

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION

**IN THE MATTER OF THE ADOPTION OF A CONDITIONAL  
WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR  
DISCHARGES FROM IRRIGATED LANDS**

**CHAIR'S ORDER ON ADMISSION OF NEW INFORMATION**

On February 1, 2012, the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board or Water Board), held a workshop to hear public comments on a proposal to adopt a "Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands" (Conditional Waiver)." At the workshop, Dr. Marc Los Huertos presented a summary of a report he is preparing on behalf of some agricultural interests. Water Board members expressed an interest in whether this report could be made a part of the record in advance of the March 2012 hearing scheduled to consider adoption of a Conditional Waiver.

For the reasons specified in this Chair's Order, I have determined that it is not appropriate to allow Dr. Los Huertos' report into the record prior to the March 2012 hearing.

**BACKGROUND**

The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) are the principal state agencies with primary responsibility for the coordination and control of water quality pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne Act, codified in Water Code Division 7). Water Code section 13260 requires persons who discharge waste to submit a report of waste discharge and pay a fee prior to obtaining waste discharge requirements. Water Code section 13263 authorizes the regional boards to issue waste discharge requirements, but there is no right to discharge. Water Code section 13269 authorizes the regional water boards to conditionally waive the requirements to submit a report of waste discharge and obtain waste discharge requirements. Such waivers must be consistent with applicable state and regional board water quality control plans, must be in the public interest, and must include monitoring to evaluate the effectiveness of the waiver's conditions. A waiver may not exceed five years in duration, but may be renewed.

On July 9, 2004, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted Resolution No. R3-2004-0117 establishing a Conditional

Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (2004 Order) pursuant to Water Code section 13269. The 2004 Order expired on July 9, 2009, and the Central Coast Water Board renewed it for a term of one year until July 10, 2010 (Order No. R3-2009-0050). On July 8, 2010, the Central Coast Water Board renewed the 2004 Agricultural Order again for an additional eight months until March 31, 2011 (Order No. R3-2010-0040). Subsequently, the Executive Officer, pursuant to authority delegated by the Central Coast Water Board, extended the 2010 Order twice, until September 30, 2012.

The Central Coast Water Board has provided an extensive process leading to the March 2012 hearing, including several staff-level workshops, four versions of revised Orders that have all been subject to the opportunity for written comments, two public workshops in the northern and central-southern parts of the Region, two multi-hour hearings, and provided five opportunities to submit written comments. Due to a lack of a quorum, the Water Board held hearings on March 17, 2011 and May 4, 2011 (a continuation of the March hearing) as panel hearings as allowed under Water Code section 11328.14. The written record for this matter was originally closed on January 3, 2011. The written record at that point included an Agricultural Proposal<sup>1</sup> submitted by agricultural interests. At the panel hearing of May 4, 2011, the Chair of the Board directed staff to allow an additional written proposal by agricultural interests into the record, to provide an addendum<sup>2</sup> to the staff report discussing the agricultural proposal, and to allow additional public comment on the agricultural proposal and the staff report.

In an Order dated January 8, 2012 the Chair granted a request to hold an additional public workshop before the Central Coast Water Board, which was held on February 1, 2012, in Salinas. At that workshop, Dr. Los Huertos, on behalf of some members of the agricultural community, presented information regarding the Agricultural Proposal and often referred to a report he is preparing on behalf of the Farmers for Water Quality.<sup>2</sup> At the workshop, Water Board members requested the Chair to determine whether Dr. Los Huertos' report may be included in the record prior to the March 2012 hearing.

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<sup>1</sup> The original Agricultural Proposal was submitted by Ms. Kari Fisher of the California Farm Bureau Federation on behalf of several other agricultural organizations, whose representatives signed the transmittal of the proposal (April 2010 and December 2010).

<sup>2</sup> Ms. Theresa Dunham on behalf of "Farmers for Water Quality" submitted the addendum to the Agricultural proposal which consists of documents submitted in March and May 2011. Note that many agricultural companies and individuals also submitted separate comments that are part of the record.

<sup>2</sup> Farmers for Water Quality members include the California Strawberry Commission, Grower-Shipper Association of Central California, Monterey County Farm Bureau, Santa Cruz County Farm Bureau, Grower-Shipper Association of Santa Barbara & San Luis Obispo Counties, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, and Western Growers.

## CONSIDERATIONS

The State Water Board has adopted regulations that apply to the Water Board's adjudicatory proceedings, including the adoption of waste discharge requirements and waivers of waste discharge requirements. (Tit. 23 Cal. Code Regs §§ 648 *et seq.*) The regulations allow the Regional Board to require comments and evidence to be submitted according to the hearing notice. (Tit. 23 Cal. Code Regs. §648.4(c).) In addition, the regulations state that where testimony or evidence is proposed to be submitted after the date stated in the notice, the Water Board "may refuse to admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Board." (Tit. 23 Cal. Code Regs. §648.4(e).) Since the information is proposed to be submitted after the close of the comment period set forth in the public notice for this matter, the issue to consider is whether admission of the report into the record would prejudice any party or the Board.

Dr. Los Huertos explained at the workshop that he is preparing a model for implementing a conditional waiver, that his work was commissioned by some of the agricultural community, that it is a work in progress, and that it is not complete. In addition, on his website he explains that the document is commissioned by Farmers for Water Quality but represents the views of the author, not Farmers for Water Quality, and that it is updated weekly. The report is 72 pages long and based on a review of the table of contents appears to contain a more detailed description of the Agricultural Proposal originally submitted in April 2010, and augmented in December 2010 and March and May 2011, detailed appendices regarding water quality criteria and the proposed third party group process, including the proposed third party audit process and monitoring programs.

As described in this Order, the Central Coast Water Board has followed a thorough and inclusive process leading to consideration of the proposed Agricultural Order in March 2012. All parties have been provided many opportunities to submit written comments and make oral comments at several workshops and hearings. In addition, agricultural representatives have been provided the opportunity to submit additional materials after the close of the written comment period. In order to assure adequate consideration of that additional material, the Water Board allowed additional staff analysis and public comment on the Agricultural Proposal. If the Water Board were to include this report into the record, it would be appropriate, if not necessary for due process, to allow interested persons and the staff to review and comment on the report and submit additional evidence that represents their concerns. Given the length and complexity of the document, there is insufficient time to allow this process to occur prior to the hearing. In addition, since it has been described as a "work in progress," is updated on the website continuously, and has not been submitted by Farmers for Water Quality, which commissioned the report, it appears that the report is not considered final. The agricultural interests have submitted their third party proposal, that appears to be the subject of the report and other parties and staff have had an opportunity to provide

comments to the Board on their proposal. In addition, the Water Board will hold a hearing where interested persons will be allowed to make additional oral comments.

It is my conclusion, therefore, that admission of the draft report into the record would be prejudicial to parties to this matter and to the Central Coast Water Board.

Upon consideration of the request to include Dr. Los Huertos report IT IS ORDERED that:

1. The Report will not be accepted into the record.
2. The written record is closed; no new written comments or evidence will be accepted into the record prior to the March 2012 hearing.

Date: February 16, 2012

A handwritten signature in black ink, appearing to read 'Jeffrey Young', written over a horizontal line.

Jeffrey Young  
Chair, Central Coast  
Regional Water Quality Control Board