

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

DRAFT RESOLUTION R5-2013-XXXX

AMENDMENT TO THE WATER QUALITY CONTROL PLAN
FOR
THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS

FOR
THE CONTROL OF DIAZINON AND CHLORPYRIFOS DISCHARGES

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. In 1975 the Central Valley Water Board adopted the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan), which has been amended occasionally.
2. The Basin Plan may be amended in accordance with Water Code section 13240, et seq.
3. Water Code section 13241 authorizes the Central Valley Water Board to establish water quality objectives and Water Code section 13242 sets forth the requirements for a program for implementation for achieving water quality objectives.
4. Water Code section 13243 authorizes the Central Valley Water Board to specify certain conditions or areas where the discharges of certain types of waste will not be permitted.
5. The federal Clean Water Act section 303 requires the Central Valley Water Board to develop water quality objectives that are sufficient to protect beneficial uses designated for each water body found within its region.
6. The Clean Water Act section 303 requires the Central Valley Water Board to review the Basin Plan at least every three years and where appropriate modify water quality objectives or beneficial uses in the Basin Plan.
7. The following 42 water body segments have been identified under the Clean Water Act section 303(d) as impaired due to elevated concentrations of diazinon and/or chlorpyrifos:

Ash Slough (Madera County); Bear Creek (San Joaquin and Calaveras

Counties); Bear River, Lower (below Camp Far West Reservoir); Berenda Creek (Madera County); Berenda Slough (Madera County); Butte Slough; Colusa Basin Drain; Coon Creek, Lower (from Pacific Avenue to Main Canal, Sutter County); Deadman Creek (Merced County); Del Puerto Creek; Dry Creek (tributary to Tuolumne River, Stanislaus County); Duck Creek (San Joaquin County); Duck Slough (Merced County); French Camp Slough (confluence of Littlejohns and Lone Tree Creeks to San Joaquin River); Gilsizer Slough (from Yuba City to downstream of Township Road); Harding Drain; Highline Canal (from Mustang Creek to Lateral No 8, Merced and Stanislaus Counties); Ingram Creek (from confluence with San Joaquin River to confluence with Hospital Creek); Jack Slough; Live Oak Slough; Lone Tree Creek; Main Drainage Canal (Butte County); Merced River, Lower (McSwain Reservoir to San Joaquin River); Mormon Slough (from Stockton Diverting Canal to Bellota Weir); Morrison Slough (Sutter County); Mustang Creek (Merced County); Natomas East Main Drainage Canal (aka Steelhead Creek, downstream of confluence with Arcade Creek); Newman Wasteway; Orestimba Creek (above Kilburn Road); Orestimba Creek (below Kilburn Road); Pixley Slough (San Joaquin County); Sacramento Slough; Salt Slough; Sand Creek (tributary to Marsh Creek, Contra Costa County); Spring Creek (Colusa County); Stanislaus River, Lower; Stony Creek; Tuolumne River, Lower (Don Pedro Reservoir to San Joaquin River); Ulatis Creek (Solano County); Wadsworth Canal; Westley Wasteway (Stanislaus County); Winters Canal (Yolo County); Yankee Slough (Placer and Sutter Counties).

All of these water body segments are located below the major dams in the Sacramento and San Joaquin River Basins.

8. The available data indicate that the following eight water body segments now have concentrations of diazinon and chlorpyrifos that do not exceed water quality standards, and therefore should be considered for removal from the Clean Water Act section 303(d) list the next time it is updated:

Butte Slough; Duck Slough (Merced County); Harding Drain; Natomas East Main Drainage Canal (aka Steelhead Creek, downstream of confluence with Arcade Creek); Newman Wasteway; Sacramento Slough; Sand Creek (tributary to Marsh Creek, Contra Costa County); Stony Creek.

9. The Central Valley Water Board has established water quality objectives and implementation programs for diazinon and chlorpyrifos for the Sacramento, Feather, and San Joaquin Rivers and the Delta. The implementation programs include loading capacities and allocations for diazinon and chlorpyrifos discharges to these water bodies.

10. The proposed Amendment modifies Basin Plan Chapter III (Water Quality Objectives) to establish numeric objective for diazinon and chlorpyrifos in all water bodies with existing or designated aquatic life beneficial uses, below the major dams, in the Sacramento and San Joaquin River Basins.
11. Pursuant to Clean Water Act section 303(d), a total maximum daily load (TMDL) is required to bring impaired water bodies into compliance with water quality standards. The proposed Amendment modifies Basin Plan Chapter IV (Implementation) to include a pesticide control program for the Sacramento and San Joaquin River Basins below the major dams to achieve the water quality objectives. The proposed Amendment establishes the loading capacities and allocations for diazinon and chlorpyrifos discharges to the 35 water body segments that are listed under Finding 7, but not listed under Finding 8. The loading capacity and allocations are needed to provide a clear basis to determine compliance with and implement applicable water quality objectives. The loading capacities and allocations also satisfy the requirements of TMDL for these water bodies.
12. The proposed Amendment modifies Basin Plan Chapter V (Surveillance and Monitoring) to include monitoring requirements to allow the Central Valley Water Board to assess progress in reducing diazinon and chlorpyrifos discharges and preventing toxicity from pesticide runoff.
13. The proposed Amendment requires dischargers of diazinon and chlorpyrifos to develop and implement plans to ensure the water quality objectives for diazinon and chlorpyrifos are not exceeded.
14. To assure that water quality objectives for diazinon and chlorpyrifos are not exceeded, the proposed Amendment also includes a prohibition from discharging chlorpyrifos and diazinon at concentrations that exceed water quality objectives under certain circumstances.
15. The Basin Plan currently requires the Central Valley Water Board to review the allocations and implementation provisions for diazinon and chlorpyrifos discharges to the Sacramento and Feather Rivers by 30 June 2013. The Basin Plan also states that the Central Valley Water Board intends to review the allocations and implementation provisions for diazinon and chlorpyrifos discharges to the San Joaquin River at least once every five years, beginning no later than 31 December 2009, and for the Delta at least once every five years, beginning no later than 31 December 2010.
16. The Central Valley Water Board has assessed the current Basin Plan allocations and implementation provisions for diazinon and chlorpyrifos runoff into the Sacramento and Feather Rivers, San Joaquin River and the

Delta and found them to be achievable and effective in controlling these discharges in order to meet water quality objectives, but could be improved as defined in Findings 17-20, below.

17. The Central Valley Water Board has found that defining the load allocations for the San Joaquin River to be consistent with the allocations established for the Sacramento River and Delta would improve the ability of the Board and dischargers to assess compliance and establish accountability for controlling discharges to the San Joaquin River in order to meet water quality objectives.
18. The potentially significant point sources for diazinon and chlorpyrifos are municipal and domestic wastewater, municipal storm water, and NPDES-permitted storm water discharges from areas where chlorpyrifos is still applied. The Basin Plan currently contains diazinon and chlorpyrifos wasteload allocations for all NPDES-permitted dischargers. It is appropriate to change the wasteload allocations in the Basin Plan so that they only apply to these significant point sources.
19. Following the phase-out of nearly all non-agricultural uses of diazinon and chlorpyrifos, these pesticides are likely to not be present in effluent from some municipal wastewater treatment plants. In these cases numerical effluent limits for these pesticides may not be required.
20. The current Basin Plan prohibitions, control programs, and monitoring and surveillance requirements for diazinon and chlorpyrifos in the Sacramento and Feather Rivers, San Joaquin River and Sacramento-San Joaquin Delta all contain similar provisions. Therefore merging the diazinon and chlorpyrifos provisions in the Basin Plan will help establish consistent and straightforward requirements.
21. The Central Valley Water Board has considered the factors set forth in Water Code section 13241, including economic considerations, in developing this proposed Amendment. The costs of implementing the proposed Amendment are reasonable relative to the water quality benefits to be derived from implementing the proposed Amendment, considering the size of the geographic area affected by the Amendment, and considering that the estimated costs of compliance with this Amendment duplicate to some extent the costs of complying with existing Basin Plan water quality objectives, the waivers and waste discharge requirements adopted by the Central Valley Water Board to regulate discharges from irrigated lands, and pesticide use regulations from the Department of Pesticide Regulation.

22. The proposed Amendment includes an estimate of the cost of the proposed implementation program to agriculture and identifies potential sources of financing, as required by Water Code section 13141.
23. The scientific portions and scientific basis of the proposed Amendment are based on source material that has already been peer reviewed in accordance with Health and Safety Code section 57004. The proposed Amendment is itself just a new application of earlier adequately peer reviewed work products. The proposed Amendment does not depart from the scientific approach of the other Basin Plan Amendments from which it is derived (R5-2005-0138 and R5-2006-0061).
24. The Central Valley Water Board finds that the scientific portions of the Basin Plan Amendment are based on sound scientific knowledge, methods, and practices in accordance with Health and Safety Code section 57004.
25. The Central Valley Water Board finds that the proposed Amendment is consistent with the State Water Resources Control Board (State Water Board) Resolution No. 68-16, in that the changes to water quality objectives (i) consider maximum benefit to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Additionally, the proposed Amendment is consistent with the federal Antidegradation Policy (40 Code of Federal Regulations section 131.12). The proposed Amendment requires actions to be taken to implement management practices to ensure compliance with water quality objectives. Such actions are of maximum benefit to the people of the state. Control of discharges of diazinon and chlorpyrifos is necessary to protect beneficial uses. The proposed Amendment will not unreasonably affect present and anticipated beneficial uses nor result in water quality less than described in applicable policies because the Amendment is intended to result in compliance with water quality objectives. The actions to be taken are not expected to cause other impacts on water quality.
26. The regulatory action proposed meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
27. The basin planning process has been certified by the Resources Agency as an exempt regulatory program because its process adequately fulfills the purposes of the California Environmental Quality Act (CEQA). The Central Valley Water Board is therefore exempt from CEQA's requirement to prepare an environmental impact report, negative declaration, or initial study (Pub. Resources Code, § 21000 et seq.) for the proposed Amendment. Central Valley Water Board staff has prepared the required

- documentation for adoption of a Basin Plan Amendment, including a completed environmental checklist and written report (Staff Report) prepared for the Board (23 Cal. Code Regs. section 3777).
28. The Central Valley Water Board staff held CEQA scoping meetings on 23 May 2006 and 15 February 2007 to receive comments on the draft Amendment and to identify any significant issues that must be considered.
 29. Central Valley Water Board staff has prepared a draft Amendment and a staff report dated March 2013. The Staff Report included a description of the proposed Amendment and analysis of reasonable alternatives to the proposed Amendment. The Staff Report included an analysis of the reasonably foreseeable environmental impacts of the methods of compliance and an analysis of the reasonably foreseeable alternative methods of compliance with the proposed Amendment. Some potential impacts were identified based on the analysis of the reasonably foreseeable methods of compliance. While these potential impacts can be mitigated, some of these mitigations are outside the jurisdiction of the Central Valley Water Board; therefore these are considered potentially significant impacts.
 30. Central Valley Water Board staff completed an environmental checklist that concluded that the proposed Amendment has the potential to cause significant adverse impacts upon the environment primarily due to the potential loss of agricultural lands to implement management measures and the potential loss of runoff from affected lands causing loss of habitat that is associated with the runoff. There are also potentially significant impacts to air quality, cultural resources, and greenhouse gas emissions for which mitigation measures have been identified which would substantially reduce the potentially significant adverse impacts; however, these mitigation measures are not within the jurisdiction of the Central Valley Water Board. Therefore, staff has prepared a Statement of Overriding Considerations.
 31. The proposed Amendment fulfills legal requirements imposed on the Central Valley Water Board by the federal Clean Water Act. Implementation of the proposed Amendment will improve water quality for aquatic habitat and drinking water. To the extent significant adverse environmental effects could occur, the Central Valley Water Board has balanced the economic, legal, social, and other benefits of the Amendment against the potentially unavoidable environmental risks and finds that specific economic, legal, social, and other benefits of the Amendment outweigh the potentially unavoidable adverse environmental effects, such that those effects are considered acceptable.

32. Central Valley Water Board staff has circulated a Notice of Public Hearing, Notice of Filing, a written Staff Report, response to public comments documents, and environmental checklist, and a draft Amendment to interested individuals and public agencies, including persons having special expertise with regard to the environmental effects involved with the proposed Amendment, for review and comment in accordance with state and federal environmental regulations (23 Cal. Code Regs. section 3775, 40 C.F.R. 25, and 40 C.F.R. 131).
33. The Central Valley Water Board held a public hearing on 12 April 2013, for the purpose of receiving testimony on the draft Basin Plan Amendment. Notice of the public hearing was sent to all interested persons and published in accordance with Water Code section 13244.
34. Based on the record as a whole, including a draft Basin Plan Amendment, the environmental document, accompanying written documentation, and public comments received, the Central Valley Water Board concurs with staff's conclusion that some actions to comply with the Amendment may result in significant impacts and the Central Valley Water Board concurs with the Statement of Overriding Considerations. The Central Valley Water Board finds that the record as a whole and the procedures followed by staff comply with applicable CEQA requirements (23 Cal. Code Regs. section 3775 et seq, Public Resources Code sections 21080.5, 21083.9, and 21159, 14 Cal. Code Regs. section 15250).
35. A Basin Plan Amendment must be approved by the State Water Board, Office of Administrative Law (OAL), and the United States Environmental Protection Agency (USEPA). The proposed Amendment becomes effective under state law after OAL approval and becomes effective under the federal Clean Water Act after USEPA approval.
36. The Central Valley Water Board finds that the Amendment to the Basin Plan was developed in accordance with Water Code section 13240, et seq.

THEREFORE BE IT RESOLVED:

1. Pursuant to section Water Code section 13240, et seq., the Central Valley Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the Staff Report and adopts the Amendment to the Basin Plan as set forth in Attachment 1.
2. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Water Board in accordance with the requirements of section 13245 of the Water Code.

3. The Central Valley Water Board requests that the State Water Board approve the Basin Plan Amendment in accordance with the requirements of sections 13245 and 13246 of the Water Code and forward it to OAL and the USEPA for approval. The Central Valley Water Board specifically requests USEPA approval of all Basin Plan Amendment provisions that require USEPA approval.
4. If during its approval process the Central Valley Water Board staff, State Water Board or OAL determines that minor, non-substantive corrections to the language of the Amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Central Valley Water Board of any such changes.
5. The Central Valley Water Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.
6. Following approval of the Basin Plan Amendment by the OAL, the Executive Officer shall file a Notice of Decision with the Secretary for Resources in accordance with Public Resources Code section 21080.5, subsection (d)(2)(E), and California Code of Regulations, title 23, section 3781.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 30 May 2013.

/s/
PAMELA C. CREEDON, Executive Officer

Attachments: Attachment 1: Amendment to Basin Plan for the Control of Diazinon and Chlorpyrifos Discharges
(ATTACHMENT ONE IS CURRENTLY CONTAINED IN APPENDIX C OF THE DRAFT STAFF REPORT)