (Page 15).**

- The staff of the Regional Board is aiming at water quality standards and timelines that are not at all realistic. For example, within 6 years nitrates in groundwater must be eliminated or have to meet water quality standards disregarding the fact that nitrates can remain in groundwater for decades after use has ceased
- They are asking farmers to pay for additional monitoring of constituents that are not even related to farming. Just such a constituent is mercury.
- The reporting requirements in the DRAFT are so burdensome and overlap with what other regulatory entities already do – that we are a bit puzzled about how their proposal will achieve water quality improvements. As an example of overlap, instead of requiring another pesticide report, the current 100% pesticide use reporting should cover the pesticide issue for the Water Board.
- The Regional Board staff's draft is very focused on gathering lots of information from growers which does not equate to improvements in water quality.

- What we know is that with the last 5 years of a collaborative approach based on science, research, and adaptive management we are moving in the right direction with water quality.
- De-railing that progress now, and asking growers to spend all our time on paperwork toward non-achievable goals, just doesn't make sense for agriculture or for the environment.

### **Some Draft Order Specific Issues:**

1) **Discharger:** This definition traps everyone, "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" (page 32). This is a significant change from the 2004 waiver definition which only includes one who does discharge, not potential and only addresses direct discharges not indirect discharges.

2) **Focused Order:** The Draft Order states (page 22) that it is addressing the "most significant agricultural water quality problems" and is "addressing priority agricultural water quality issues" but instead hammers every farmer in the region creating an overbearing one-size-fits-all order.

3) **Water Monitoring Public Information:** It is clearly the intent of this Order to give the public authority in our on-farm practices. The Order states on page 8, "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"

4) **Riparian Buffers:** Within 4 years from the adoption of this Order, Dischargers must have planted and document with photo documentation in their Farm Plan, the presence of 50 to 100 foot wide riparian buffer on both sides of perennial and intermittent streams (begins page 70).

5) **Education:** The Order states that, "education is an important component of an irrigated lands program", yet in Attachment 2 (page 5) declares that "water quality education (is) encouraged rather than required".

6) **Farm Plan:** The Farm Plan has been unbelievably expanded beyond the current Plan requirements. Although the new Plan may still be retained at your farm, it must be updated within 30 days for compliance according to a new Time Table and the Regional Board can demand a copy of it. This, once submitted, becomes public information, open to anyone who wants to read it.

7) **Nurseries:** In addition to the exhaustive new Farm Plan and other requirements, nurserymen who grow crops in pots and/or containers outside, must "prevent rainwater from coming into contact with containerized plants" (page 68).

### **Agriculture's Alternative:**

**Because of the dramatic adverse impacts this new Order will have on farms on the Central Coast, the agricultural community is preparing an "Alternative Waiver Proposal". We are trying to present a superior proposal to the Regional Water Board. As opposed to the draconian approach written in the Draft Order, agriculture's alternative will be an achievable water quality plan that won't put farmers out of business.**

**Many of the water quality issues have taken years to develop in mixed ag. and urban watersheds. Agriculture understands that what we do today may impact the future and has made the commitment to be part of the solution.**

**PRELIMINARY DRAFT  
STAFF RECOMMENDATIONS  
FOR AN  
AGRICULTURAL ORDER**

**CONDITIONALLY WAIVING INDIVIDUAL WASTE  
DISCHARGE REQUIREMENTS  
FOR DISCHARGES  
FROM IRRIGATED LANDS**

**Preliminary Draft Report**

**CENTRAL COAST REGIONAL  
WATER QUALITY CONTROL BOARD**

*February 1, 2010*



## **1.0 Introduction**

The Central Coast Water Board currently regulates discharges from irrigated lands with a Conditional Waiver of Waste Discharge Requirements (Order No. R3-2009-0050, hereafter current Order) that expires in July 2010. The Central Coast Water Board is beginning their process to consider conditions to be included in a new or revised Order that achieves desired water quality improvement.

### **1.1 *What is the issue?***

The Central Coast Water Board must determine how best to regulate agricultural discharges on the Central Coast to directly address the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater so that we achieve desired water quality outcomes that support all beneficial uses. Agricultural discharges (primarily due to contaminated irrigation runoff and percolation to groundwater) are a major cause of water quality impairment. The main problems are:

1. In the Central Coast Region, thousands of people are drinking water contaminated with unsafe levels of nitrate or are drinking replacement water to avoid drinking contaminated water. The cost to society for treating polluted drinking water is estimated to be in the hundreds of millions of dollars.
2. Aquatic organisms in large stretches of rivers in the entire region's major watersheds have been severely impaired or completely destroyed by severe toxicity from pesticides.

These impairments are well documented, severe, and widespread. Nearly all beneficial uses of water are impacted, and the discharges causing the impairments continue. Immediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life.

### **1.2 *Why is the issue important?***

The Central Coast Region's coastal and inland water resources are unique, special, and in some areas still of relatively high quality. Millions of Central Coast residents depend on groundwater for nearly all their drinking water from both deep municipal supply wells and shallow domestic wells. In addition, the region supports some of the most significant biodiversity of any temperate region in the world and is home to many sensitive natural habitats and species of special concern. These resources and the beneficial uses of the Central Coast water resources are severely impacted or threatened by agricultural discharges. At the same time, the Central Coast Region 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, contributing 14 percent of California's agricultural economy. For example, agriculture in Monterey County supplies

80 percent of the nation's lettuces and nearly the same percentage of artichokes and sustains an economy of 3.4 billion dollars.<sup>1</sup>

Thousands of people rely on public supply wells with unsafe levels of nitrate and other pollutants. Excessive nitrate concentration in drinking water is a significant public health issue resulting in risk to infants for methemoglobinemia or "blue baby syndrome", and 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. Seventeen percent of public supply wells surveyed by the Department of Water Resources (DWR) showed contaminants above the drinking water standard, with nitrate as the most frequent chemical to exceed the drinking water standard. In a Monterey County study, in portions of the Salinas Valley, up to 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. Water Board staff estimate several additional thousands of people are drinking from shallow private domestic wells. For these wells, water quality is not regulated, is often unknown, not treated, or treated at significant cost to the well owner.

Agricultural discharges of fertilizer are the main source of nitrate contamination to groundwater based on local nitrate loading studies. In some cases, up to 30 percent of applied nitrogen may have leached to groundwater in the form of nitrate. Due to elevated concentrations of nitrate in groundwater, many public water supply systems have abandoned wells and established new wells or sources of drinking water, or are required to remove nitrate before delivery to the drinking water consumer, often, at significant cost.

Agricultural discharges have impaired surface water quality in the Central Coast Region, such that some creeks are found toxic (lethal to aquatic life) every time the site is sampled and as a result many areas are devoid of aquatic organisms essential to ecological systems. Vertebrates, including fish, rely on invertebrates as a food source. Consequently, invertebrates are key indicators of stream health, and are commonly used for toxicity analyses and assessments of overall habitat condition. The majority of creeks, rivers and estuaries in the Central Coast Region are not meeting water quality standards. Most of these waterbodies are impacted by agriculture. These conditions were determined and documented on the Central Coast Water Board's 2008 Clean Water Act Section 303(d) List of Impaired Waterbodies. The three main forms of pollution from agriculture are excessive runoff of pesticides and toxicity, nutrients, and sediments. In a statewide study, the Central Coast Region had the highest percentage of sites with pyrethroid pesticides detected and the highest percentage of sites exceeding toxicity limits. In addition, there are more than 46 waterbodies that exceed the nitrate water quality standard and several waterbodies routinely exceed the nitrate water quality standard by five-fold or more. In addition to causing the human health impacts discussed previously, these high levels of nitrate are impacting sensitive fish

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<sup>1</sup> Salinas Valley Chamber of Commerce [http://atlantabrain.com/ag\\_industry.asp](http://atlantabrain.com/ag_industry.asp)

species such as the threatened Steelhead, endangered Coho Salmon, by causing algae blooms that remove oxygen from water, creating conditions unsuitable for aquatic life.

The water quality conditions throughout the region are also impacting several other threatened and endangered species, including the marsh sandwort (*arenaria paludicola*), Gambel's watercress (*nasturtium rorippa gambelii*), California least tern (*sterna antillarum browni*), and red-legged frog (*Rana aurora*). The last remaining known populations of the two endangered plants, marsh sandwort and Gambel's watercress, occur in Oso Flaco Lake, are critically imperiled and depend upon the health of the Oso Flaco watershed to survive.

### **1.3 What is the Central Coast Water Board's regulatory role?**

The California Regional Water Board's and State Water Resources Control Board's mission and regulatory responsibility *"is to preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations."* The Central Coast Water Board is responsible for regulating discharges of waste to the region's waterbodies to protect beneficial uses of the water. In some cases, such as the discharge of nitrate to groundwater, the Water Board is the only agency with regulatory responsibility and authority for controlling the discharge to waters of the State. The Central Coast Water Board issues Orders that contain prohibitions on and requirements for discharging waste and enforces violations of the prohibitions and requirements in these Orders. The Central Coast Water Board also develops water quality standards and implements plans and programs. These activities are conducted to best protect the State's waters, recognizing the local differences in climate, topography, geology and hydrology. As the current Order expires in July 2010, The Central Coast Water Board must immediately determine how best to regulate agricultural discharges on the Central Coast to directly address the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater so that we achieve desired water quality outcomes that support all beneficial uses.

### **1.4 Why is the Central Coast Water Board changing the current Order?**

The Central Coast Water Board and other stakeholders successfully developed an Order (in the form of a Conditional Waiver of Waste Discharge Requirements (2004 Conditional Waiver) through a stakeholder process and the Board adopted the Conditional Waiver on July 9, 2004 and renewed it for one year on July 10, 2009. Agricultural dischargers enrolled and established farm plans based on education and outreach, and created an industry-led, nonprofit, monitoring program. The current Conditional Waiver, however, lacks clarity and does not focus on accountability and verification of directly resolving the known water quality problems. The conditions of the 2004 Conditional Waiver address all common problems associated with all agricultural operations equally and without specific targets or timelines for compliance. Currently, the Water Board and the public have no direct evidence that water quality is improving

due to the 2004 Conditional Waiver. The current watershed-scale monitoring program only indicates long-term (multi-year), receiving water changes without measuring : 1) if individual agricultural dischargers are in compliance with Conditional Waiver conditions or water quality standards, or 2) if short-term progress towards water quality improvements on farms or in agricultural discharges is occurring. We know that better on-site information assists growers in improving farming practices and some growers have advanced efforts toward water quality protection. Currently, information that provides evidence of on-farm improvements and reductions in pollution loading from farms is not required, and therefore probably does not exist for most farms. The public, including those who are directly impacted by farm discharges, and the Water Board, do not have the necessary evidence of compliance or improvements. This is unacceptable given the magnitude and scale of the documented water quality impacts and the number of people directly affected. At a minimum, we continue to observe that agricultural discharges continue to severely impact water quality. The Central Coast Water Board must determine how best to regulate agricultural discharges on the Central Coast to directly address the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater so that we achieve desired water quality outcomes that support all beneficial uses.

### ***1.5 What actions are necessary to achieve water quality improvement?***

The Central Coast Water Board must fulfill its regulatory responsibility to protect water quality. The Central Coast Water Board must determine how best to regulate agricultural discharges on the Central Coast to directly address and resolve the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater so that we achieve desired water quality outcomes that support all beneficial uses. The agricultural industry must be accountable for preventing and addressing the water quality issues caused by agriculture. Together, we must control agricultural discharges – especially contaminated irrigation runoff and percolation to groundwater. The Central Coast Water Board must focus on those areas of the Central Coast Region already known to have, or be at great risk for, severe water quality impairment. The agricultural industry must implement the most effective management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection, and verify their effectiveness with on-farm data. The Central Coast Water Board must establish a known and reasonable time schedule, with clear and direct methods of verifying compliance and monitoring progress over time so that agricultural dischargers understand when and if they are successfully reducing their contribution to the problems or maintaining adequate levels of protection. We all must adapt to what we learn from measures of progress, so we efficiently and effectively achieve water quality improvement over time. To prevent further water quality impairment and impact to beneficial uses, we must take action now.

## **1.6 A Dilemma:**

Agricultural discharges continue to contribute to already significantly impaired water quality and impose certain risk and massive costs to public health, drinking water supplies, aquatic life, and valued water resources. If we do not protect water quality and beneficial uses, these costs and other impacts are likely to increase significantly. Resolving agricultural water quality issues will greatly benefit public health, present and future drinking water supplies, aquatic life, aesthetic, recreational, and other beneficial uses. Resolving agricultural water quality issues will require changes in farming practices, will impose increasing costs to individual farmers and the agricultural industry at a time of competing demands on farm income, regulatory compliance efforts, and food safety challenges, and may impact the local economy.

Protecting water quality and the environment while protecting agricultural benefits and interests will require change and may shift who bears the costs and who reaps the benefits. There will be a spectrum of adaptation by individual farmers to any change in water quality requirements – some farmers will react by actively adapting to the change and find efficiencies and advantages to achieving compliance; and some farmers may be more resistant to change or otherwise have greater difficulty adapting, possibly resulting in negative impacts. These impacts can be reduced by the use of reasonable time schedules and by providing that individual farmers identify how they can best meet water quality standards in their individual Farm Plans.

However, continuing to operate in a mode that causes constant or increasingly severe receiving water problems is not a sustainable model. Change will be effected one way or another. Without proactive improvements in operation, a non-sustainable model will result in increasing changes such as increasingly impaired habitat, and reactive fixes such as additional costly water supply treatment, and additional cost for developing new supplies (example: northern Monterey County water supply on-going development costs due in part to groundwater overuse by Salinas Valley water users and seawater intrusion). There is no “new water” other than through desalinization which is expensive not only in terms of money but in energy costs.

To prevent further water quality impairment and impact to beneficial uses, the Central Coast Water Board must take action immediately to better regulate agricultural discharges on the Central Coast to directly address the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater so that we achieve desired water quality outcomes that support all beneficial uses.

## **2.0 Background**

The California Regional Water Quality Control Board (Central Coast Water Board) Agricultural Regulatory Program was initiated in 2004, with the adoption of a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (2004 Conditional Waiver, Order No. R3-2004-0117). The 2004 Conditional Waiver expired on July 9, 2009 and the Central Coast Water Board extended it until July 10, 2010 (Order No. R3-2009-0050).

The intent of the 2004 Conditional Waiver was to regulate discharges from irrigated lands to ensure that such dischargers are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard. The requirements of the 2004 Conditional Waiver focused on enrollment, education and outreach, the development of Farm Water Quality Management Plans (Farm Plans), and receiving (watershed-scale) water quality monitoring. However, substantial evidence indicates discharges of waste are causing significant exceedances of numeric and narrative water quality standards resulting in negative impacts on beneficial uses.

Prior to the expiration of the current Conditional Waiver in July 2010, the Central Coast Water Board must consider the adoption of new or revised conditions to achieve desired water quality improvement. This report provides background and supporting information, and the terms and requirements for these Preliminary Staff Recommendations for an Agricultural Order for Discharges from Irrigated Lands (Preliminary Draft Agricultural Order). Specifically, this report contains:

1. an introduction explaining the context for considering a new Agricultural Order,
2. a description of the water quality impacts caused by agricultural discharges,
3. the Preliminary Draft Agricultural Order,
4. and a preliminary draft evaluation of environmental impacts from implementation of this Preliminary Draft Agricultural Order (initial study/environmental checklist).

## **3.0 The Preliminary Draft Agricultural Order**

### **3.1 Summary**

The Preliminary Draft Agricultural Order, like the 2004 Conditional Waiver, must regulate discharges of waste from irrigated lands to ensure that such dischargers are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard, such that all beneficial uses are protected. The Preliminary Draft Agricultural Order directly addresses agricultural discharges – especially contaminated irrigation runoff and percolation to groundwater causing widespread toxicity, unsafe levels of nitrate, unsafe levels of pesticides, and excessive sediment in surface waters and/or groundwaters. The Preliminary Draft Agricultural Order also focuses on those areas of the Central Coast Region already known to have, or at great risk for, severe water quality impairment. In addition, the Preliminary Draft

Agricultural Order requires the effective implementation of management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection. The Preliminary Draft Agricultural Order includes immediate requirements to eliminate or minimize the most severe or impactful agricultural discharges and additional requirements with specific and reasonable time schedules to eliminate or minimize degradation from all agricultural discharges. The Preliminary Draft Agricultural Order also includes clear and direct methods and indicators for verifying compliance and monitoring progress over time.

### **3.2 Public Input and Consideration of Additional Information**

The Preliminary Draft Agricultural Order describes requirements for owners and operators (Dischargers) 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. The requirements described in the Preliminary Draft Agricultural Order were developed by Central Coast Water Board staff based upon information and data available, and public input received to date. At the December 2009 Board Meeting, the Central Coast Water Board invited interested persons to submit any alternative recommendations for regulating agricultural discharges for consideration by Board members and staff. Board members directed interested persons to submit alternative recommendations in writing by April 1, 2010. The Central Coast Water Board will review and consider all alternatives submitted for consistency with: 1) the program goals of resolving surface and groundwater water quality impairment and impacts to aquatic habitat over a reasonable time frame, and including milestones, and monitoring and reporting to verify compliance and measure progress over time; and 2) minimum statutory requirements (including Water Code sections 13263 and 13269 and relevant plans, policies, and regulations identified in Attachment A to the Preliminary Draft Agricultural Order). During the course of reviewing alternatives (including any specific comments on or recommendations for the Preliminary Draft Agricultural Order), Central Coast Water Board staff may modify proposed conditions or identify other feasible conditions, resulting in revisions to the Preliminary Draft Agricultural Order. Interested Persons will have an opportunity to review and provide comments on forthcoming versions of the Agricultural Order (e.g., during informal staff workshops or Board information workshops), and during future public comment periods associated with specific actions to be taken by the Central Coast Water Board (e.g., adoption of new Agricultural Order).

## **4.0 Water Quality Conditions**

### **4.1 Summary of Surface Water Quality Conditions**

Most waterbodies located in or near areas influenced by agriculture in the Central Coast Region have unsafe levels of nutrients, unsafe levels of pesticides/toxicity, and

excessive levels of sediment/turbidity, evidenced by exceedances of surface water quality standards, and poor biological and physical conditions. Most surface waterbodies in agricultural watersheds are not suitable for drinking water, recreation (swimming or fishing), or aquatic life. Surface water quality data shows severe water quality impairment in most areas of the region with only minimal signs of improvement in a few areas.

To develop a comprehensive assessment of surface water quality in agricultural areas throughout the Region, staff evaluated data from the Cooperative Monitoring Program (CMP), the monitoring program established for compliance with the Conditional Waiver, and the Central Coast Water Board's Regional Monitoring Program, the Central Coast Ambient Monitoring Program (CCAMP). The CMP data focused monitoring in problem areas with agricultural sources and CCAMP data focused monitoring in all areas of the Region. Consequently, CMP data are biased toward more agricultural runoff influenced streams. Staff also evaluated (and will continue to evaluate) both sets of data for evidence of trends. Staff also completed an assessment of potential risk to Marine Protected Areas in the nearshore marine environment.

Surface water quality conditions are detailed in Attachment 1 to this staff report and summarized below.

#### *Indicators of Surface Water Quality Impairment-*

- Most of the same areas that showed serious contamination from agricultural pollutants five years ago are still seriously contaminated.
- The 2008 Clean Water Act Section 303(d) List of Impaired Waterbodies for the Central Coast Region (Impaired Waters List) identified surface water impairments for approximately 167 water quality limited segments 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.
- Agricultural discharges most severely impact surface waterbodies in the lower Salinas and Santa Maria watersheds, both areas of intensive agricultural activity. Evaluated through a multi-metric of water quality, 82 percent of the most degraded sites in the Central Coast Region are in these agricultural areas.
- Nitrate concentrations in areas that are most heavily impacted are not improving in significantly or in any widespread manner and in a number of sites in the lower Salinas and Santa Maria watersheds appear to be getting worse in the last few years (from CCAMP and CMP data) .
- Thirty percent of all sites from CCAMP and CMP have average nitrate concentrations that exceed the drinking water standard, and approximately 57 percent exceed the level necessary to protect aquatic life. Several of these water bodies have average nitrate concentrations that exceed the drinking water standard by five-fold or more. Some of the most seriously polluted waterbodies include the Tembladero Slough system (including Old Salinas River, Alisal Creek, Alisal Slough, Espinosa Slough, Gabilan Creek and Natividad Creek), the Pajaro River (including Llagas Creek, San Juan Creek, and Furlong Creek), the

lower Salinas River (including Quail Creek, Chualar Creek and Blanco Drain), the lower Santa Maria River (including Orcutt-Soloman Creek, Green Valley Creek, and Bradley Channel), and the Oso Flaco watershed (including Oso Flaco Lake, Oso Flaco Creek, and Little Oso Flaco Creek).

- Discharges from some agricultural drains have shown toxicity every time the drains are sampled. Researchers collaborating with CCAMP have shown that these toxic discharges can cause toxic effects in river systems that damage benthic invertebrate communities.
- Agricultural use of pyrethroid pesticides in the Central Coast Region and associated toxicity are 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 (42 percent), and the highest rate (by three-fold) of active ingredients applied (113 lbs/acre).
- Agricultural discharges contribute to sustained turbidity with many sites heavily influenced by agricultural discharges exceeding 100 NTUs as a median value. Most CCAMP sites have a median turbidity level of under 5 NTUs. 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.
- Agricultural discharges result in water temperatures that exceed levels that are desirable for 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. These include the Salinas, Santa Maria, and Santa Ynez rivers.
- Bioassessment data shows that creeks in areas of intensive agricultural activity have impaired benthic communities. Aquatic habitat is often poorly shaded, high in temperature, and has in-stream substrate heavily covered with sediment.
- Several Marine Protected Areas (MPAs) along the Central Coast are at risk of pollution impacts from sediment and water discharges leaving river mouths. Three of the MPAs, Elkhorn Slough, Moro Cojo Slough and Morro Bay, are estuaries that receive runoff into relatively enclosed systems.
- For Moro Cojo Slough and Elkhorn Slough, nitrates, pesticides and toxicity are documented problems. These two watersheds have more intense irrigated agricultural activity than does the Morro Bay watershed.

#### *Indicators of Surface Water Quality Improvement -*

- Some drainages in the Santa Barbara area are improving in surface water quality (such as Bell Creek, which supports agricultural activities) and on Pacheco Creek in the Pajaro watershed. In the lower Salinas and Santa Maria watersheds, flow volumes are declining at some sites, so at these locations nitrate loads may not necessarily be getting worse in spite of trends in concentrations;
- Dry season flow volume appears to be declining in some areas of intensive agriculture;

- 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;
- Two sites in the lower Santa Maria area show significant improvements in nitrate concentration (Green Valley Creek (312GVS) and Oso Flaco Creek (312OFC);
- Four sites on the main stem of the Salinas River show improvements in turbidity during the dry season;
- Dry season turbidity is improving along a portion of the main stem of the Salinas River;
- CCAMP monitoring has detected declining flows at other sites elsewhere in the Region, likely because of drought;

#### *Surface Water Quality Data and Information Gaps -*

- The timeframe and frequency of data collection limit the evaluation of statistical trends for some water quality parameters in surface waterbodies;
- Flow data are not collected at all sites, making it difficult to identify patterns or trends in flow and loading of pollutants (compared to changes in concentration);
- Flow information and water quality data are not reported for agricultural discharges from individual farms, so correlations cannot be made between reductions in irrigation runoff or improvements in agricultural discharge quality vs. in-stream changes.
- In-stream water quality is an effective long-term measure of water quality improvement (especially for nutrients), and more time may be necessary to identify any significant change.
- There is no individual on-farm monitoring or reporting, and it is unknown how individual farms contribute to surface water quality improvement or impairment. In addition, it is unknown if individual Dischargers are in compliance with water quality standards (given the magnitude and scale of documented impacts, it is highly likely that most discharges are not in compliance).
- In Marine Protected Areas, there is no monitoring of sediments that carry pesticides in attached forms. Without this information it is difficult to determine if these pesticides, carried downstream in streamflow by sediments and discharged to the ocean, harm marine life.
- Additional research would increase understanding of the potential impacts of nutrient discharges in rivers in local ocean waters.

## **4.2 Groundwater Quality**

Groundwater is severely impaired by nitrate contamination in many areas of the Central Coast Region. In many areas, nitrate concentration in groundwater is orders of magnitude above the drinking water standard, resulting in a significant threat to public health. This problem is critically important because much of the Central Coast Region is almost completely dependent on groundwater resources.

To develop a comprehensive assessment of groundwater quality in agricultural areas throughout the Region, staff evaluated available groundwater data collected by the California Department of Water Resources, California Department of Public Health (CDPH), Monterey County Water Resources Agency, and other researchers. Groundwater quality data generally represents conditions at the groundwater basin and sub-basin scale, and in particular, comprehensive impacts of agricultural land uses over a broad scale. Groundwater quality data for the purposes of characterizing specific individual agricultural discharges are not available and collection of this type of groundwater data is not required in the 2004 Conditional Waiver.

Groundwater quality conditions are detailed in Attachment 1 to this staff report and summarized below.

*Indicators of Groundwater Quality Impairment -*

- Groundwater contamination from nitrate severely impacts public drinking water supplies in the Central Coast Region. A Department of Water Resources (DWR) 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 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 MCL for nitrate. According to data maintained in the GAMA-Geotracker database, recent impacts to public supply wells are greatest in portions of the Salinas Valley (up to 20 percent of wells impacted) and Santa Maria groundwater (approximately 17 percent) basins. In the Gilroy-Hollister Groundwater Basin, 11 percent are impacted, and the CDPH identified over half of the drinking water supply wells as vulnerable to discharges from agricultural-related activities. Due to these elevated concentrations of nitrate in groundwater, many public water supply systems are required to provide wellhead treatment, at significant cost, to remove nitrate before delivery to the drinking water consumer.
- Groundwater contamination from nitrate severely impacts shallow domestic drinking water supplies in the Central Coast Region. Domestic wells (wells supplying one to several households) are typically screened in shallower zones than public supply wells, and typically have higher nitrate concentrations as a result. Water quality monitoring of domestic wells is not generally required and water quality information is not readily available, however based on the limited data available, the number of domestic wells that exceed the nitrate drinking water standard is likely in the range of hundreds to thousands in the Central Coast Region.
- In Monterey County, 25 percent of 352 wells sampled (88 wells) had concentrations above the nitrate drinking water standard in the northern Salinas Valley. In 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. Nitrate exceedences in the Gilroy-Hollister and Pajaro groundwater basins are similar, as reported by local agencies/districts for those basins.

- In many cases, whole communities relying on groundwater for drinking water purposes are affected. Local agencies have reported the shut down of domestic drinking water wells due to high nitrate concentrations. In addition, 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 quality drinking water for the long-term. In the Central Coast Region, the Monterey County community of San Jerardo, the San Martin area of Santa Clara County, and the City of Morro Bay are among the local communities affected by nitrate.

#### *Groundwater Quality Data and Information Gaps -*

- Groundwater quality (especially in deeper parts of the aquifer) is an effective long-term measure of water quality improvement and long time periods are usually necessary to identify significant change in water quality.
- Shallow groundwater is generally more directly susceptible to pollution from overlying land use. Groundwater quality data collection from shallow wells (especially agricultural or domestic drinking water wells) is not required and data is only broadly available, thus limiting evaluations related to shorter term indications of water quality changes.
- Well construction data (e.g., depth and screened intervals) are generally available for public supply wells but are otherwise not collected on a broad scale in a common format. This data gap limits more precise evaluations of water quality and groundwater depth.
- Groundwater data from wells associated with individual farms or areas of intensive agriculture are not routinely collected, nor have data been collected for all such areas in the region. This data gap limits understanding of chemical contributions from individual farms or areas to the levels of chemicals found in groundwater wells.

### **4.3 Aquatic Habitat Conditions**

Aquatic habitat is degraded in many areas of the region as evidenced by poor biological and physical conditions. Most surface waterbodies in agricultural watersheds are not suitable for safe recreational fishing or to support aquatic life.

To determine aquatic habitat conditions, staff reviewed data collected by CMP and CCAMP, and conducted a review of available riparian and wetland information for the Central Coast Region. While the 2004 Conditional Waiver did not specifically require aquatic habitat monitoring, it stated that cooperative monitoring of in-stream effects would enable the Central Coast Water Board to assess the overall impact of agricultural discharges to beneficial uses, such as aquatic life and habitat. The 2004 Conditional Waiver also requires protection of beneficial uses including aquatic and wildlife habitat.

The proposed 2010 order continues that requirement.

Aquatic habitat conditions are detailed in Attachment 1 to this staff report and summarized below.

*Indicators of Aquatic Habitat Degradation -*

- Agricultural activities result in the alteration of riparian and wetland areas, and continue to degrade the waters of the State and associated beneficial uses. Owners and operators of agricultural operations historically removed riparian and wetland areas to plant cultivated crops and in many areas continue to do so.
- As a result of aquatic habitat degradation, watershed functions that serve to maintain high water quality, aquatic habitat and wildlife - by filtering pollutants, recharging aquifers, providing flood storage capacity, have been disrupted.
- Data collected from CCAMP and CMP indicate that population characteristics of aquatic insects (benthic macroinvertebrates) important to ecological systems reflect poor water quality, degradation or lack of aquatic habitat, and poor overall watershed health at sites in areas with heavy agricultural land use. Aquatic habitat is often poorly shaded, high in temperature, and stream bottoms are heavily covered with sediment.
- The lower Salinas watershed and lower Santa Maria watersheds score low for common measures of benthic macroinvertebrate community health and aquatic habitat health.
- Unstable, bare dirt and tilled soils, highly vulnerable to erosion and stormwater runoff, are common directly adjacent to surface waterbodies in agricultural areas. Erosion and stormwater runoff from agricultural lands contributes sediment and sustained turbidity at levels that impact the ability of salmonids to feed. Many of these sites are located in the lower Santa Maria and Salinas-Tembladero watersheds.
- Degradation of aquatic habitat also results in water temperatures that exceed levels that are desirable for 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. These include the Salinas, Santa Maria, and Santa Ynez rivers.
- Real and/or perceived incompatible demands between food safety and environmental protection and subsequent actions taken by Dischargers to address food safety concerns associated with environmental features have resulted in the removal of aquatic habitat and related management practices.
- 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. 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.

#### *Indicators of Aquatic Habitat Improvement -*

- Protection, restoration and enhancement of aquatic habitat and watershed functions are demonstrated to be effective for improving water quality, aquatic and wildlife habitat, aquifer recharge, and flood storage capacity.
- Grant-funded projects in the Gabilan Watershed and surrounding Southern Monterey Bay Watersheds demonstrate that wetland restoration results in improved aquatic habitat conditions measured by changes in populations of native plants and birds, and establishment of macroinvertebrate populations. Restoration projects also resulted in water quality improvement by reducing sediment loads, removing large fractions of nitrate and suspended sediment inputs, and removal of ammonia, phosphate, and diazinon.
- Restoration projects implemented in the Moro Cojo Slough indicated that agricultural runoff that ran through wetland habitats can result in greatly reduced levels of nitrate. In addition, restoration resulted in better support of native plants and animals. Greater than 40 native plant species and 22 native vertebrates were observed throughout the project sites. In addition, the following protected species were documented throughout the Moro Cojo Watershed: California Red-legged Frog, California Tiger Salamander, Steelhead, Santa Cruz Long-toed Salamander, Tidewater Goby, and Saline Clover.
- Restoration projects in the Hansen Slough area near Watsonville resulted in decreases in stream turbidity by more than 50-fold, comparing sites above and below restoration. Nitrate concentrations also decreased as water passed through the restoration area – nitrate concentrations entering the site exceeded 140 mg/L and levels leaving the site never exceeded 40 mg/L, and were frequently below 5 mg/L.

#### *Aquatic Habitat Data and Information Gaps -*

- The success of aquatic habitat protection and restoration efforts is dependent on a variety of different parameters including scale, climate, topography, flow, water quality, and other site-specific variables.

## **4.4 Agricultural Discharge Water Quality**

Water quality of agricultural discharges is often poor, carrying nitrates at concentrations above safe drinking water levels and pesticides at concentrations above toxic levels to waterbodies in the region. Agricultural discharges contribute significantly to water quality conditions. In some cases, agricultural discharges are the sole or primary source of pollution in impaired waterbodies. Even in areas where agricultural is not the only source of pollution, it is a primary contributor.

Numerous studies document the impact of agricultural discharges on water quality and specific pollutants contained in irrigation runoff. Research conducted by the Food and Agriculture Organization of the United Nations found that irrigation return flow resulted in a significant increase in nitrogen, phosphorous, pesticide residues, and sediments.

Agricultural research conducted by University of California Cooperative Extension (UCCE) found nitrate values in agricultural tailwater at 26, 53, and 75 mg/L NO<sub>3</sub>-N (up to 7.5 times the drinking water standard). UCCE researchers indicated that the high levels of nitrate at the site were likely caused by the grower injecting nitrogen fertilizer into the irrigation water during the 2nd and 3rd irrigation events. A UC Davis study of Salinas Valley farms found that by the second and third crop cycles, farm soils had begun to accumulate nitrogen, but that growers continued with the same fertilization schedule. In addition, soils are high enough in phosphorus that in some areas no added phosphorus is necessary; however, growers continue to add this chemical to their fields. These practices lead to excess fertilizer leaving the farm, which ultimately cause significant water quality impairment. Similar to tailwater, tile drain water with elevated nitrate levels has been found draining into surface water bodies. Nitrate concentrations in selected waterbodies in the Pajaro Valley Watershed have been found to range from 19 to 89.5 mg/l NO<sub>3</sub> as N (compared to the drinking water standard, 10 mg/l).

Pesticides have been detected in agricultural tailwater and routinely exceed the toxicity water quality standard (lethal to aquatic life). Regionwide, CCAMP and the Cooperative Monitoring Program have conducted toxicity monitoring in 80 streams and rivers. Some measure of lethal effect (as opposed to growth or reproduction effect) has been observed at 65 percent of the water bodies monitored.

## **5.0 Preliminary Draft Staff Recommendations for an Agricultural Order**

### **5.1 Background on Agricultural Regulatory Program Implementation (2004 – 2009)**

On July 9, 2004, the Central Coast Water Board unanimously adopted the 2004 Conditional Waiver, and the associated Monitoring and Reporting Program, with the support of an Agricultural Advisory Panel (including agricultural and environmental interest group representatives), and overall public support. The goal of the 2004 Conditional Waiver was to improve agricultural water quality through the implementation of appropriate management practices. The requirements of the 2004 Conditional Waiver focused on enrollment, education and outreach, development of Farm Water Quality Management Plans (Farm Plans), and cooperative water quality monitoring.

During the term of the 2004 Conditional Waiver, Water Board staff worked with the agriculture community to develop an Agricultural Regulatory Program that would progress to protect and restore surface water quality, groundwater quality, and aquatic habitat to conditions that protect all designated beneficial uses of water in areas with irrigated agricultural lands. Major programmatic accomplishments of the first five years include the following:

- Enrollment of approximately 90 percent of the Central Coast Region's total irrigated agricultural acreage under the 2004 Conditional Waiver;

- Development and Implementation of a region-wide monitoring program (CMP) to assess water quality conditions at the watershed-scale;
- Tracking program implementation for more than 1700 farming operations (including inspections at 59 farming operations, and various enforcement actions: more than 200 Notices of Violation, more than 20 water quality enforcement actions, and five Administrative Civil Liability complaints);
- Discharger development of Farm Water Quality Management Plans for over 1528 operations (72 percent of enrollees); and
- Discharger completion of water quality education courses (in total, more than 18,000 hours);

While the success of initial efforts of the Agricultural Regulatory Program to develop a Conditional Waiver with stakeholders and achieve enrollment through education and outreach is significant, the current Conditional Waiver lacks clarity and focus on water quality requirements and does not include adequate compliance and verification monitoring. Thus, desired water quality outcomes achievement is uncertain and unmeasured. At a minimum, agricultural discharges continue to severely impact water quality in most receiving waters. The Central Coast Water Board must determine how better to regulate agricultural discharges on the Central Coast to directly address the major water quality issues of toxicity, nitrates, pesticides and sediment in agricultural runoff and/or leaching to groundwater to achieve desired water quality outcomes that support all beneficial uses.

## **5.2 Preliminary Draft Agricultural Order – Summary of Staff Proposed Conditions**

Conditions in the Preliminary Draft Agricultural Order and changes related to the 2004 Conditional Waiver are summarized in Attachment 2 and the Preliminary Draft Agricultural Order is contained in Attachment 3. Conditions in the Preliminary Draft Agricultural Order that are a clarification of conditions in the 2004 Conditional Waiver are notated as “<CLARIFICATION OF EXISTING>” in the Preliminary Draft Agricultural Order, Attachment B, Terms and Conditions. -. Conditions in the Preliminary Draft Agricultural Order that do not exist in the 2004 Conditional Waiver are notated as “<NEW>”. Conditions in the Preliminary Draft Agricultural Order without a notation are the same as conditions contained in the 2004 Conditional Waiver.

Staff developed these preliminary recommendations for an Agricultural Order by building upon the 2004 Conditional Waiver to advance efforts to improve agricultural water quality and gain compliance with applicable water quality standards. Thus, staff recommends the same regulatory tool, a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, to regulate agricultural discharges. To ensure understanding of applicable water quality standards, staff included explicit clarification of water quality discharge and compliance requirements. In addition, to improve implementation actions directly addressing the specific priority water quality issues, the Preliminary Draft Agricultural Order builds upon the development and

implementation of Farm Plans, including effective implementation of management practices (related to irrigation, nutrient, pesticide and sediment management) that will most likely yield the greatest amount of water quality protection. The Preliminary Draft Agricultural Order also builds upon the existing Cooperative Monitoring Program by retaining watershed-scale, receiving water monitoring, but adds individual monitoring and reporting to improve Water Board staff's ability to identify specific discharges loading pollutants or contributing to impacts, verify compliance with the requirements by dischargers and measure progress over time at the farm and watershed scales. The Preliminary Draft Agricultural Order focuses on reducing or eliminating agricultural discharges – especially contaminated irrigation runoff and percolation to groundwater in the most severely impaired areas. Due to the unique conditions related to irrigated lands and individual farming operations, the Preliminary Draft Agricultural Order includes multiple options for compliance to maximize Dischargers' flexibility in achieving desired water quality improvement according to a specific time schedule and specific milestones. Similar to the 2004 Conditional Waiver, the Preliminary Draft Agricultural Order also includes significantly reduced monitoring and reporting requirements for those agricultural discharges identified as having relatively low-risk for water quality impairment. The conditions for compliance, the monitoring and reporting requirements and the time schedule for compliance are summarized in the following paragraphs.

To demonstrate compliance with this Order, Dischargers must:

- Enroll to be covered by the Order
- Develop and implement a farm plan that includes management practices with certain conditions and specifications
- Eliminate non-storm water discharges, or use source control or treatment such that non-storm water discharges meet water quality standards
- Demonstrate through water quality monitoring that individual discharges meet certain basic water quality targets (that are or indicate water quality standards that protect beneficial uses). For example, non-storm water discharge monitoring should find:
  - No toxicity
  - Nitrate  $\leq 10$  mg/L NO<sub>3</sub> (N)
  - Turbidity  $\leq 25$  NTUs
  - Un-ionized Ammonia  $< 0.025$  mg/L (N)
  - Temperature  $\leq 68^{\circ}\text{F}$
- Demonstrate through water quality monitoring that receiving water is trending toward water quality standards that protect beneficial uses or is being maintained at existing levels for high quality water
- Farm operation must support a functional riparian system and associated beneficial uses (e.g., recreational uses like swimming, wading, or kayaking, fishing, wildlife habitat, etc.)

### **5.3 Preliminary Draft Monitoring and Reporting Requirements**

Water quality monitoring for the Preliminary Draft Agricultural Order is required by California Water Code Section 13269. Monitoring requirements are designed to support the implementation of the Preliminary Draft Agricultural Order (specifically as a Conditional Waiver of Waste Discharges). Monitoring must verify the adequacy and effectiveness of the Order's conditions. Monitoring information and data must be reported to the Water Board. The reporting requirements that staff recommends with the Preliminary Draft Agricultural Order include all farm operations to report on management practice implementation at the time of enrollment, to report on management practices at least once during the period of the Order, to update their farm plans annually with monitoring and site evaluation results, and to update their plans annually with specific adjustments in response to any results that indicate unacceptable progress (e.g., do not meet interim milestones set forth in the Order).

The current monitoring program for the 2004 Conditional Waiver uses a third party for meeting all monitoring and reporting requirements (Preservation, Inc., the nonprofit organization that implements the Cooperative Monitoring Program). Under the current monitoring and reporting program, Dischargers are responsible for monitoring and reporting either individually or collectively, and they must comply with the requirements of the Board-approved Monitoring and Reporting Program. The preliminary draft monitoring and reporting requirements provide for Dischargers to continue to use a third party as long as the third party is approved by the Executive Officer.

The existing monitoring program does not collect sufficient information regarding:

- Groundwater quality
- Pollution source identification
- Individual compliance
- Terrestrial riparian conditions

To address the critical need for additional data for groundwater quality, source identification, source control and/or compliance and riparian condition, Water Board Staff considered various monitoring options.

In the Preliminary Draft Agricultural Order, Water Board staff recommends a monitoring program that requires four categories of monitoring: Individual Discharge Characterization Monitoring, Individual Discharge Monitoring, Watershed (receiving water) Monitoring, and Additional Monitoring if required by the Executive Officer (receiving water and/or discharge). Staff recommends this monitoring program because it:

- Addresses all surface water (tailwater, tile drain water, stormwater, etc) and groundwater
- Provides complete identification of individual operations responsible for discharge
- Allows for immediate management of known discharges with the potential to impact water quality

- Limits costs for farms that are in compliance
- Prioritizes further regulatory action on farms that are not progressing toward compliance
- Uniformly distributes costs for trend and stormwater monitoring across all growers resulting in similar costs for all growers based on acreage farmed
- Provides data for surface and groundwater trends, individual compliance, management practice implementation, riparian protection, and stormwater
- Allows data collection, analysis, and reporting to be performed by a non-regulatory single third party
- Provides follow up monitoring to identify and mitigate known discharges with the potential to impact water quality

The following paragraphs describe each of the four categories of monitoring recommended.

*Individual Discharge Characterization Monitoring-*

To establish the need for one time and/or continuous monitoring at an individual farm operation, farm operations (Dischargers) will be required to evaluate their farms individually. The first step under this option is a requirement that all farm operations conduct an “individual discharge characterization” of their farm operation. The characterization will require a farm operation to identify if they have non-stormwater discharge(s) to either surface or ground water. Examples of non-stormwater discharges include agriculture tailwater, irrigation runoff, tile drain water, pond water discharge, ponded furrows, and/or another intermittent agriculture water discharge.

If a farm operation verifies that it does not have any non-stormwater discharge, that farm operation is not required to conduct any individual discharge water quality monitoring. Each operation without an identified non-stormwater discharge must conduct watershed monitoring for stormwater and long-term in-stream trends.

If a farm operation has an identified non-stormwater discharge to either surface or ground water, that discharge must be sampled and analyzed for the following discharge characterization parameters:

- Flow
- Toxicity
- Total Nitrogen (mg/L)
- Nitrate-Nitrite (mg/L)
- Total Ammonia (mg/L)
- Ortho-Phosphosphate (mg/L)
- Turbidity (NTU)
- Water Temperature (degrees C)
- pH
- Total Dissolved Solids (mg/L)

The following parameter must be calculated (based on Ammonia and pH):

- Un-ionized Ammonia (mg/L)

Staff and the discharger will use this information to assess the discharge to surface and/or ground water. If the discharge characterization demonstrates the discharge is impairing or has potential to impair surface and/or groundwater (load pollutants at levels that would cause exceedance of water quality standards to protect beneficial uses), that pollutant discharge must be eliminated, If the discharge flow can not be eliminated, the discharge must be treated or controlled to meet water quality standards to be protective of ground and surface water beneficial uses (within a time-frame specified in the Order), and must be monitored as described under “individual discharge monitoring” below.

#### *Individual Discharge Monitoring-*

For a farm operation with continuous discharge(s), the discharge(s) must be monitored until the discharge(s) is terminated or controlled so that it meets water quality standards (within a time frame specified in the Order). Data collected through individual monitoring will be used to verify that individual operations are progressing towards or have succeeded to eliminate or adequately control discharges that are impacting waters of the state and associated beneficial uses. If individual discharge monitoring demonstrates discharges are loading significant amounts of pollutants to receiving waterbodies that are already impaired (exceed water quality standards that protect beneficial uses) or that have water quality conditions at or better than water quality standards currently supporting beneficial uses, the Discharger must use additional source control/pollutant reduction (compliance is defined by time frames specified in the Order).

A third-party monitoring group can fund or perform this monitoring on behalf of individual dischargers. Individual agriculture operations identified through Individual Discharge Characterization or Follow-up monitoring efforts as the source of pollution must implement additional management practices or improve implementation of current practices for the protection of water quality and associated beneficial uses.

If management practice implementation fails to eliminate a source of pollution or bring a discharge in compliance with applicable water quality standards, the Water Board may pursue enforcement to bring the discharge into compliance with water quality standards.

#### *Watershed Monitoring Program-*

Sites on main stems of rivers and tributaries in agricultural areas of the region must be monitored on a regular basis to evaluate in-stream stormwater trends and long-term trends in water quality and associated beneficial uses. All Dischargers must conduct watershed monitoring program.

The watershed monitoring program must collect samples at a core network of receiving water sites. For the watershed monitoring component of the monitoring requirements, Dischargers may recommend monitoring sites or constituents to best characterize potential agricultural impacts that the Executive Officer must approve to be effectuated. Similarly, the Executive Officer may require changes to the sites or waste constituents, or other aspects of the watershed monitoring program, to better characterize agricultural

impacts, identify sources of pollution, or better characterize stream water quality (See discussion of Additional Monitoring below).

#### *Surface Water*

Representative surface water samples shall be collected and analyzed for the parameters listed in Attachment 4. Also, two stormwater events shall be monitored for the parameters listed in Attachment 4 during the rainy season (October 15 – March 15). Rainy season sampling is typically conducted during or shortly after runoff events, preferably including the first event that results in significant flow increase.

#### *Groundwater*

At a minimum, all Dischargers must sample their own irrigation wells and drinking water wells annually. Sampling must include collection and analyses of data for nitrate and TDS, at a minimum.

Additionally, individual Dischargers (or approved third party on their behalf) must develop a plan to monitor groundwater to characterize groundwater quality in agricultural areas including:

- current representative conditions of groundwater quality,
- more specific groundwater quality along general groundwater flow paths (where water is recharged to where it discharges, e.g., into streams or wells), and
- trends in groundwater quality
- impacts to beneficial uses (or protection of beneficial uses).

The proposed groundwater monitoring plan may rely on existing groundwater wells and may include existing monitoring efforts around the region to document groundwater quality. The proposed groundwater monitoring plan must be submitted to the Water Board Executive Officer by March 1, 2012.

To be an acceptable third-party, the monitoring group must:

- Be responsible for implementing monitoring and reporting program.
- Report names of participating dischargers.
- Report any dischargers who cease to comply with requirements.
- Comply with a Quality Assurance Program Plan and monitoring plan approved by the Water Board's quality assurance officer.
- Submit all data (daily, monthly, quarterly, etc.) to the Water Board; the data submission shall conform to criteria approved by the Central Coast Regional Water Quality Control Board Executive Officer.

#### *Additional Monitoring required by the Executive Officer*

At the direction of the Water Board Executive Officer, individual Dischargers or an approved third party must conduct Follow up monitoring in areas identified as problematic through Individual Discharge Monitoring, Watershed Monitoring, and the Central Coast Ambient Monitoring Program. This monitoring must be conducted to identify the source of pollution and monitor any identified discharges associated with

agriculture operations to surface or ground water, including discharges to streams, discharges to tail-water ponds, and stormwater runoff.

#### **5.4 Proposed Time Schedule for Compliance**

Water Board Staff considered a time schedule that would support timely and effective implementation. Under this Preliminary Draft Agricultural Order, either irrigation runoff will need to be eliminated within two years of adoption of the Order or the following pollutants in irrigation runoff will need to be eliminated and/or treated or controlled to meet applicable water quality standards by the dates specified:

- Toxicity – within two years of adoption of the Order
- Turbidity – within three years of adoption of the Order
- Nutrients – within four years of adoption of the Order
- Salts – within four years of adoption of the Order

Additionally, dischargers must implement management practices to reduce pollutant loading to groundwater.

Staff recommends the time-schedule in this Preliminary Draft Agricultural Order as a reasonable starting point to improve water quality. This schedule acknowledges that to fully control all discharges and achieve compliance will take longer than the five years of this Preliminary Draft Agricultural Order. In a separate, but related effort regarding regulation of agricultural discharges, staff is evaluating and developing a time schedule for actions and to meet interim milestones that extends out to 2025.

### **6.0 Preliminary Draft Environmental Analysis Pursuant to the California Environmental Quality Act (CEQA)**

Consistent with CEQA, staff prepared a preliminary draft environmental impact analysis, currently in the form of an Initial Study, including an environmental checklist. See Attachment 5.

The project evaluated in this Initial Study/Environmental Checklist is the Preliminary Draft Irrigated Ag Order, which is a revised Conditional Waiver of Waste Discharge Requirements and the requirement to submit a report of waste discharge.

The preliminary draft environmental impact analysis contains the following information relating to the Preliminary Draft Irrigated Ag Order:

1. A description of proposed activity and proposed alternatives ,
2. An environmental checklist,
3. An initial evaluation of potentially significant environmental impacts.

## 7.0 References

Staff consulted several references in preparing the report on water quality conditions and the Preliminary Draft Agricultural Order. A list of those references is included as Attachment 6.

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
895 AEROVISTA PLACE, SUITE 101  
SAN LUIS OBISPO, CALIFORNIA 93401**

**Order No. R3-2009-0050**

**Conditional Waiver of Waste Discharge Requirements  
for  
Discharges From Irrigated Lands**

*The Central Coast Regional Water Quality Control Board finds:*

1. The intent of this Conditional Waiver is to regulate discharges from irrigated lands to ensure that such discharges are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard. Irrigated lands are lands where water is applied for producing commercial crops and, for the purpose of this program, 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 are not currently operating under Waste Discharge Requirements (WDRs). Fully contained greenhouse operations (those that have no groundwater discharge due to impervious floors) are not covered under this Conditional Waiver and must either eliminate all surface water discharges of pollutants or apply for Waste Discharge Requirements. Lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops, must also obtain coverage under this Conditional Waiver.
2. Discharges include surface discharges (also known as irrigation return flows or tailwater), subsurface drainage generated by installing drainage systems to lower the water table below irrigated lands (also known as tile drains), discharges to groundwater through percolation, and storm water runoff flowing from irrigated lands. These discharges can contain wastes that could affect the quality of waters of the state.
3. Discharger means the owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater.
4. The Central Coast Region has approximately 600,000 acres of cropland under irrigation and more than 2,500 operations that are or may be discharging waste that could affect the quality of waters of the state.
5. Waters of the state is defined in Section 13050 of the California Water Code to be any surface or groundwater within the boundaries of the state.
6. Whether an individual discharge of waste from irrigated lands may affect the quality of waters of the state depends on the quantity of the 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, management practices and other site-specific factors.

7. Waste discharges from some agricultural operations have and will continue to threaten the quality of the waters of the state, as shown by the number of water bodies on the Clean Water Act Section 303(d) list of impaired water bodies that identify agriculture as a potential source, particularly in the Central Coast Region.
8. Data collected through the Central Coast Ambient Monitoring Program and other monitoring identify water quality problems in areas of irrigated agriculture throughout the Region, including in groundwater.
9. California Water Code Section 13269 allows Regional Boards to waive submission of Reports of Waste Discharge (ROWDs) and/or issuance of Waste Discharge Requirements (WDRs) if it is in the public interest. On April 15, 1983, the Regional Board approved a policy allowing waivers of WDRs for 26 categories of discharges, including irrigation return flows and non-NPDES storm water runoff.
10. On October 10, 1999, Senate Bill 390 amended California Water Code Section 13269. The amendments extended all waivers in effect on January 1, 2000, for three years to January 1, 2003, unless terminated earlier, and required all existing waivers to expire on January 1, 2003, unless renewed.
11. As amended, CWC Section 13269 authorizes the Regional Board to waive WDRs for a specific discharge or specific types of discharges if the following conditions are met: 1) the waiver is in the public interest, 2) the waiver is conditional, 3) waiver conditions include performance of individual, group, or watershed-based monitoring, except for discharges that the Regional Board determines do not pose a significant threat to water quality, 4) compliance with waiver conditions is required, and 5) a public hearing has been held. The term of a waiver cannot exceed five years, but the Regional Board can renew a waiver after holding a public hearing. The Regional Board may terminate a waiver at any time.
12. The Regional Board, in compliance with amended CWC Section 13269, reviewed the previously issued categorical waivers for irrigation return flows and non-NPDES storm water runoff and determined that additional conditions are required to protect water quality.
13. Relevant factors in determining whether a waiver is in the public interest include the following: whether the discharge is already regulated by a local governmental entity which must continue to play a major role in regulating that type of discharge; whether the Discharger is observing reasonable practices to minimize the deleterious effects of the discharge; whether a feasible treatment method exists to control the pollutants in the discharge; and whether conditionally waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Regional Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement. Although local government entities do not regulate water quality impacts of agricultural operations, these operations are subject to pesticide regulation and reporting. In addition, various public and private entities provide education and field assistance to growers implementing best management practices. These entities include various Resource Conservation Districts, the Monterey Bay National Marine Sanctuary, the University of California Cooperative Extension, and the programs cited in Finding 17. The Regional Board has made supplemental environmental program funds available to farm-related activities such as a watershed coordinator and monitoring, and anticipates directing further grants toward these activities, as well as to on-farm management practice implementation. Compliance with the Conditional Waiver will include reasonable management practices to minimize water quality

impacts. Management practices that reduce the amount of waste produced or contain runoff are more feasible and more effective than treatment methods and will be strongly encouraged.

14. The adoption of the Conditional Waiver is also in the public interest because (1) it includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state, (2) it contains more specific and more stringent conditions for protection of water quality compared to existing regulatory programs, (3) given the number of persons who discharge waste from irrigated lands and the magnitude of acreage involved, it provides for an efficient and effective use of limited Regional Board resources, (4) it provides flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with monitoring requirements through participation in cooperative monitoring programs or individually, and (5) it builds on, rather than replaces, existing efforts within the Region.
15. The Conditional Waiver provides an alternative regulatory option to adoption of WDRs for all Dischargers. Dischargers may seek coverage under this program through a tiered waiver structure. Some operations may be immediately considered for WDRs because of a past history of violations or other problems of non-compliance; however, the vast majority of operations will be allowed time to meet requirements before being considered for WDRs. The conditions of the waiver require Dischargers to comply with applicable water quality control plans and water quality objectives.
16. It is not expected that Dischargers will achieve full compliance with all of the conditions immediately. In some areas, rising groundwater with nitrate levels exceeding the drinking water standard may influence surface water concentrations substantially, making water quality improvements difficult to achieve in the short term. In others, time will be required to find the most effective combination of practices to improve water quality. The cooperative water quality monitoring program is designed to focus attention on waterbodies where objectives are not being met and allow Dischargers time to adjust practices. Although time will be allowed, increased reporting and monitoring may be required in order to ensure that water quality is improving. Even if the Regional Board were to issue WDRs to Dischargers rather than adopting this waiver, compliance schedules under California Water Code Section 13263(c) would be appropriate in most cases.
17. The Central Coast Region has benefited from the proactive approach to protecting water quality taken by several segments of the agricultural industry. Notable examples include the Agricultural Water Quality Program of the Coalition of Central Coast County Farm Bureaus (Farm Bureau Coalition) and efforts to promote sustainable wine growing practices by the Central Coast Vineyard Team and the Central Coast Winegrowers Association. Efforts are also underway to promote sustainable practices by Spanish-speaking farmers through the Rural Development Center and the Agricultural Land-Based Training Association (ALBA) in Monterey County. A consideration in developing the new regulatory program was the impact such a program would have on existing water quality protection efforts by the agricultural industry. Continuing and building on such efforts is in the public interest. Staff has worked with the agricultural and environmental communities in the Region to find areas of agreement on the broad outline of an irrigated agriculture water quality program.

**How does the Conditional Waiver give “credit” to growers who have been proactive in protecting water quality?**

18. Under the Monterey Bay Sanctuary’s Plan for Agriculture, the Farm Bureau Coalition is organizing growers into watershed working groups who attend Farm Water Quality Planning short courses as a group and develop farm plans. The Waiver’s education and plan requirements are modeled on this, so growers who are participating in the Sanctuary effort will likely be in Tier 1 (see Part IIC, “Waiver Tiers”) and have fewer reporting requirements and lower costs. Growers who have completed other qualifying water quality education classes and developed plans that meet the waiver requirements will also qualify for Tier 1. Vineyards operations that have completed Positive Point System evaluations will be able to use them as part of their farm plans. Regional Board staff also recommends that growers who meet the education and planning requirements and who have already implemented substantial management practices to protect water quality have reduced monitoring costs under the cooperative monitoring program, and be considered as a “low-threat” discharge (see below).

**What is the management practice checklist?**

19. The management practice checklist/self-assessment is a short questionnaire that allows the Discharger to identify management practices that are being implemented for water quality protection. The Regional Board will provide a template prior to the enrollment deadline. The template will include practices for irrigation management, nutrient management, pesticide management and erosion control. Dischargers will also be able to add practices if they are known or likely to have a water quality benefit. The template will be available on-line. Tier 1 dischargers will submit an updated checklist once during the waiver cycle (five years); Tier 2 dischargers will submit a checklist annually as part of their annual report. In areas where water quality monitoring identifies problems, checklists will be used to assess whether practices need to be adjusted or whether increased implementation is needed.

**What is a “low-threat” discharge?**

20. A low-threat discharge is a discharge that has very low potential to impact water quality because of management practices in place. For the purposes of this Conditional Waiver a low-threat discharge category could be defined in the cost allocation structure of the cooperative monitoring program and qualify for reduced monitoring costs.

**If I have no discharge, do I have to apply for a Waiver?**

21. If an operation does not discharge waste that could affect water quality, then there is no need to obtain coverage under the Conditional Waiver. “Waste” includes (among other things) any residual pesticide, herbicide, or fertilizer that is not taken up or beneficially used for its intended purpose. Any discharge of waste that could percolate to groundwater or run off in tail water or stormwater is a discharge for purposes of this waiver. Waste discharges also include sediment that runs off a field (erosion) due to land disturbance activities. It is very difficult to be certain that an operation has no discharge, particularly to groundwater or during storm events; however, Dischargers that qualify for Tier 1 have fewer reporting requirements and facilities that have implemented management practices may be considered for a low-threat discharge category in the cooperative monitoring program and could have reduced monitoring costs.

**What if I lease land?**

22. Under the terms of the Conditional Waiver, both owners and operators of irrigated land have responsibility for compliance with the conditions of the waiver. A farm map must be submitted along with the Notice of Intent (see Part II below). Farm water quality management plans must specify management practices for the operation identified in the map. Many management practices will be operational in nature and under the direct control of the operator, while structural practices which remain in place through changes in leaseholders will more likely be the responsibility of the landowner. In the event that the Regional Board undertakes enforcement action, it is likely that both the owner and the operator will be held accountable. Owners and operators may consider delineating these responsibilities in lease agreements; however, both the owner and operator will retain full legal responsibility for complying with all provisions of the applicable waiver.

**How do I apply?**

23. Dischargers seeking authorization to discharge under the Conditional Waiver shall submit a complete *Notice of Intent (NOI) to Comply with the Terms of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Land*. The Notice of Intent form will be available from the Regional Water Quality Control Board upon request and on the Regional Board's website.
24. Information that must be submitted as part of the NOI includes the location of the operation, identification of responsible parties (owners/operators), a map of the operation (should be the same as is submitted to the Agricultural Commission for pesticide use applications or equivalent), a management practice checklist/self-assessment on a template provided by the Regional Board, certification of completion of Regional Board-approved water quality education, a signed statement of farm water quality plan completion, if applicable, and which monitoring option is elected. Certificates of education and statement of plan completion will be used to evaluate which category of waiver is appropriate.

**When do I apply?**

25. The deadline for submitting a Notice of Intent is **January 1, 2005**. All task and milestone due dates are listed in Part IV (Provisions) of this Order. All Dischargers must apply for coverage under the conditional waiver by **January 1, 2005**.

**Is a fee required?**

26. Not at this time. Recently passed Senate Bill 923 authorizes the payment of fees for conditional waivers. A fee schedule may be set by the State Board based on a number of factors, including acreage, and monitoring and compliance costs. The Regional Board cannot charge fees until after the State Board adopts a fee schedule for waivers.

**Is monitoring required?**

27. California Water Code Section 13269 requires conditional waivers to include a monitoring program that verifies the adequacy and effectiveness of the waiver's conditions. Monitoring programs can be individual, group (cooperative), or watershed-based. As long as a Discharger

complies with all of the provisions and requirements of the waiver, if group monitoring adequately verifies that the waiver conditions adequately protect water quality, a cooperative monitoring approach satisfies Section 13269.

28. Monitoring requirements and options are described in Monitoring and Reporting Program (MRP) R3-2004-0117. All Dischargers will be required to elect a monitoring option. Dischargers may elect to perform individual monitoring or participate in cooperative monitoring. Cooperative monitoring in general offers a much less costly alternative to individual monitoring. A Discharger may change the monitoring option election at any time by submitted a revised NOI. The revised NOI must include a proposed monitoring and reporting plan (to elect individual monitoring) or a demonstration that the Discharger is participating in a cooperative monitoring program (for cooperative monitoring).

#### **How will the cooperative monitoring program work?**

29. The cooperative monitoring program, which was developed by Regional Board monitoring program staff, with input from the Agricultural Advisory Panel and researchers within the Region, will focus on currently applied agricultural constituents. The program calls for monitoring at sites located on the main stems and tributaries of rivers in the agricultural areas of the region. Monthly sampling will be conducted to analyze nutrients (nitrate, ammonia, orthophosphate) and some general parameters such as temperature, dissolved oxygen, total dissolved solids, pH, turbidity, and flow. Monthly monitoring of these constituents in a set of fixed locations will improve the Regional Board's ability to determine whether water quality is improving over time. It takes much longer to detect change, statistically speaking, with less frequent monitoring, and change detection is important for determining whether the waiver is effective. Monitoring of these conventional pollutants is less expensive than other program components, such as toxicity, and thus is a comparatively inexpensive way to increase the ability to detect improvements in water quality resulting from management practices. Data from the Regional Board's Central Coast Ambient Monitoring Program (CCAMP) shows that exceedances of these general water quality parameters are often associated with toxicity in waters affected by agricultural runoff. The cooperative monitoring program will make provision for follow-up monitoring with a certain fixed proportion of its budget, as another means of maintaining costs at a reasonable level.
30. Monitoring for individual pesticides can be expensive and does not assess additive or synergistic effects or impacts to beneficial uses. The cooperative monitoring program proposes instead to look first at in-stream effects, by performing toxicity testing at the same set of sites four times per year, twice during the irrigation season and twice during the storm season. The program will also characterize in-stream health by examination of insects and other invertebrates that live in the streams. In combination with toxicity sampling, this approach will enable the Regional Board to assess the overall impact of the discharges to beneficial uses, such as aquatic life and habitat.
31. Cooperative monitoring will allow growers to pool resources to meet monitoring requirements at a lower cost than individual monitoring. The monitoring sites will be located primarily in agricultural areas with previously identified water quality problems, but will also incorporate other monitoring efforts to provide coverage throughout the agricultural areas of the region. Regional Board staff is directed to work with the agricultural industry to assist the industry to establish or identify an existing nonprofit entity. This entity will be responsible for establishing a dues schedule, collecting funds and conducting the monitoring program adopted by the Regional Board. The Central Coast Ambient Monitoring Program will provide additional monitoring as part of its five-year rotation scheme, and monitoring data from other agencies will be

incorporated wherever possible. The nonprofit entity will also have the ability to receive grant funds and other sources of revenue to reduce costs to growers. The Regional Board strongly encourages the industry to seek available grant funds to reduce monitoring costs for participating Dischargers, either through a cooperative monitoring entity or through other eligible entities.

**What will cooperative monitoring cost?**

32. The total annual cost of the cooperative monitoring program is estimated to be between \$900,000 and \$1.0 million. The contribution of each discharger participating in the cooperative monitoring program will be based on a cost schedule developed by the agricultural industry and the nonprofit entity, as described in paragraph 31. Regional Board staff will work with the cooperative monitoring program to develop a reasonable cost to individuals based on a number of factors, including type of discharge and threat to water quality. Settlement funds and grant funds may be used to supplement resources and reduce overall costs.
33. The Regional Board encourages the cooperative monitoring program to develop reduced monitoring charges for low-threat discharges.

**What are some considerations in establishing a monitoring program?**

34. The monitoring program must verify the adequacy and effectiveness of the waiver's conditions. In establishing a monitoring program, the Regional Board may consider the volume, duration, frequency, and constituents of the discharge, and the extent and type of existing monitoring activities. The monitoring program can rely on other agencies' or organizations' water quality monitoring programs in lieu of establishing a separate monitoring program as long as those programs provide sufficient data of adequate quality; if other program data are of adequate quality but incomplete, the Board can still rely on the other data and limit the additional monitoring requirements to what is needed to fill data gaps.
35. There are a number of surface water quality monitoring programs in the Central Coast Region. However, few on-going programs assess impacts to beneficial uses from agricultural chemicals through chemical testing, toxicity testing or benthic invertebrate monitoring. The Regional Board's Central Coast Ambient Monitoring Program conducts relatively detailed monitoring on a five-year rotational cycle. Data from this program and others can be used to supplement the monitoring program, but will not provide sufficient data to verify the adequacy and effectiveness of the waiver, nor to detect improvements in water quality due to changes in management practices within the time frame of the waiver.

The Regional Board recognizes that a certain amount of time will be required to put a cooperative monitoring program in place, but an unreasonable delay in monitoring will violate CWC Section 13269, which requires monitoring to verify the adequacy of the waiver's conditions. Staff will assist the agricultural industry to identify a suitable entity to manage the cooperative monitoring program. The entity must demonstrate to the Executive Officer's satisfaction that it is technically able to carry out the monitoring and reporting program (either directly or by hiring a consultant or other acceptable organization to perform monitoring and reporting) and that it has or will have adequate financial resources to do so. Demonstration of financial capability should include development of a budget which may incorporate funding from outside sources, such as grants. A dues schedule should be developed in consideration of input from the agricultural industry. The entity, working with Regional Board staff, shall advise Dischargers on the availability of the cooperative monitoring program. Each Discharger covered by the waiver is ultimately responsible for compliance and must perform individual monitoring if the cooperative monitoring is not established. The entity will notify the Regional Board of any enrolled

dischargers who cease to comply with dues schedules or other enrollment requirements; such dischargers will be considered out of compliance with the conditions of the waiver unless they begin individual monitoring immediately. Staff will provide to the agricultural industry's "monitoring subcommittee," data as part of an inventory and review of existing data and monitoring efforts. The "monitoring subcommittee" may develop an alternative monitoring protocol for consideration by the Regional Board. The Board shall hold a public hearing and consider the agricultural industry's "monitoring subcommittee's" alternative monitoring protocol. Monitoring and Reporting Program R3-2004-0117 will be implemented as proposed, beginning in the lower Salinas/Elkhorn and Santa Maria areas, and shall be implemented by January 1, 2005. Full regionwide monitoring, in accordance with MRP R3-2004-0117 or an alternative monitoring protocol approved by the Regional Board at a public hearing, shall be implemented by January 1, 2006.

36. All requirements for technical and monitoring reports are pursuant to California Water Code section 13267. These reports are necessary to evaluate each Discharger's compliance with the terms and conditions of the Conditional Waiver, to verify the adequacy and effectiveness of the waiver's conditions and to evaluate whether additional regulatory programs or enforcement actions are warranted. Failure to submit reports in accordance with schedules established by this Order, Monitoring and Reporting Program R3-2004-0117, or an individual or cooperative monitoring plan, or failure to submit a report of sufficient technical quality to be acceptable to the Executive Officer, may subject the Discharger to enforcement action pursuant to Section 13268 of the California Water Code.

**Why is agriculture being required to do more monitoring than other land uses?**

37. California Water Code Section 13267 requires the cost of monitoring to be reasonable in light of the information to be obtained. Identified water quality problems in agricultural areas, in conjunction with the large number of Clean Water Act 303(d) listings that identify agriculture as a potential source justify greater monitoring than is necessary for other land uses, such as urban stormwater, which is not known to be causing as high a level of regional impact. However, when water quality monitoring indicates sources other than agriculture may be contributing to a problem, the other sources will be required to provide monitoring and other information to the Regional Board.

**Is groundwater monitoring required?**

38. No. Existing groundwater monitoring efforts around the region will be used in lieu of any agricultural groundwater monitoring requirements.

**What if groundwater already violates standards?**

39. Groundwater in many agricultural areas of the region shows nitrate levels exceeding drinking water standards. Growers will not be held liable for historical conditions. Since high nitrate groundwater in agricultural areas is often used for irrigation, farm plans need to include nutrient management practices to ensure that current discharges to groundwater do not further degrade groundwater. Plans also should account for specific nitrate concentrations in irrigation water in determining agronomic nitrogen application rates.

**Am I expected to contain all stormwater on my property?**

40. Although there is no requirement to contain all stormwater on site, all farm plans must identify practices to reduce discharges during storm events. Operations should choose the best combination of practices to reduce and/or detain runoff, reduce erosion and reduce the discharge of sediment, nutrients and pesticides during storms. Conservation practices that could pose a threat to public safety, for example, sediment detention basins that include earthen embankments, should conform to relevant local ordinances and engineering standards. Other management practices such as cover crops, filter strips, or furrow alignment, should aim to reduce runoff quantity and velocity, hold fine particles (silt and clay) in place, and increase infiltration to minimize impacts to stormwater quality. The goal of these combined practices should be to minimize stormwater runoff for the first half inch of rain during each storm, and to reduce runoff for the first one and one-half inches of rain during each storm. There is no requirement to contain or manage waste in stormwater runoff that enters the farm from off site, but the occurrence of such runoff does not change the goal of managing waste generated on site.

**What happens if a Tier 2 discharger fails to meet requirements for Tier 1 within the three year time limit?**

41. Dischargers who fail to meet Tier 1 requirements within three years will be issued Waste Discharge Requirements if they have made no progress toward meeting Tier 1 requirements. Progress includes completion of five hours of water quality training each year and progress toward completion of a farm water quality plan. Prior to issuance of Waste Discharge Requirements, the Discharger may ask the Regional Board to consider extenuating circumstances, such as lack of available training and financial hardship.

**Regulatory Considerations**

42. Basin Plan – The Regional Board adopted the Water Quality Control Plan, Central Coast Basin (Basin Plan) on September 8, 1994. The Basin Plan incorporates State Board plans and policies by reference and contains a strategy for protecting beneficial uses of surface and ground waters throughout the Region. This conditional waiver requires Dischargers to comply with all applicable provisions of the Basin Plan.
43. Beneficial Uses – Existing and potential beneficial uses of surface and groundwaters within the Central Coast Region include municipal and domestic supply; agricultural supply; industrial process and service supply; recreation; warm and cold freshwater habitat; wildlife habitat; migration; spawning; areas of special biological significance (now called State Water Quality Protection Areas or SWQPAs); rare, threatened or endangered species; freshwater replenishment; and groundwater recharge. Beneficial uses that apply to all waterbodies, unless otherwise identified in the Basin Plan, include municipal and domestic supply, recreation, and aquatic life (either warm or cold freshwater habitat, as applicable).
44. California Environmental Quality Act – For purposes of adoption of this Waiver Order, the Regional Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21100 et. seq.). The action to adopt a conditional waiver is intended to protect and improve water quality. The waiver order sets forth conditions that will require Dischargers to implement management practices to protect water quality and to monitor to ensure that such practices are effective and are improving water quality. The Regional Board has not regulated the discharges subject to this waiver Order to this extent in the past. Such

regulation will result in protection, maintenance and improvement of water quality. The Regional Board adopted a Negative Declaration in Resolution R3-2004-0118.

45. Anti-Degradation – This Order is consistent with the 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 a regional board’s policies. This conditional waiver 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.
46. The goal of this Order and Conditional Waiver is to improve and protect water quality by providing a program to manage discharges from irrigated lands that cause or contribute to conditions of pollution or nuisance as defined in Section 13050 of the California Water Code or that cause or contribute to exceedances of any Regional or State Board numeric or narrative water quality standard by reducing discharges of waste.
47. Interested parties were notified of the intent to adopt a conditional waiver of waste discharge requirements for discharges from irrigated lands, including irrigation wastewater and/or stormwater, to surface waters and groundwater as described in this Waiver Order and were provided an opportunity for a public hearing and an opportunity to submit written comments.
48. In a public hearing, all comments pertaining to this Waiver Order were heard and considered.

***IT IS HEREBY ORDERED*** that, pursuant to California Water Code sections 13263, 13267 and 13269, Dischargers of irrigation wastewater and/or stormwater from irrigated lands to waters of the state, who file for coverage under this Waiver Order in order to meet the provisions contained in California Water Code Division 7 and regulations and plans and policies adopted thereunder, and who request waiver of waste discharge requirements, shall comply with the following terms and conditions:

## **PART I. WAIVER**

1. The discharge of any wastes not specifically regulated by the waiver described herein is prohibited unless the Discharger complies with CWC Section 13260(a) and the Regional Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or the time frames specified in CWC Section 13264(a) have elapsed.
2. The Regional Board waives the submittal of a ROWD and WDRs for discharges from irrigated land if the Discharger complies with the conditional waiver described in this Order and Monitoring and Reporting Program R3-2004-0117.
3. Dischargers shall take action to comply with the terms and conditions of the waiver adopted by this Order and improve and protect waters of the state.

4. This waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.
5. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from taking enforcement actions (including civil liability) pursuant to the CWC.

## **PART II. WAIVER PROGRAM**

### **A. Definitions**

1. Irrigated lands – lands where water is applied for the purpose of producing commercial crops. For the purpose of this Conditional Waiver, irrigated lands include, but are not limited to, land planted to row, vineyard, field and tree crops, commercial nurseries, nursery stock production, and greenhouse operations with soil floors.
2. Irrigation return flow – surface and subsurface water which leaves the field following application of irrigation water.
3. Tailwater – the runoff of irrigation water from the lower end of an irrigated field.
4. Stormwater runoff – the runoff of precipitation from the lower end of an irrigated field.
5. 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.
6. 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 earthen materials (soil, silt, sand, clay, rock), inorganic materials (metals, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.), and organic materials such as pesticides.
7. Discharger - the owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater.
8. Requirement of applicable water quality control plans- a water quality objective, prohibition, Total Maximum Daily Load (TMDL) implementation plan, or other requirement contained in water quality control plans adopted by the Regional Board and approved according to applicable law.
9. Monitoring - refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions, including but not limited to, in-stream water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in water quality, inspections of

operations, management practice implementation and effectiveness monitoring, maintenance of on-site records and management practice reporting.

10. Farm Water Quality Management Plan (Farm Plan) - a document that contains, at a minimum, identification of practices that are currently being or will be implemented to address irrigation management, pesticide management, nutrient management and erosion control to protect water quality. Plans will contain a schedule for implementation of practices. Lists of water quality protection practices are available from several sources, including the University of California farm plan template available from the University of California and on-line at <http://anrcatalogue.ucdavis.edu/merchant.ihtml?pid=5604&step=4>.

11. All other terms shall have the same definitions as prescribed by California Water Code Division 7, unless specified otherwise.

## **B. Enrollment Process**

All applicants must submit the following information as part of their Notice of Intent (NOI) to enroll:

- Completed application form, including location of the operation and identification of responsible parties (owners/operators)
- Copy of map of operation (map should be the same as the one submitted to the County Agricultural Commissioner for Pesticide Use Reporting, or equivalent)
- Completed management practice checklist/self assessment form
- Certificates of attendance at Regional Board-approved farm water quality education courses, if applicable
- Statement of farm water quality plan completion, if applicable
- Election for cooperative or individual monitoring

## **C. Waiver Tiers**

### **Tier 1 Qualifications and Reporting Requirements**

Tier 1 conditional waivers will be five years in length. To qualify for a Tier 1 conditional waiver, Dischargers must do the following:

- a. complete 15 hours of Regional Board-approved farm water quality education by the enrollment deadline
- b. complete a Farm Plan by the enrollment deadline
- c. provide a biennial practice implementation checklist to the Regional Board demonstrating that the Discharger is implementing the Farm Plan, or that the Discharger has made and is implementing appropriate changes to the Farm Plan
- d. perform individual water quality monitoring or participate in cooperative water quality monitoring

### **Tier 2 Qualifications and Reporting Requirements**

Tier 2 conditional waivers will be one year in length, renewable up to three years. To qualify for a Tier 2 conditional waiver, operations must do the following:

- a. complete at least 5 hours of Regional Board-approved water quality education per year, up to a total of at least 15 hours (the first 5 hours may be completed after enrollment)
- b. complete a Farm Plan within three years of the enrollment deadline

- c. provide annual practice implementation checklists identifying currently implemented and planned management practices and progress reports on completion of requirements to the Regional Board
- d. perform individual water quality monitoring or participate in cooperative water quality monitoring

**D. General Conditions for All Waiver Holders**

1. The Discharger shall not cause or contribute to conditions of pollution or nuisance as defined in CWC Section 13050.
2. The Discharger must comply with all requirements of applicable water quality control plans.
3. The Discharger shall not cause or contribute to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.
4. Wastewaters percolated into groundwater shall be of such quality at the point where they enter the ground so as to assure the protection of all actual or designated beneficial uses of all groundwaters of the basin.
5. Wastes discharged to groundwater shall be free of toxic substances in excess of maximum contaminant levels (MCLs) for primary and secondary drinking water standards established by the United States Environmental Protection Agency or California Department of Health Services, whichever is more stringent; taste, odor, or color producing substances; and nitrogenous compounds in quantities which could result in a groundwater nitrate concentration (as NO<sub>3</sub>) above 45 mg/l.
6. The Discharger shall comply with each applicable Total Maximum Daily Load (TMDL), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL. If an applicable TMDL does not contain an effective date or compliance date, the Discharger shall commence compliance with the TMDL's implementation plan no later than twelve months after USEPA approves the TMDL.
7. The Discharger shall comply with applicable time schedules.
8. This Conditional Waiver does not authorize the discharge of any waste not specifically regulated under this Order. Waste specifically regulated under this Order includes: earthen materials, including soil, silt, sand, clay, rock; inorganic materials including metals, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.; and organic materials such as pesticides that enter or threaten to enter into waters of the state. Examples of waste not specifically regulated under this Order include hazardous materials, and human wastes.
9. Objectionable odors due to the storage of wastewater and/or stormwater shall not be perceivable beyond the limits of the property owned or operated by the Discharger.

**PART III. RECOMMENDATIONS**

1. Controlling pollutants at the source should be the primary approach to water quality protection.

2. Irrigation efficiency improvement should be used to minimize wastewater generation.
3. Crop nutrient requirements should be evaluated to minimize fertilizer applications.
4. Irrigation water nitrate and soil nitrate content should be incorporated in fertilization decisions.
5. Erosion control should be considered as part of storm water management and irrigation water management.
6. Integrated pest management techniques, such as pest population monitoring, should be incorporated into pest control decision-making to minimize use of pesticides.

#### **PART IV. PROVISIONS**

1. The Discharger shall comply with an individual or cooperative Monitoring and Reporting Program approved by the Regional Board Executive Officer.
2. A copy of the Conditional Waiver and farm water quality plan shall be kept at the operation for reference by operating personnel. Key operating and site management personnel shall be familiar with its contents.
3. In the event of any change in control or ownership of an operation presently owned or controlled by the Discharger, the Discharger shall notify the succeeding owner or operator of the existence of this conditional waiver order by letter, a copy of which shall be immediately forwarded to the Regional Board Executive Officer. The new Discharger shall submit a NOI within 30 days.
4. The Discharger shall take all reasonable steps to prevent any discharge in violation of this conditional waiver.
5. The Discharger shall furnish the Regional Board, within a reasonable time, any information that the Board may request to determine compliance with this conditional waiver Order.
6. The Discharger shall allow Regional Board staff reasonable access onto the subject property (the source of runoff and percolating water) whenever requested by Regional Board staff for the purpose of performing inspections and conducting monitoring, including sample collection, measuring, and photographing to determine compliance with conditions of the waiver.
7. Pursuant to CWC section 13267, the following information/reports shall be submitted to the Regional Board according to the following time schedule to ensure compliance with the terms and conditions of this Conditional Waiver, unless the Regional Board has granted a time extension<sup>1</sup>:

<sup>1</sup> The Regional Board recognizes that the cooperative monitoring entity is not a discharger subject to regulation under the Porter-Cologne Water Quality Control Act. However, the cooperative monitoring entity must satisfy the milestones applicable to it before any individual discharger may rely on cooperative monitoring to satisfy the discharger's monitoring requirements.

<b>Reporting Tasks/Milestones</b>	<b>Responsible Party</b>	<b>Due Date</b>
Notice of Intent	All Dischargers	January 1, 2005
Annual Report	Tier 2 Dischargers	January 1, 2006 and annually thereafter
Management Practice Checklist Update	Tier 1 Dischargers	January 1, 2007

<b>Monitoring Tasks/Milestones</b>	<b>Responsible Party</b>	<b>Due Date</b>
Establish an Agricultural Committee*	Cooperative Monitoring Program	September 1, 2004
Establish a Cost Allocation Subcommittee*	Cooperative Monitoring Program	November 1, 2004
Establish a Agricultural Monitoring Subcommittee* (not required)	Cooperative Monitoring Program	As early as possible
Establish a Cooperative Monitoring Entity*	Cooperative Monitoring Program	January 1, 2005
Approved Quality Assurance Project Plan and Sampling Plan	Cooperative Monitoring Program/Individual Dischargers	January 1, 2005
Start Date Salinas and Santa Maria Area Monitoring	Cooperative Monitoring Program	January 1, 2005
Start Date for Individual Monitoring	Individual Dischargers	October 1, 2005
Submit List of Participants in Cooperative Monitoring Program	Cooperative Monitoring Program	January 1, 2006
Submit Cost Allocation Formula	Cooperative Monitoring Program	January 1, 2006
Start Date for Regionwide Cooperative Monitoring	Cooperative Monitoring Program	January 1, 2006
Electronic Monitoring Data Submittal	Cooperative Monitoring Program/Individual Dischargers	Three months after start of monitoring and quarterly thereafter
Hard Copy Monitoring Report Submittal	Cooperative Monitoring Program/Individual Dischargers	January, 2007 and annually thereafter

\* The Agricultural Committee will have the sole authority to determine the membership of the Agricultural Monitoring Committee and Cost Allocation Committee. The Agricultural Committee is not required to open committee membership to the general public

8. All reports, NOI, or other documents required by this conditional waiver Order, and other information requested by the Regional Board shall be signed by the owner and/or operator of an irrigated operation.
9. Any person signing a NOI, monitoring report, or technical report makes the following certification, whether written or implied:

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

10. Violations of this conditional waiver may result in enforcement actions as authorized under the CWC.
11. Conditional waivers may be issued for five years and may only be reissued after a public hearing. The conditional waiver will be reviewed at a public hearing on or before May 13, 2009. At that time, additional conditions may be imposed.
12. A waiver of WDRs for a type of discharge may be superseded by the adoption by the State Board or Regional Board of specific waste discharge requirements or general waste discharge requirements for specific discharges.
13. The Regional Board may review this Order and Conditional Waiver at any time and may modify or terminate the waiver in its entirety or for individual Dischargers as appropriate.
14. The Regional Board directs the Executive Officer to provide regular updates to the Regional Board regarding the effectiveness of the conditional waiver to regulate these types of discharges. These updates may include: Executive Officer Reports, memoranda, staff reports, workshops, and agenda items.
15. This Order and Conditional Waiver shall become effective July 10, 2009 and expire **July 10, 2010** unless rescinded, renewed or extended by the Regional Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 10, 2009.

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Roger W. Briggs  
Executive Officer

# ALAB Agenda 7

April 5, 2010

IN THE BOARD OF SUPERVISORS  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

*Supplemental info.  
Agenda item  
#7.*

MON day April 27, 1970

PRESENT: Supervisors M. Roland Gates, Elston L. Kidwell, John V. Freeman  
Lyle F. Carpenter, and Chairman Hans Heilmann

ABSENT: None

Resolution No. 70-253

RESOLUTION APPROVING ESTABLISHMENT  
OF A COUNTY AGRICULTURAL LIAISON BOARD  
AND PROVIDING FOR APPOINTMENTS TO SAME

The following resolution is now offered and read:

WHEREAS, the San Luis Obispo County Farm Bureau has indicated the need for a liaison board to assist the agricultural industry in said County with its ever increasing problems; and

WHEREAS, the functions of this board would be to receive, review, and propose for presentation to appropriate county agencies, complaints from members of the rural communities, and to pursue necessary action; and

WHEREAS, this Board of Supervisors concurs with the need for and value of establishing an agricultural liaison board on a totally self-supporting basis;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Supervisors of the County of San Luis Obispo, State of California do hereby approve formation of a County Agricultural Liaison Board who shall serve at the will and pleasure of the Board of Supervisors, and whose membership shall consist of ten (10) members appointed as follows:

1. Five (5) members, one, to be nominated by the Supervisor of each District and appointed by the Board of Supervisors, who is a bonafide farmer or who most nearly represents the type of agriculture in that District.
2. The President of the Farm Bureau or his appointee during his tenure.
3. The President of the Cattlemen's Association or his appointee during his tenure.

4. One representative from an allied industry, preferably agricultural financing, who shall be appointed by the Board of Supervisors.
5. The Farm Advisor and Agricultural Commissioner who shall act as advisors in a non-voting capacity.

BE IT FURTHER RESOLVED that:

1. These appointments be made as soon as possible to insure prompt functioning of the Board.
2. One year from the date of inception of the Agricultural Liaison Board, the Board of Supervisors shall review and determine the feasibility of its continued existence.

Upon motion of Supervisor GATES, seconded by Supervisor Carpenter, and on the following roll call vote, to-wit:

AYES: Supervisors Gates, Carpenter, Kidwell, Freeman, Chairman Heilmann

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

Thomas Heilmann  
Chairman of the Board of Supervisors

ATTEST:

Ruth Warnken  
Clerk of the Board of Supervisors

ADMIN. OFF.  
3WC

STATE OF CALIFORNIA, }  
County of San Luis Obispo, } ss.

I, RUTH WARNKEN, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this 4th day of May, 1970.

(SEAL)

RUTH WARNKEN  
County Clerk and Ex-Officio Clerk of the Board of Supervisors  
By Diaseil Madewell  
Deputy Clerk.

IN THE BOARD OF SUPERVISORS  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day May 5, 19 92

PRESENT: Supervisors Harry Ovitt, Evelyn Delany, Ruth Brackett,  
David Blakely, and Chairperson Laurence L. Laurent

ABSENT: None

RESOLUTION NO. 92 - 220

AMENDING RESOLUTION NO. 70-253  
TO EXPAND THE MEMBERSHIP OF THE COUNTY AGRICULTURAL  
LIAISON BOARD AND PROVIDING FOR APPOINTMENTS TO SAME

The following resolution is hereby offered and read:

WHEREAS, the County Agricultural Board was established by Resolution No. 70-253, with said resolution providing for appointments thereto; and

WHEREAS, it is deemed desirable and beneficial to have representatives of the Coastal San Luis Resource Conservation District and the Upper Salinas - Las Tablas Resource Conservation District included as members of the County Agricultural Liaison Board.

NOW, THEREFORE BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, does hereby approve the addition of two members to the County Agricultural Liaison board effective as of July 1, 1992, as set forth below:

One representative each from the Coastal San Luis Resource Conservation District and the Upper Salinas - Las Tablas Resource Conservation District. Said representatives to be nominated by the respective Boards of Directors from the Directors or Associate Directors of the two districts.

B-56  
3

On motion of Supervisor Delany, seconded by Supervisor

Blakely and on the following roll call vote, to wit:

AYES: Supervisors Delany, Blakely, Ovitt, Brackett, Chairperson Laurent

NOES: Supervisors None

ABSENT: Supervisors None

The foregoing resolution is hereby adopted.

LAURENCE L. LAURENT

Chairman, Board of Supervisors

ATTEST:

FRANCIS M. COONEY

Francis M. Cooney, Ex-Officio  
Clerk of the Board of Supervisors

STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO) SS

I, FRANCIS M. COONEY, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors this 14th day of May 19 92.

FRANCIS M. COONEY

County Clerk and Ex-Officio Clerk of the Board of Supervisors

Laurence L. Laurent  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL EFFECT

4/28/92 19 92  
AMES B. LINDHOLM, JR  
COUNTY COUNSEL  
SAN LUIS OBISPO COUNTY

BY [Signature]  
DEPUTY COUNTY COUNSEL

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Agricultural Commissioner		(2) MEETING DATE June 5, 2001		(3) CONTACT/PHONE (805)781-5910	
(4) SUBJECT Agriculture Liaison Advisory Board updating Resolution 70-253 and 92-220					
(5) SUMMARY OF REQUEST In the review of County Boards and Commissions the County Clerk Recorder's Office determined that the resolution authorizing the Ag Liaison Board was dated and appointment processes and terms of office were unclear.					
(6) RECOMMENDED ACTION It is recommended that your board approve the Ag Liaison Resolution updating Resolution 70-253 and 92-220. Further, direct the Agricultural Commissioner to clarify appointments and terms as specified in the resolution in a prompt manner for Board of Supervisors' consideration.					
(7) FUNDING SOURCE(S) County General Fund		(8) CURRENT YEAR COST \$58		(9) ANNUAL COST \$2,000	
(10) BUDGETED? <input type="checkbox"/> YES <input type="checkbox"/> N/A <input checked="" type="checkbox"/> NO					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): We worked with the Ag Liaison Board, the County Clerk Recorder's Office through Vicky Shelby and the environmental community in developing this resolution.					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		
(15) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(16) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(17) NEED EXTRA EXECUTED COPIES? <input checked="" type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input type="checkbox"/> N/A			(18) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		

(19) ADMINISTRATIVE OFFICE REVIEW
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COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

2156 SIERRA WAY, SUITE A • SAN LUIS OBISPO, CALIFORNIA 93401-4556  
RICHARD D. GREEK  
AGRICULTURAL COMMISSIONER/SEALER

(805) 781-5910

FAX (805) 781-1035

AgCommsLO@co.slo.ca.us

May 24, 2001

To: Board of Supervisors

From: Richard Greek, Agricultural Commissioner/Sealer

*RidG*

Subject: Agricultural Liaison Advisory Board Resolution Updating Resolution 70-253 and 92-220

Recommendation

It is recommended that your Board of Supervisors approve the resolution and direct the Agricultural Commissioner to clarify appointments and terms as provided for in the resolution in a prompt manner for Board of Supervisors consideration.

Discussion

The County Clerk Recorder in their review of County Boards and Commissions requested the following issues be ratified/approved by your Board of Supervisors:

1. Formally establish or delete the environmental position.
2. Formally establish terms for all members, not just the supervisorial district representatives.
3. Formally establish who appoints the Resource Conservation District (RCD) members.

The attached resolution addresses those issues identified by the County Clerk and establishes the framework necessary to insure that all positions and those persons occupying Agricultural Liaison Board positions are clearly participating at the direction of your board.

The environmental position has been a voting participant since 1980. The perspective this position has brought to the Agricultural Liaison Board, historically and particularly recently, has been critical to insuring issues are looked at in depth and from varied perspectives. On more than one occasion, in recent months, the Agricultural Liaison Board unanimously recognized the value of that position and are recommending that its status be clearly documented within the resolution which they supported and is before you for consideration. ECOSLO has agreed to canvass local environmental organizations and recommend a nominee for appointment by your Board of Supervisors. The Agricultural Liaison Board endorsed this as an appropriate method largely paralleling and providing a process similar to other appointments. We have attached the letter from ECOSLO committing to providing that function.

Board of Supervisors

Agricultural Liaison Advisory Board Resolution Updating Resolution 70-253 and 92-220

Page 2

In evaluating the role of the Agricultural Liaison Board, staff noted, and the Agricultural Liaison Board concurred, that although the primary focus has been related to land use or other agricultural issues, discussions have benefitted the County staff in helping develop departmental programs and providing information and support to your board. Therefore, the resolution also acknowledges that the Agricultural Liaison Board is a resource for your board and county departments for deliberation and recommendations on agricultural issues.

The resolution also provides the opportunity for a board member to choose a farmer from another district who most nearly represents the type of agriculture in or adjacent to their district. With the current redistricting effort based upon the census, the Agricultural Liaison Board felt that in those more urban oriented regions, finding a farmer or rancher able and willing to serve on a board might become more challenging in the future. This change increases the opportunity and discretion of a board member to find a highly qualified candidate.

Thanks to the San Luis Obispo County Farm Bureau, a large majority of the miscellaneous expenses connected with this advisory board have been covered. For several years there has been discussion by the Agricultural Liaison Board regarding equal treatment relative to support from county funds comparable to that provided other boards and commissions. As a result, the Agricultural Commissioner has absorbed some of the expenses, such as printing letterhead and proposes that in the future their budget cover those items necessary for conducting business.

#### Other agency involvement

County Counsel has approved the resolution as to form and legal effect. This package is a result of the collaborative efforts of the Agricultural Commissioner with the County Clerk Recorder's Office, the Agricultural Liaison Board and the Environmental Center of San Luis Obispo County, as well as the Sierra Club, Native Plant Society, Cambria's Green Space, and Life on Planet Earth. Outreach beyond this group was relied upon through the participants on the Agricultural Liaison Board and the network of agricultural, environmental and governmental organizations that they belong to and represent.

#### Financial considerations

The impact upon the County general fund is relatively minor with an estimated \$2,000 per year expense to the Agricultural Commissioner's Office for general office support. The estimated cost was provided by San Luis Obispo Farm Bureau. The transition of these expenses has been gradual and the Agricultural Commissioner intends to address those needs through the normal budget process.

ATTACHMENT: Copy of Resolution and ECOSLO Letter of 3/21/01

Resolution 70-253

Resolution 92-220

IN THE BOARD OF SUPERVISORS  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day June 5, 2000 1

PRESENT: Supervisors Shirley Bianchi, Peg Pinard, Michael P. Ryan and  
Chairperson K.H. "Katcho" Achadjian

ABSENT: Supervisor Harry L. Ovitt

RESOLUTION NO. 2001-228

Agricultural Liaison Advisory Board Resolution Updating Resolution 70-253 and 92-220

WHEREAS, the Agricultural Liaison Advisory Board was established in 1970 at the request of the San Luis Obispo County Farm Bureau; and

WHEREAS, appointments and membership were provided by Resolutions 70-253 and 92-220; and

WHEREAS, the Board of Supervisors extended the Ag Liaison indefinitely beyond its initial one-year existence on September 27, 1971; and

WHEREAS, the Agricultural Liaison Advisory Board has functioned for three decades providing agricultural perspective to the Board of Supervisors on land use planning; and

WHEREAS, the Board of Supervisors and the county's departments have found value in referring agricultural issues to the Ag Liaison Board for deliberation.

NOW, THEREFORE BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, do hereby affirm the establishment of the Ag Liaison Board who shall serve at the will and pleasure of the Board of Supervisors for deliberation and recommendation(s) on agricultural issues and whose membership shall consist of thirteen (13) members appointed as follows:

1. Five (5) members, one to be nominated by the Supervisor of each District and appointed by the Board of Supervisors for a term running concurrent with the nominating supervisor who is a bonafide farmer or who most nearly represents the type of agriculture in that District or a farmer from another district who most nearly represents the type of agriculture in or adjacent to said district.
2. Two (2) members of Agricultural Organization(s) representing a broad cross section of Farmers and Ranchers, specifically described as follows:
  - a. The President of the San Luis Obispo County Farm Bureau or their appointee during his/her tenure.
  - b. The President of the San Luis Obispo County Cattlemen's Association or their appointee during his/her tenure.
3. One representative from an allied industry, preferably agricultural financing, who is appointed by the Board of Supervisors for a four-year term.
4. One representative nominated by the Governing Board of ECOSLO after soliciting local environmental organizations, and appointed by the Board of Supervisors for a four year term.
5. One representative nominated by the Coastal San Luis Resource Conservation District and appointed by the Board of Supervisors for a four-year term.
6. One representative nominated by the Upper Salinas-Las Tablas Resource Conservation District and appointed by the Board of Supervisors for a four-year term.
7. The Cooperative Extension Director or their designee who shall act in an advisory

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- non-voting capacity without term limits.
8. The Agricultural Commissioner or their designee who shall provide staff support as needed and act in an advisory non-voting capacity without term limits.

**BE IT FURTHER RESOLVED AND ORDERED,**

1. Expenses necessary for conducting business and staff support shall be budgeted within the Agricultural Commissioner/Measurement Standards budget.
2. The clarification of appointments and terms deliberated in the resolution be transitioned in a prompt manner.

Upon motion of Supervisor Ryan, seconded by Supervisor Bianchi, and on the following roll call vote, to wit:

AYES: Supervisors Ryan, Bianchi, Pinard, Chairperson Achadjian

NOES: None

ABSENT: Supervisor Ovitt

The foregoing resolution is hereby adopted.

K. H. ACHADJIAN  
Chairperson of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD

Clerk of the Board of Supervisors

BY: CHERIE ASPURIO Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.

By: [Signature]  
Deputy County Counsel

Dated: 5/21/01

STATE OF CALIFORNIA ) COUNTY OF SAN LUIS OBISPO ) 58
I, JULIE L. RODEWALD, County Clerk of the above county, do hereby certify the foregoing to be correct and true copy of an order entered in the relation of said Board of Super- visors, and now on file in my office.
Witness my hand and seal of said Board of Supervisors this <u>6-8-01</u>
JULIE L. RODEWALD County Clerk of San Luis Obispo County
By <u>Cherie Aspurio</u> Deputy Clerk

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