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April 13, 2005

VIA FACSIMILE AND GUARANTEED OVERNIGHT DELIVERY

Mr. Roger W. Briggs, Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401

Re: Monitoring and Reporting Program for Dischargers Enrolled Under Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands
Order No. R3-2004-0117

Dear Mr. Briggs:

Last year this office participated on behalf of certain of the agricultural associations involved in submitting a monitoring proposal to the Central Coast Regional Water Quality Control Board and testified on behalf of Mr. Steve Jensen and Jensen Farms before the Board at its public hearing on July 8, 2004, in Watsonville, California.

A serious question within the ranks of the agricultural industry has now arisen concerning the relationship of the nonprofit organization that has evolved to assume responsibility for conducting the cooperative monitoring and reporting program - Central Coast Water Quality Preservation, Inc. - to both the Board and the twenty-three agricultural industry associations that participated in development of the cooperative monitoring proposal.

Your written clarification is requested on how the nonprofit organization that will be responsible for conducting the cooperative monitoring and reporting program is to work with the agricultural industry.

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Both your Board's Order No. R3-2004-0117, and the Monitoring and Reporting Program adopted pursuant to said Order, delineate the agricultural industry's role in the cooperative monitoring program:

- "Regional Board staff is directed to work with the agricultural industry to assist the industry to establish or identify an existing nonprofit entity." (Order, p. 6, para. 31)
- "Staff will assist the agricultural industry to identify a suitable entity to manage the cooperative monitoring program." (Order, p. 7, para. 35)
- Table identifies "Cooperative Monitoring Program" as "Responsible Party" for specified monitoring tasks. (Order, p. 15)
- "Regional Board staff is directed to work with the agriculture industry to identify an organization or other entity suitable to conduct the Cooperative Monitoring Program according to the timeline adopted in the Waiver Order." (Program, p. 2, para. 3, ll 3-6)
- "...[T]he Cooperative Monitoring Program should be structured as a unified approach conducted by a single entity." (Program, p. 3, para. 3, ll 11-12)
- "Funds for the Cooperative Monitoring Program should be collected and managed by an entity (nonprofit organization or other suitable group) designated by the agricultural industry and acceptable to the Regional Board." (Program, p. 4, para. 1, ll 1-3)

Twenty three agricultural associations joined together in submitting written clarification and expanding upon the industry's monitoring proposal in a letter to your Board dated July 6, 2004. This letter was provided to your Board for its July 8, 2004, hearing as Supplemental Sheet Attachment 8 ("Agricultural Industry Revised Monitoring Proposal").

Under the heading "**Establishment of an Industry-Led Non-Profit Entity to Administer the Monitoring Program,**" the Revised Monitoring Proposal states:

"The industry will begin work immediately to identify and form an entity to develop, implement, and administer the Monitoring Program. The industry

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will need six (6) months to secure a Board of Directors, develop Bylaws, and file Articles of Incorporation with the State of California. The entity will be formed by January 1, 2005.

“The Non-Profit Entity will work with the CCRWQCB and SWRCB to secure grant funds to implement Phase I.”

The Staff response was as follows:

“Staff concurs and will work closely with the industry to assist them in obtaining funding.” (Revised Monitoring Proposal, page 4)

As you are aware, a nonprofit entity called “Central Coast Water Quality Preservation, Inc.” (CCWQP) was formed and has taken it upon itself to begin to act as the industry-formed entity to administer the cooperative monitoring program. A March 4, 2005, draft memo from Mr. Dennis Dickerson, Executive Director of CCWQP, to his Board of Directors and Cost Allocation Committees, states: “CCWQP has been designated to implement the Cooperative Water Quality Monitoring Program required by the Central Coast Regional Water Board.”

The concerns of the agricultural industry regarding the cost allocation structure that will be developed to fund the cooperative monitoring program were presented in the Revised Monitoring Proposal under the heading “**Establishment of a Cost Allocation Subcommittee**”:

“The industry will appoint a subcommittee consisting of eight (8) members of the Region 3 Agricultural Committee to develop a recommended fee schedule by November 1, 2005, for the Monitoring Program.

“The undersigned support a fair and equitable methodology for assigning financial responsibility for the Monitoring Program, which focuses on the cost of services being provided under the Conditional Waiver rule or monitoring program. Accordingly, we believe that the financial responsibility of each irrigated agricultural discharger or landowner for the monitoring program should be proportional to their respective contributions to water quality impairment. To the extent necessary, the financing methodology should include *off-sets or credits* for those dischargers and landowners that contribute to or cause *water quality improvements* as a result of agricultural or drainage

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practices. We believe that a per-acre fee assessed to include all irrigated agricultural dischargers and landowners in the Region, is not fair or equitable, and may be legally suspect.” (Revised Monitoring Proposal, page 3) (Emphasis in original)

The Staff response was as follows:

“Staff agrees that the distribution of financial responsibility for monitoring should be fair and equitable. The agricultural industry has the opportunity to develop a cost allocation structure that it believes to be most suitable, as long as the financial needs of the program are met.” (Revised Monitoring Proposal, page 3)

The industry’s further concerns about funding were set forth in the Revised Monitoring Proposal under the heading **“Phase II: Region-wide and Watershed-wide Network Monitoring January 2, 2006 - June 2009”**:

“To ensure industry participation in the monitoring program, it is imperative that the Non-Profit Entity adopts the Cost Allocation Committee’s recommended fee structure prior to the commencement of fee collection and Region-wide/Watershed-wide Network Monitoring.”

The Staff response was, “Staff agrees.” (Revised Monitoring Proposal, page 5)

It is becoming increasingly apparent, at least to my clients, that there is a disconnect between the funding approach being pursued by CCWQP and the approach suggested by the industry in its Revised Monitoring Proposal. It seems clear enough that the nonprofit entity is to take direction from the industry’s Cost Allocation Committee, and not the other way round.

In order to have any hope of resolving this matter by consensus within the agricultural industry, it is important to have a clear signal from your Board and staff as to how they interpret the Order and Monitoring Program on the key issue of the relationship between the nonprofit entity and the industry-appointed Cost Allocation Committee.

In the event that consensus cannot be secured within the agricultural industry on the funding mechanism for the cooperative monitoring program, then my clients will seriously pursue

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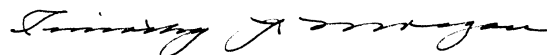
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contracting with an existing local public water agency as a watershed-based approach to meeting the discharge monitoring requirements.

I understand an important meeting is scheduled for this coming Tuesday between the CCWQP Board and the two relevant agricultural industry sub-committees at which the cost allocation structure will be discussed. It would be extremely useful to have your views on the question posed by this letter in advance of that meeting.

I thank you for your continuing cooperation and look forward to your response.

Sincerely,



Timothy J. Morgan

cc: Steve Jensen, Jensen Farms

Nancy Isakson

Roger Moitoso