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## **Conservation, Environmental Justice, and Industry Sue State over Agricultural Pollution**

Last Wednesday, a coalition of five nonprofit organizations and an elderly woman on a fixed income in Monterey County, Antonia Manzo, who cannot drink water from her tap because it is contaminated with agricultural waste, filed a lawsuit in California Superior Court challenging the Central Coast Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Agriculture (also known as the Ag Waiver). The coalition contends that the Ag Waiver is so weak it does not comply with State Law. The organizations (Santa Barbara Channelkeeper, The Otter Project, Environmental Justice Coalition for Water, Pacific Coast Federation of Fishermen's Associations, and California Sportfishing Protection Alliance) represent a broad alliance of conservation, environmental justice, and industry united in protecting clean water.

"The economic and health impacts of our government's inability to adequately regulate agricultural pollution into drinking water fall most heavily on those families whose limited resources mean they are least able to defend themselves against this ongoing assault. This lawsuit is filed with the interests of those families at heart," said Colin Bailey, Executive Director of the Environmental Justice Coalition for Water.

Agricultural pollution is exempt from regulation by the federal Clean Water Act but is governed by California's Water Quality Control Act. In adopting the Water Quality Control Act, the California Legislature declared that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." Any person or industry proposing to discharge waste that "could affect the quality of the waters of the state" must file a report of waste discharge and be issued a permit (called Waste Discharge Requirements). A group of similar dischargers can be issued a group permit, called a Conditional Waiver of Waste Discharge Requirements. All dischargers in the group must comply with the "conditions" of the waiver.

On July 9, 2004, the Central Coast Water Quality Control Board adopted its first Ag Waiver. In a report released on February 1, 2010, Regional Board staff explained that, six years after adoption of the 2004 Waiver, there was "no direct evidence that water quality [was] improving due to the 2004 Conditional Waiver." Regional Board staff noted that many water segments throughout the Central Coast region are listed as impaired under section 303(d) of the federal Clean Water Act, nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain "well documented, severe, and widespread." Regional Board staff concluded that "[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life." Staff determined that the 2004 Waiver "[lacked] clarity and focus," did not provide for adequate "compliance and verification monitoring," and allowed "agricultural

discharges [to] continue to severely impact water quality in most receiving waters.” The Regional Board set out to renew the five-year waiver in 2009 and issued a new Draft Ag Waiver in February 2010. The draft was attacked by agricultural interests as draconian, punishing, and intrusive over-regulation and was significantly weakened when it was finally adopted by the Regional Board in March 2012. Desiring even weaker regulation, organized agricultural interests filed four separate appeals of the Regional Board’s decision to the State Water Resources Control Board. Conservation interests filed an appeal asking for stricter regulation. On October 29, 2013 the State Board issued its decision to further dramatically weaken the Ag Order.

The coalition that filed the lawsuit believes the Ag Order fails to protect public health and the environment by allowing the further degradation of surface and ground water quality. The coalition also believes that crucial scientific evidence of water quality degradation – and solutions – were deliberately excluded from the policy making process. Finally, the coalition contends that the process fails to comply with California’s Environmental Quality Act (CEQA). They are asking for reinstatement of the March 2012 Waiver adopted by the Regional Board while the State develops stricter regulations. The organizations are represented by Stanford Environmental Law Clinic and the Golden Gate University Environmental Law and Justice Clinic, and Ms. Manzo is represented by California Rural Legal Assistance.

“The financial, legal, and political resources of big agriculture eviscerated and weakened the regulation. Agriculture has every right to use the public’s water but they do not have the right to return it so polluted that it kills the life that lives in it,” said Steve Shimek, Executive Director of The Otter Project.

“The Waiver created slightly more stringent requirements for only 3% of the region’s largest, most polluting farms, which would have done nothing to address the serious problem of agricultural pollution in the greater Santa Barbara area,” said Kira Redmond, Executive Director of Santa Barbara Channelkeeper. “The power of big ag’s influence simply drowned out and defeated the mandate to protect the environment and public health. We had no choice but to stand up and say no.”

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**Notes:**

A copy of the complaint can be found at <http://www.otterproject.org/wp-content/uploads/2013/12/2013-11-25-Amended-Writ-Petition-FINAL.pdf>

The groups simultaneously filed an amended complaint and a new complaint. If for some reason the court did not allow the groups to amend their previous complaint, filing the new complaint ensures they still meet the filing deadline.