



**California Regional Water Quality Control Board
Central Valley Region**

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**TO: Betsy Jennings
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**FROM: Pamela C. Creedon
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DATE: 27 October 2006

SIGNATURE:

**SUBJECT: RESPONSE TO PETITIONS, CONDITIONAL WAIVERS OF WASTE
DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS**

**SWRCB/OCC FILE A-1759
PETITION OF SAN JOAQUIN VALLEY WATER QUALITY COALITIONS**

**SWRCB/OCC FILE A-1759(a)
PETITION OF SACRAMENTO VALLEY WATER QUALITY COALITION AND NORTHERN
CALIFORNIA WATER ASSOCIATION**

**SWRCB/OCC FILE A-1759(b)
PETITION OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE; DELTAKEEPER
CHAPTER OF BAYKEEPER; AND SAN JOAQUIN AUDUBON**

INTRODUCTION

By letter dated 27 September 2006, the State Water Resources Control Board (State Board) has provided 30 days to submit comments on the above petitions, SWRCB/OCC Files A-1759, A-1759(a), and A-1759(b) to review actions taken by the Central Valley Regional Water Quality Control Board (Regional Board). By this memorandum, I am providing the Regional Board's response to the petitions regarding Order No. R5-2006-0053, *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, and Order No. R5-2006-0054, *Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*. The Regional Board adopted these Orders at its 22 June 2006 meeting and revised them at its 3 August 2006 meeting. The administrative record will be provided in a separate submittal.

The Conditional Waiver is a major part of a significant new effort to regulate effects on water quality from irrigated agriculture, but the Conditional Waiver is an interim program while the Regional Board develops a long-term program to regulate irrigated agriculture. Under the Conditional Waiver, the Regional Board is addressing wastewater discharges from a huge geographic area (an estimated 7 million acres of irrigated lands stretching from the Oregon border to the Tehachapi Mountains), involving tens of thousands of individual and corporate owners and operators, widely varying local conditions (e.g., soil types, precipitation, surface

tography), and a broad spectrum of potential pollutants ranging from silt to fertilizers to pesticides. The Irrigated Lands Conditional Waiver Program (Program) is still growing and evolving. Since the Program started in 2002, Coalitions have been formed to deal with "local" technical issues, monitoring has begun, pollutant source identification has begun, and management practice development and evaluation is starting to address water quality problems. The Regional Board is working with Coalitions to implement the current program, is initiating enforcement against growers not complying with the Water Code, and is working on a programmatic Environmental Impact Report (EIR) to develop a long-term regulatory program for discharges of waste from irrigated lands.

The Program is evolving as we learn more about the water quality problems and better understand how to address those problems. The 2006 renewal of the Conditional Waiver implemented a number of needed improvements, and modifications to the Monitoring and Reporting Program are under consideration to improve monitoring and communication. The Coalitions are not all fully compliant with the Conditional Waiver, and the Coalitions and the Regional Board are working to improve compliance. Not all water quality problems are being fully addressed due to a variety of technical and resource issues, but this is being worked on. To effectively use resources, water quality issues are being prioritized and high priority and critical issues are being addressed first.

The Conditional Waiver fully complies with Water Code and other requirements for regulation of pollutant discharges from irrigated lands, and it provides a framework to address these issues with sufficient flexibility to accommodate conditions ranging from a near-desert in the south to temperate rain forests in the north. The Conditional Waiver is working to identify, address and resolve water quality issues. The Regional Board requests that the State Board reject the Petitions and affirm the Conditional Waiver.

BACKGROUND

On 11 July 2003, the Regional Board adopted:

1. Resolution No. R5-2003-0105 *Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region* (2003 Conditional Waivers),
2. Resolution No. R5-2003-0103 *Approving an Initial Study and Adopting a Negative Declaration for the Conditional Waivers*,
3. Monitoring and Reporting Program (MRP) Order No. R5-2003-0826 for Coalition Groups, and
4. MRP Order No. R5-2003-0827 for Individual Dischargers.

In August 2003, six agricultural interests and one environmental interest submitted petitions to the State Board regarding these actions. On 22 January 2004, the State Board adopted Order WQO 2004-0003, which upheld the Conditional Waivers and Monitoring and Report Programs

with revisions. Various agricultural and environmental interests challenged the 2003 Conditional Waivers in Sacramento County Superior Court. The Court primarily upheld the Conditional Waivers, but remanded the matter to the Regional Board to clarify the Conditional Waivers with respect to inspection and trade secret issues. See *Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region*, Case No. 04CS00235, and *California Farm Bureau Federation v. State Water Resources Control Board, et al.*, Case No. 04CS00264, Sacramento County Superior Court, 9 May 2005. The Regional Board made revisions to the 2003 Conditional Waivers in August and October 2005 in response to the Court's ruling.

The 2003 Conditional Waivers had an expiration date of 31 December 2005. In April 2005, Regional Board staff began the process to renew the Conditional Waivers to determine whether revisions were appropriate. This process involved:

- an extensive outreach effort, such as meetings with Water Districts, Coalition Groups, Environmental Groups, Department of Pesticide Regulation (DPR), Department of Food and Agriculture (DFA), and California Farm Bureau Federation;
- continued evaluation of analytical results from the Phase I and II UC Davis Cooperative Extension sampling and the monitoring conducted by Coalition Groups and Water Districts under the Program;
- consideration of the Irrigated Lands Programs in other Regions;
- review of State Board policies, such as the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy);
- review of revisions in the Water Code that had occurred subsequent to the adoption of the 2003 Conditional Waivers; review of the previously prepared environmental documents; and
- review of the Sacramento County Superior Court Order with respect to the 2003 Conditional Waivers.

Based on this process, staff developed potential revisions to the 2003 Conditional Waivers. During late August and early September 2005, staff conducted three public workshops to introduce these potential revisions and to gather feedback prior to providing officially proposed tentative Orders. The workshops were held in Modesto on 29 August, in Colusa on 1 September, and in Tulare on 8 September.

Based on all the feedback received from the extensive outreach and other efforts, on 5 October 2005, staff circulated Tentative Renewal Documents for a 30-day public review and comment period, with comments due by 4 November. The Tentative Renewal Documents included two proposed Orders (one for Coalition Groups and one for Individual Dischargers), each with Attachments A and B, and three corresponding MRPs (one for Coalition Groups, one for Individual Dischargers, and one for Water Districts that file for coverage under the Individual Discharger Order). Beginning two weeks after the start of this 30-day period, staff conducted four public workshops to explain the changes staff proposed and to listen to comments on the Tentative Renewal Documents. The workshops were held on 18 October in Tulare, during the 20 October Regional Board meeting in Rancho Cordova, on 25 October in Colusa, and on 27 October in Modesto.

The Regional Board received many comments during these workshops and during the public comment period. Staff then conducted meetings with representatives from Coalition Groups, California Farm Bureau Federation, and DFA, and with Agricultural Commissioners of the Central Valley and DPR to describe the major comments received, to explain possible revisions to address the comments, and to hear any additional comments on the Tentative Renewal Documents.

Based on the public comments, staff prepared additional revisions, and on 10 November, sent out Proposed Orders in the agenda package for the 28 November 2005 adoption hearing. At the hearing, the Regional Board did not adopt the Proposed Orders but voted to extend the Conditional Waivers until 30 June 2006 and directed staff to continue to collaborate with stakeholders to work through remaining issues.

In response to this directive, in January 2006, staff formed the Policy Working Group to conduct a facilitated, collaborative discussion to attempt to reach agreement, or at least understanding, amongst stakeholders on Conditional Waiver requirements. On 31 January 2006, staff invited key stakeholders to participate in this focus group of individuals representing various interests. The Policy Working Group met four times between 15 February and 6 April 2006. Attendance at these meetings generally increased with each meeting. The key topics of discussion at the first meeting were to determine which issues to address and to begin framing those issues. Attendees agreed to begin with two issues: Coalition Group membership lists and the definition of who is a discharger. Beginning in late March, a subcommittee of the Policy Working Group met in person and on the phone several times to resolve issues with respect to membership list submittals and the definition of a discharger.

On 19 April 2006, staff circulated revised Tentative Renewal Documents (April 2006 Tentative Orders) for a 30-day public comment period, including two proposed Orders, each with Attachments A and B. The April 2006 Tentative Orders proposed several changes to the 2003 Conditional Waivers. On 26 April, staff posted a version of the Tentative Coalition Group Order on the Regional Board website that shows the proposed changes from the 2003 Conditional Waivers in highlight and strikethrough, with annotations to the 2003 Conditional Waiver. A detailed summary of the differences between the 2003 Conditional Waivers and the April 2006 Tentative Orders is in the Staff Report for the 22 June adoption hearing in Table 3 (substantive changes) and Table 4 (other differences).

The comment period on the April 2006 Tentative Orders ended on 19 May, and 19 comment letters were submitted. The *Summary of Comment Letters and Staff Responses Regarding April 2006 Tentative Conditional Waivers of Waste Discharge Requirements For Discharges From Irrigated Lands* (Response to Comments) was included in the agenda package for the 22 June adoption hearing. Based on the comments received and the Response to Comments, staff proposed changes to the April 2006 Tentative Orders, which were shown in revision mode in the Tentative Orders that were part of the agenda package (June 2006 Tentative Orders). The June 2006 Tentative Orders were circulated for public review with the agenda materials on 9 June. The Staff Report summarized the reasons for the revisions, and clarified the scope of the hearing and the options that the Regional Board may consider in adopting the proposed Orders.

On 22 June 2006, the Regional Board held a hearing and adopted a Coalition Group Conditional Waiver and an Individual Discharger Conditional Waiver to regulate discharges of waste from irrigated agricultural lands to surface waters. The Regional Board considered the administrative record, the staff presentation, the written comments, and the testimony of 65 people at the hearing. In adopting the Coalition Group Conditional Waiver, the Regional Board approved a condition to require the Coalition Group to submit annually a list of participants, including specified information, and if requested by the Executive Officer, to submit a GIS map showing participants and non-participants. The Regional Board adopted a condition that set a cut-off date for joining a Coalition Group, which stated that no one may join a Coalition Group after 31 December 2006. The Regional Board also considered whether to add a condition to require Coalition Groups to submit management plans whenever there is an exceedance of a water quality standard. The Regional Board directed that the revised MRP, which was under discussion by the Technical Issues Committee, be brought to the Regional Board for adoption, rather than being issued by the Executive Officer.

The next day, on 23 June 2006, the Regional Board further discussed the action it had taken the day before because the Regional Board members had questions regarding the final action. Some Regional Board members believed they had adopted a condition to require management plans if there is an exceedance of a water quality standard, but the motion adopted on 22 June did not include such condition. The Regional Board also discussed the possibility of including exceptions to the deadline for joining a Coalition Group. The Regional Board directed staff to return to the August 2006 Regional Board meeting with an action item addressing two issues: (1) exceptions to the Coalition Group deadline and (2) the automatic submittal of management plans upon an exceedance of a water quality standard.

On 29 June, Regional Board staff sent a draft agenda item for these two issues to the Policy Working Group members and requested comments by 7 July. Four comment letters were submitted, and staff then prepared the agenda package, which was posted on the Regional Board's website on 21 July for a 10-day public comment period. Six comment letters were submitted by the comment deadline of 31 July. At the 3 August 2006 hearing, the Regional Board adopted Resolution No. R5-2006-0077, which amended Order No. R5-2006-0053, Attachment B. The Resolution revised Condition A.9 to include six circumstances under which a person may join a Coalition Group after 31 December 2006. The Resolution also added a new condition after Condition B.6 that states:

“The Coalition Group shall submit a management plan when there has been more than one exceedance of a water quality standard in three years, unless the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.”

OBJECTION TO REQUEST FOR HEARING

The San Joaquin Valley Water Quality Coalitions and the Sacramento Valley Water Quality Coalition and Northern California Water Association have requested that the State Board hold an evidentiary hearing in this matter. The Regional Board opposes this request. The 2006

Conditional Waiver, that is the subject of these petitions, is a revision to the 2003 Conditional Waiver. As described above, it has been subject to extensive hearings, meetings, and workshops, past petitions before the State Board, and litigation in, including a lengthy Order from, the Sacramento County Superior Court. The record is very extensive. Therefore, the Regional Board does not agree that another evidentiary hearing is warranted.

RESPONSE TO PETITION SWRCB A-1759

PETITION OF SAN JOAQUIN VALLEY WATER QUALITY COALITIONS (hereafter "San Joaquin Valley CGs" or "Petitioners")

The Petitioners make the following contentions:

1. The Regional Board removed the map option for participant information submittal after the close of the hearing. This was not noticed, not open to discussion or comment, and inconsistent with the recommendation of the Policy Working Group. In addition, there was an unreasonably short time to address the changed requirement since the Coalition Groups had started working on the maps, and testimony supports the fact that maps are superior to lists.
2. The Regional Board decision to allow the Executive Officer the discretion to require maps is duplicative of the list option and unreasonable.
3. The Regional Board improperly included a condition that no one could join a Coalition Group after 31 December 2006 because the Regional Board did not provide notice that it might consider such a condition.

Below are responses to these contentions, which are labeled as "San Joaquin Valley CGs Contention" to differentiate from the other two petitions. For ease of review, each contention is summarized in italics in the beginning of each response.

Response to San Joaquin Valley CGs Contention 1

The Regional Board removed the map option for participant information submittal, but did not properly notice this action.

The Petitioners contend specifically that the Regional Board members made a motion to allow Coalition Group participant information to be submitted only in the form of a list, not in the form of a map, and the motion was made after the close of the hearing, even though no comments or questions were raised during the hearing about the use of maps in lieu of lists. The Petitioners further contend that the list-only option is inconsistent with the recommendations of the Policy Working Group, is inconsistent with the Conditional Waiver, and is contrary to efforts by Coalition Groups to develop maps. They also contend that the time period for submittal of lists is unreasonably short.

The Regional Board disagrees that the action taken at the hearing was not properly noticed. The Staff Report for the June 2006 hearing sets forth in detail the options the Regional Board

may consider in adopting revisions to the Conditional Waiver. See *Staff Report for Orders Adopting Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands, 22 June 2006 Central Valley Water Board Meeting* (Staff Report), at pages 6-9. The Staff Report made very clear that the Regional Board may consider various alternatives with respect to participant information submittals:

“Consistent with previous Water Board direction, staff has set forth below several alternatives to the April 2006 Tentative Order with respect to submittal of Coalition Group participant information. Central Valley Water Board may consider one of the following alternatives or another alternative with respect to submittal of participant information. Alternative I is the April 2006 Tentative Order language with language added to address comments of the California Rice Commission. Alternative II, continues the requirement of the 2003 Conditional Waivers that the Coalition Groups maintain a list of participants and contains revisions to assure that if a list is submitted, the list must contain participants that knowingly elect to participate in the Coalition Group. The other alternatives address issues that have been raised in comments and in the Water Board’s previous consideration of this issue.” (Staff Report at page 6)

Among the options, the Staff Report stated that the Regional Board would consider in revising the Conditional Waiver was an option that was essentially the same as the 2003 Conditional Waiver. The Staff Report stated:

“Alternative V

Require the Coalition Groups to maintain a Participant List and submit the list as requested by the Water Board’s Executive Officer. This alternative is the current condition in the 2003 Conditional Waiver (with minor editorial modifications). This alternative would replace Attachment B, Conditions A.5 and A.6 in the April 2006 Tentative Order.

The Coalition Group shall maintain a Participant List with information concerning each Participant who has knowingly elected to be a member of the Coalition Group. The Participant List shall include, at a minimum, a list of Participants, information on contacting each Participant, and information sufficient to locate the fields or parcels of each Participant that are within a Coalition Group. The Water Board may further specify the information to be included. This information shall be provided to the Water Board upon request, within the time specified by the Water Board, which time shall not exceed 30 days. To the extent information required by this section may not be disclosed pursuant to Food and Agricultural Code Sections 71089 and 71124(a), the Coalition Group must provide a detailed area map(s) that clearly delineates the coverage area and acreage.” (Staff Report at page 8-9) ¹

¹ The reference to the Food and Agricultural Code is specifically with reference to the California Rice Commission. Due to the cited provision of the Food and Agricultural Code, the Regional Board proposed to allow the California Rice Commission to submit a map only.

Thus, the Petitioners are incorrect that there was no notice that the Regional Board may consider adopting a condition in the Conditional Waiver that required submittal of lists only.

The Petitioners appear to be arguing that the Regional Board is required to adopt what the Policy Working Group recommended with respect to participant information submittals. That argument is misplaced. The Regional Board has the authority to adopt waivers of waste discharge requirements, not staff or the public. It was made clear to the participants in the Policy Working Group that the Regional Board had the ultimate authority to decide the conditions in the Conditional Waiver; the staff and Policy Working Group could only make recommendations. The Regional Board could consider the Policy Working Group recommendations only after public review and comment. The condition that Coalition Groups provide lists of participants and not a map is consistent with the Water Code. In particular, Water Code section 13269 authorizes the Regional Board to waive the requirements to submit reports of waste discharge and/or to obtain waste discharge requirements. Thus, any waiver applies to "dischargers," not to representatives of Coalition Groups. Consistent with section 13269, the Coalition Group Conditional Waiver states:

"Pursuant to Water Code Section 13269, the Central Valley Water Board waives the requirement for Dischargers to submit a RWD and to obtain WDRs for discharges of waste from irrigated lands if the Discharger is a participant in a Coalition Group that complies with the Conditional Waiver and Monitoring and Reporting Program Order No. R5-2005-0833 and any revisions thereto." (Order Item 4, page 17)

If the Regional Board does not obtain a list of participants in a Coalition Group, it would not be able to determine whether any particular individual is complying with the Water Code. A map may be convenient with regard to some information, but it does not provide the information necessary to determine whether an individual discharger is complying with the Water Code. Further, it was always the intent of the Regional Board to develop lists of participants regardless if the initial data provided by Coalition Groups was contained in maps. The Regional Board chose to adopt an option that did not require maps, but it never changed its intent on the end result of needing participant lists.

The adopted Coalition Group Conditional Waiver does not prevent Coalition Groups from creating maps, if they so choose. The Regional Board does not agree that the time for submittal of lists is unreasonably short. The 2003 Conditional Waiver required Coalition Groups to maintain a list of participants and to have that list completed by 22 July 2004. Each Coalition Group, to be in compliance with the 2003 Conditional Waiver, should have been maintaining a list and had to provide it within 30 days of a request by the Regional Board Executive Officer. Thus, the time for submittal of lists is not unreasonable because the requirement to maintain the list has been in the Conditional Waiver since 2004.

The Petitioners also state: "State Board Order WQO 2004-0003 had indicated that requests [for participant lists] be made only where there was evidence of violation of Waiver conditions, . . ." This statement is not a correct summary of the State Board Order WQO 2004-0003. That Order revised the 2003 Conditional Waiver to require:

“The Coalition Group shall, by July 22, 2004, maintain a Membership Document with information concerning each Participant who has knowingly elected to be a member of the Coalition Group. The Membership Document shall include, at a minimum, a list of the Participants, information on contacting each Participant, and information sufficient to locate the fields or parcels of each Participant that are within the Coalition Group. The Regional Board may further specify the information to be included. This information shall be provided to Regional Board upon request, within the time specified by the Regional Board, which time shall not exceed thirty days.”

The State Board did not limit the Regional Board’s ability to request a list only where there was evidence of a violation of Conditional Waiver conditions. The State Board required the list to be maintained as of 22 July 2004 and to be provided within 30 days of a request from the Executive Officer. The State Board recommended that the Regional Board require the list where monitoring data show exceedances of water quality standards or other violations of the Conditional Waiver, but did not limit a list request to these circumstances. See State Board Order WQO 2004-0003 at pages 17-18.

On 26 August 2005, the former Executive Officer sent a letter to the Coalition Groups requesting them to submit their Membership Documents, as allowed in the Conditional Waiver. The reasons for the request were to address low participation in Coalition Groups and to help identify non-participants in order to assist staff with enforcement duties. The Executive Officer sent a second letter on 15 September extending the submittal deadline to 1 November, and staff scheduled meetings with Coalition Groups to discuss acceptable alternatives to the Membership Document.

The former Executive Officer’s request caused significant concern amongst the Coalition Groups, and only four of the nine Coalition Groups submitted alternative information (or a detailed plan to provide alternative information) by the due date. No Coalition Group submitted a Membership Document, as described in and required by the Conditional Waiver. In part as a result of the lack of compliance with the Executive Officer’s request, staff proposed at the November 2005 Regional Board meeting that the Regional Board adopt a condition requiring annual submittal of a membership list with specific information. This is the condition that the Regional Board ultimately adopted on 22 June 2006.

The Regional Board considered this matter numerous times since December 2002, including the comments submitted by the Petitioners, and chose to continue to require that Coalition Groups submit a list of participants as a condition of the Conditional Waiver. This approach is consistent with applicable law.

The Petitioners make a statement that the Executive Officer has made a new policy determination that requires irrigation districts that are members of a Coalition Group to submit the names of the members of the irrigation district; it is not sufficient to submit only the name of the irrigation district. It is not correct that this is a new policy determination. The Regional Board’s position always has been and State Board Order WQO 2004-0003 requires that members of Coalition Groups knowingly elect to be members. Regional Board staff has

consistently stated that the Coalition Groups must maintain membership documents that contain a list of members who have knowingly elected to be members.

Response to San Joaquin Valley CGs Contention 2

The Regional Board decision to allow the Executive Officer the discretion to require maps is duplicative of the list option and unreasonable.

The Regional Board has consistently determined, even after extensive public participation over a nearly four-year period, to require the submittal of participant lists as a condition of the Coalition Group Conditional Waiver. The record for the June 2006 hearing also includes statements by staff that the staff would like to use the lists to make maps. Thus, it was reasonable for the Regional Board to authorize the Executive Officer to requests maps, and such a request would be appropriate to augment the work of staff and help in determining compliance. The option of whether to require a map or not was thoroughly noticed and subject to extensive public comment and discussion.

Response to San Joaquin Valley CGs Contention 3

The Regional Board did not provide notice that it might consider a condition that no one could join a Coalition Group after 31 December 2006.

The Petitioners are correct that the 31 December 2006 deadline was not specifically noticed as a condition that the Regional Board may consider at the June 2006 Board meeting. However, this notice issue was addressed in a later meeting. The Regional Board chose to reconsider this particular matter and did so at the 3 August 2006 meeting after appropriate public notice and comment. At the August 2006 meeting, the Regional Board adopted numerous exceptions to the 31 December 2006 deadline. See Resolution No. R5-2006-0077 (Agenda Item 6 at the 3 August 2006 meeting).

RESPONSE TO PETITION SWRCB A-1759(a)

PETITION OF SACRAMENTO VALLEY WATER QUALITY COALITION AND NORTHERN CALIFORNIA WATER ASSOCIATION (hereafter "Sacramento Valley CG" or "Petitioners")

The Petitioners make the following contentions:

1. The Regional Board's action requiring submittal of participant lists without allowing an option to submit non-participant lists was inappropriate, improper, not supported by the evidence, and inconsistent with the Policy Working Group recommendation. The requirement is unnecessarily burdensome and inflexible, and it will affect the ability of the growers to comply. The Regional Board is not legally required to collect names of all individual growers, and inclusion of a non-participant list option is appropriate because it provides information for the Regional Board to contact non-cooperating growers and encourages growers to participate in a Coalition Group.
2. The Regional Board did not provide sufficient opportunity for Coalition Groups to submit evidence on the non-participant list option or to respond to concerns about allowing non-

participant lists. The changes made during the Regional Board meeting were not noticed, or open to discussion and comment.

3. The Conditional Waiver condition to allow the Executive Officer to also require technical maps in addition to the participant lists is unnecessarily duplicative, it was not discussed until after the close of the public hearing, and the Regional Board failed to adopt any findings to support it.

Below are responses to these contentions, which are labeled as "Sacramento Valley CG Contention" to differentiate from the other two petitions. For ease of review, each contention is summarized in italics in the beginning of each response.

Response to Sacramento Valley CG Contention 1

The Regional Board's action requiring submittal of participant lists without allowing an option to submit non-participant lists was inappropriate and will affect the ability of the growers to comply.

The Regional Board disagrees with the Petitioners contentions with respect to non-participant list option. As noted in the response to the San Joaquin Valley CGs Petition, the Staff Report set forth the many options the Regional Board would consider in determining the conditions with respect to participant information submittal. The Regional Board's decision was not arbitrary, since it had considered this option in the adoption of the 2003 Conditional Waiver and in the adoption of the 2006 Conditional Waiver. The State Board also fully considered this option in 2004 in acting on petitions to the 2003 Conditional Waiver. All interested parties, including the Petitioners, participated in those matters.

The Coalition Groups have been required since 22 July 2004 to maintain a list of participants. In the petition, the Petitioners contend that maintaining the list is unnecessarily burdensome and inflexible. The Petitioners state on page 5, paragraph 8 of their petition that the Sacramento Valley Coalition Group has maintained participant lists as required by the 2003 Conditional Waiver. However, the petition provides no support to its statements that submittal of the list is burdensome when it already maintains a list and why submitting a list could possibly affect the ability of growers the Petitioners represent to comply with the Conditional Waiver. (Petition at page 6, line 4) The growers the Petitioners represent are required to comply with the Water Code if they discharge waste that could affect the quality of the waters of the state. Providing information to the Regional Board that demonstrates that the grower has joined a Coalition Group appears to be a very direct and simple way to demonstrate compliance with the Water Code. If a Coalition Group does not have the authority to release the name of a discharger, then that discharger must independently provide appropriate information directly to the Regional Board to comply with the Water Code, which includes the information that appears to be objectionable, such as names and addresses of the dischargers (unless exempted by law)².

The Regional Board has the authority to waive the requirement to submit a report of waste discharge and/or to obtain waste discharge requirements as to dischargers. In particular,

² See, e.g., Food and Agricultural Code Sections 71089 and 71124(a).

Water Code section 13269 authorizes the Regional Board to waive the requirements to submit reports of waste discharge and/or to obtain waste discharge requirements. Any conditional waiver applies to “dischargers,” not to representatives of a Coalition Group. Consistent with Water Code section 13269, the Coalition Group Conditional Waiver states:

“Pursuant to Water Code Section 13269, the Central Valley Water Board waives the requirement for Dischargers to submit a RWD and to obtain WDRs for discharges of waste from irrigated lands if the Discharger is a participant in a Coalition Group that complies with the Conditional Waiver and Monitoring and Reporting Program Order No. R5-2005-0833 and any revisions thereto.” (Order Item 4, page 17)

In other words, the Coalition Group Conditional Waiver states that individuals who are dischargers are not required to submit a report of waste discharge or obtain waste discharge requirements, if they are members of a Coalition Group that complies with the Conditional Waiver requirements. If the Regional Board does not obtain a list of participants in a Coalition Group, it would not be able to determine whether any particular individual is complying with the Water Code. While a list of non-participants may support the Regional Board’s enforcement efforts, it is not essential in implementing the Conditional Waiver.

The Petitioners argue that the Regional Board failed to support its decision to adopt the participant list requirement by setting forth appropriate findings, citing to *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515, and other citations. The Petitioners inappropriately rely on *Topanga* on this issue. As noted by the Petitioners, that case stated that the agency must “set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order.” On this issue of whether the Regional Board can require the Coalition Group to submit lists of participants and not lists of non-participants, there is no necessity to bridge the gap between evidence and the ultimate decision. The Regional Board has the authority to regulate persons who discharge waste that could affect the quality of the waters of the state. The individual dischargers are required under Water Code section 13260 to submit a report of waste discharge if they discharge waste that could affect the quality of the waters of the state and may not discharge waste until they meet the conditions of Water Code section 13264. The Regional Board may issue waste discharge requirements or waive such requirements. In the Coalition Group Conditional Waiver, the Regional Board has waived these requirements as to individual dischargers, but only on the condition that the individual discharger is a member of a Coalition Group that is in compliance with the Conditional Waiver conditions. If a discharger is not a member of a Coalition Group, the Water Code requires submittal of a report of waste discharge, and no discharge is allowed until the discharger has complied with the requirements of Water Code section 13264.

It could be argued that the Regional Board has no legal basis to require persons to join a Coalition Group³ or to require that Coalition Groups submit the names of persons who are not

³ Even though the Regional Board could not require a person to join a Coalition Group, the Water Code requires persons who discharge waste that could affect the quality of the waters of the state to submit a report of waste discharge (i.e., apply for waste discharge requirements) and to obtain waste discharge requirements unless the conditions of Water Code section 13264 are met. The Coalition Group and Individual Discharger

participating in such Group.⁴ However, if individual dischargers join a Coalition Group to comply with the Water Code, the Regional Board does have a legal basis to require the names of such dischargers as a condition of the Conditional Waiver, since it could have required a full report of waste discharge from every discharger who is a participant (or non-participant for that matter). The Regional Board chose, as a policy matter, to allow an individual to join a Coalition Group, including requiring identification of such individual dischargers, in lieu of requiring the individuals to submit a report of waste discharge. Even if the holding in *Topanga* appropriately applied in this matter, the Conditional Waiver contains sufficient findings to explain why the Regional Board is waiving the requirements to submit a report of waste discharge and obtain waste discharge requirements and explaining the basis for the conditions of the Conditional Waiver.

The Petitioners appear to argue that the Regional Board somehow overstepped its authority in requiring lists of participants in a Coalition Group, rather than non-participants. To the contrary, the Regional Board has waived some requirements that it could impose. With respect to the Regional Board's decision to require participant lists, the Petitioners' arguments on pages 18-24 of the Petition are couched in legal terms, but they are actually policy arguments. The Environmental Groups Petitioners make contrary policy and legal arguments and contend that the Regional Board should require reports of waste discharge and waste discharge requirements for all dischargers. The Regional Board determined, after considering all public comments both for and against such lists, that lists of participants were appropriate and well within its legal authority. This policy decision is completely consistent with and encouraged by the State Board's NPS Policy. In addition, in State Board Order WQO 2004-0003, the State Board already has supported the Regional Board's decision in 2003 to require lists of participants. The Sacramento County Superior Court also upheld this requirement. See also Response to Petition of San Joaquin Valley CGs.

The Petitioners also suggest that requiring the Coalition Group to submit names and addresses of participants could impose a burden on dischargers who could face lawsuits or disclosure of private information. As pointed out above, the individual dischargers are required by law to submit a report of waste discharge that would contain all the information requested in the Conditional Waiver and more. The Conditional Waiver provides another option for individuals to comply with the Water Code, but does not relieve dischargers of their duty to comply with the law. The Conditional Waiver does not create any new legal causes of action or make participants more vulnerable to lawsuits than would exist without the Conditional Waivers. In addition, there is no citizen suit provision in the Water Code. See Memorandum to Barbara Evoy, Division of Water Quality, State Water Resources Control Board, from Alex Mayer, Office of Chief Counsel, dated 21 July 2006, *Third Party Lawsuits Addressing Discharges from Irrigated Agricultural Lands*.

Conditional Waivers provide an option to comply with the Water Code and dischargers may join a Group rather than submit a report of waste discharge.

⁴ The Regional Board would have no objection to a Coalition Group submitting the names of non-participants known to the Coalition Group in addition to the list of participants.

Response to Sacramento Valley CG Contention 2

The Regional Board did not provide notice that it would consider removing the non-participant list option.

See Response to Contention 1 of the San Joaquin Valley CGs.

Response to Sacramento Valley CG Contention 3

The condition to allow the Executive Officer to also require technical maps in addition to the participant lists is unnecessarily duplicative and not noticed.

See Response to Contention 2 of the San Joaquin Valley CGs.

RESPONSE TO PETITION SWRCB A-1759(b)

PETITION OF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE; DELTAKEEPER CHAPTER OF BAYKEEPER; AND SAN JOAQUIN AUDUBON (hereafter "Environmental Groups" or "Petitioners")

The Petitioners make the following contentions:

1. The Regional Board has failed to ensure compliance with the Conditional Waiver's requirements.
2. The Program cannot document any measurable progress in reducing discharges of pollutants from irrigated lands.
3. The Conditional Waiver fails to address protection of groundwater despite the importance of groundwater as a key source of irrigation and drinking water and despite science demonstrating agricultural effects on groundwater.
4. The Regional Board failed to comply with the California Environmental Quality Act (CEQA); the renewed Conditional Waiver is a new project for CEQA purposes because of several reasons.
5. The Regional Board's findings that the Conditional Waiver is in the public interest are not supported by the weight of the evidence.
6. The Conditional Waiver does not comply with explicit requirements in State Board Resolution No. 68-16, the State Board's APU 90-004 regarding a legally acceptable anti-degradation analysis, or the federal anti-degradation policies.
7. The Conditional Waiver is inconsistent with the provisions of the state's NPS Policy.
8. The Conditional Waiver does not comply with the specific requirements of the Basin Plan's Pesticide Control Policy.

The Environmental Groups challenged the Individual Discharger Conditional Waiver, but did not make any specific contentions that apply only to the Individual Discharger Conditional Waiver. This response addresses the significant contentions of the Petitioners.

Below are responses to these contentions, which are labeled as “Environmental Groups Contention” to differentiate from the other two petitions. For ease of review, each contention is summarized in italics in the beginning of each response.

Response to Environmental Groups Contention 1

The Regional Board has failed to ensure compliance with the Conditional Waiver’s requirements.

The Petitioners’ contention appears to be that a failure to ensure compliance would require that the Conditional Waiver approach be rejected and that some other regulatory approach be used, such as general waste discharge requirements. The Regional Board disagrees with this contention.

Water Code section 13269 has been amended to include provisions that make conditional waivers very similar to waste discharge requirements. To waive waste discharge requirements, the Regional Board must find that a conditional waiver is in the public interest and, among other requirements, it must (1) be consistent with applicable water quality control plans, (2) be conditional, (3) include monitoring and reporting, except in limited circumstances, (4) be for a limited term, and (5) be adopted after a hearing. The Regional Board may require payment of annual fees, which are already being collected and are included as a condition of the 2006 Conditional Waivers. Similarly, waste discharge requirements must implement the applicable water quality control plans, are adopted after a hearing, and require payment of annual fees. There are no longer significant statutory differences between conditional waivers and waste discharge requirements. The Regional Board, as a policy decision, chose to allow the use of Coalition Groups to act on behalf of dischargers to implement the Water Code.

Ensuring compliance when addressing an extremely large group of dischargers who essentially have not previously been regulated is a significant task and will take time, whether using a conditional waiver approach or using general waste discharge requirements. A recent example is the General Industrial Stormwater Permit Program, which took many years to achieve a high percentage of compliance. The Industrial Stormwater Program addresses about 2,500 sites. There are over seven million acres of irrigated lands in the Central Valley, which involves tens of thousands of parcels and an estimated range of 25,000 to 75,000 owners or operators. The Regional Board decided to use conditional waivers as the regulatory tool for this interim Program due to the unprecedented large-scale nature of the Program. This approach is consistent with and recommended in the NPS Policy. Other regulatory options may be considered after completion of the programmatic EIR to be used in evaluating a long-term regulatory program.

The Conditional Waivers began a unique and ambitious program to regulate discharges of waste from the millions of acres of irrigated lands in the Central Valley. Since 2003, the Program has resulted in significant region-wide monitoring and reporting. This monitoring has

led to the identification of water quality issues related to waste discharges from irrigated lands, and more importantly, for management plans to be developed and implemented to address the issues. As of 4 August 2006, the Executive Officer has issued three management plan requests. Three plans have been submitted, and two are being implemented. More management plan requests have been prepared and are pending issuance. Management plans sometimes involve entire hydrologic areas and multiple constituents.⁵

Due to the unprecedented size and scope of this Program, implementation will require time. The Regional Board agrees that not all Coalition Groups have fully complied with all conditions of the Coalition Group Conditional Waiver. Nor are all individual dischargers in compliance with the Water Code. However, this does not mean that the Conditional Waivers should be rejected. Choice of regulatory mechanism (i.e., conditional waiver versus general waste discharge requirements) will not change the scale of this program, which is a key challenge and a factor in why the program is at its existing stage. Implementation and enforcement efforts have been initiated, and the Regional Board is gathering data on an ongoing basis to expand and enhance these efforts. The Regional Board compliance assurance efforts have been focused on: (1) identifying individual dischargers who are in violation of the Water Code because they have not joined a Coalition Group, enrolled in the Individual Discharger Conditional Waiver, or submitted a report of waste discharge and (2) ensuring that Coalition Groups and their participant growers are complying with the Water Code and the terms and conditions of the Coalition Group Conditional Waiver.

With respect to individual dischargers, between March 2005 and May 2006, the Regional Board issued more than 800 Water Code section 13267 Orders requiring landowners to submit a report on how they are complying with the Water Code. Follow-up actions include verifying information provided in response to the Orders, ensuring dischargers are complying with the Water Code, and enforcing against individuals failing to respond to the Orders (which can include issuing Notices of Violation and Administrative Civil Liability Complaints, as authorized by Water Code section 13268). These follow-up actions are in progress. Further, during the period these Orders were issued, the Regional Board was continually obtaining data from various Coalition Groups and County Assessors to enable it to identify additional agricultural landowners throughout the Central Valley Region to which Water Code section 13267 Orders should be issued. There can be thousands of agricultural parcels in any given county, and the Central Valley Region encompasses all or portions of 38 of the State's 58 counties. This effort will take time to obtain the necessary data, perform the required analyses, and take appropriate action. However, progress has been made and the effort is continuing.

With respect to enforcing the conditions of the Conditional Waivers, the Regional Board is following the iterative approach set forth in the Conditional Waivers, which is similar to the Municipal Stormwater Program. Further, this is consistent with the Water Board policy of progressive enforcement as set forth in the State Water Quality Enforcement Policy.⁶ For example, the Coalition Group Conditional Waiver requires the Coalition Groups to ensure compliance with water quality standards. If exceedances of water quality standards are

⁵ One example is a plan to address diazinon and chlorpyrifos in the Sacramento/Feather River watershed, which is one of the watersheds that formed the basis for the Program originally.

⁶ Water Quality Enforcement Policy, 19 February 2002, State Water Resources Control Board.

identified, the Coalition Groups and dischargers must implement and/or improve management practices to come into compliance with those standards. The Conditional Waiver requires Coalition Groups to submit reports, such as Monitoring and Reporting Program Plans, Watershed Evaluation Reports, Semi-Annual Monitoring Reports, Exceedance Reports, Communication Reports, Evaluation Reports, and Management Plans, among others. The Regional Board ensures compliance with these and other Conditional Waiver conditions by reviewing these documents for completeness, sending the Coalition Groups correspondence (letters and emails) with comments, and meeting with Coalition Group representatives to explain and discuss the comments to make sure they understand what is needed to comply with the conditions. The revised documents submitted as a result of these communications sometimes comply with the conditions and sometimes do not. When they do not, staff repeats the iterative process described above to continue working towards an acceptable submittal. Coalition Groups are now submitting Exceedance Reports on a regular basis, and the Regional Board continues to work with them to improve Communication Reports.

One foundational requirement of the Conditional Waivers is submittal of a Watershed Evaluation Report (WER) and a Monitoring and Reporting Program Plan (MRP Plan). The WER must include, among other items, a description of the watersheds within the Coalition Group boundaries, including maps showing irrigated lands and drainage and discharge locations; information on crops grown, production practices, chemicals used and application methods; documentation of existing receiving water quality, quality of typical irrigation discharges, known water quality issues, water quality limited water bodies, and potential water quality problems; and discussion of practices in use and available programs to address problems from agricultural discharges.

The MRP Plan uses the information in the WER to delineate the monitoring strategy, including but not limited to monitoring sites and parameters, land use, chemicals used, and management practices in the watershed. MRP Order No. R5-2005-0833 states that monitoring sites “shall be selected for various watersheds based on size and flow of water bodies...” and “must be established initially on the water bodies that are carrying agricultural drainage into natural water bodies.” If the results of this monitoring show that any constituents exceed water quality standards at any monitoring site, the monitoring for those constituents “shall continue and the monitoring must be expanded upstream in a systematic search for sources. All major drainages must be part of baseline monitoring. At least 20% of the intermediate drainages must be monitored during the first year and the second 20% , the second year, etc. ... The major, intermediate, and small drainages based on hydrology, size and flow of the water bodies are different for each watershed. Therefore, Coalition Groups shall provide scientific rationale for the site selection process based on historical and on-going monitoring, drainage size, and land use.”

The Coalition Groups are at different stages of compliance with the conditions of the Conditional Waiver. Consistent with the Regional Board’s policy, the Regional Board is working with the Coalition Groups to attain compliance. However, should these efforts fail, the Regional Board has the authority to withdraw the Notice of Applicability of the Conditional Waiver with respect to any particular Coalition Group or individual discharger, if compliance is not achieved. Such enforcement is within the Regional Board’s discretion.

Response to Environmental Groups Contention 2

The Program cannot document any measurable progress in reducing discharges of pollutants from irrigated lands.

The Conditional Waivers require dischargers to comply with water quality standards and to implement management practices as conditions of the Conditional Waivers. In addition, the Executive Officer may request a management plan at any time and that management plan must, among other requirements, evaluate the effectiveness of existing management practices in achieving applicable water quality standards; propose a time schedule to implement the plan and achieve water quality standards; identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its participants propose to implement to achieve applicable water quality standards; and identify how the effectiveness of those additional actions will be evaluated.

At this point in the Program, it is difficult to document management practices that are currently being used or how effective they are. Coalition Groups have informed Regional Board staff that management practices are being implemented, but they have submitted only limited information about those practices. The Regional Board intends to continue working with the Coalition Groups to achieve compliance, including taking enforcement actions if necessary, to ensure the Coalition Groups comply with the Conditional Waiver conditions to implement management practices and demonstrate progress toward compliance. One Coalition Group recently submitted a management plan, which includes mailing advisory notices to growers in the watersheds cover by the plan with a management practices survey for the growers to complete. The Coalition Group plans to build a database of management practices from the completed surveys and distribute lists of management practices to growers so they can choose the ones that best fit their farm conditions.

Response to Environmental Groups Contention 3

The Conditional Waiver fails to address protection of groundwater.

Regional Board staff agrees that groundwater is an extremely important resource in the Central Valley. Since this is a new, complex regulatory program that involves millions of acres and thousands of surface water bodies, the Regional Board chose in 2003 to prioritize its regulatory efforts and begin the regulation of discharges of waste from irrigated lands to surface water. The Regional Board intends to address groundwater at a later date. The Regional Board directed staff to develop a programmatic EIR to be used in evaluating a long-term regulatory program, including how and whether to regulate discharges of waste to groundwater. This EIR is still in progress.

Response to Environmental Groups Contention 4

The Regional Board failed to comply with CEQA.

The Petitioners state that the Regional Board failed to comply with explicit requirements of CEQA by relying on the 2003 Negative Declaration despite significant changes in the project and project setting, and despite the fact that for the purposes of CEQA, the renewed

Conditional Waiver is a new project requiring a new CEQA document. The Petitioners state that since adoption of the 2003 Negative Declaration, there have been substantial changes that involve new significant environmental impacts, significant changes have occurred with respect to the circumstances of the project, and new information has come to light that reveals that the project will have significant effects.

The Regional Board adopted a Negative Declaration prior to adoption of the 2003 Conditional Waivers. Several parties challenged that Negative Declaration and the 2003 Conditional Waivers in State Superior Court, which upheld the Negative Declaration. See *Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region*, Case No. 04CS00235, and *California Farm Bureau Federation v. State Water Resources Control Board, et al.*, Case No. 04CS00264, Sacramento County Superior Court, 9 May 2005. The action the Regional Board took is the renewal of the Conditional Waivers with modifications, and it was not a new project. Water Code section 13269 authorizes a renewal of the Conditional Waivers. Therefore, a new environmental document is not required to support the renewal.

The Regional Board did analyze whether a subsequent environmental document was necessary for the renewal. The Regional Board is not required to prepare a subsequent environmental document, except as required by the CEQA Guidelines section 15162. The new information the Petitioners state is available since the adoption of the Negative Declaration confirms the existence of water quality concerns. However, it does not support the conclusion that different measures are needed to address those concerns other than those already included in the Conditional Waivers. The Conditional Waivers require compliance with water quality standards, monitoring, implementation of management practices, and submittal of management plans. Without the Conditional Waivers, none of those conditions would be in place.

Response to Environmental Groups Contention 5

The Regional Board's findings that the Conditional Waiver is in the public interest are not supported by the weight of the evidence.

The Petitioners state that the Regional Board has no evidence as to what, if any, additional pollution control measures the Coalition Groups will apply, when and where they would apply, or whether they would be effective.

Water Code section 13269 authorizes the Regional Board to waive waste discharge requirements if such waiver is in the public interest. The statute does not define what is in the public interest. The Water Board has considered the goals of the Water Code and the interests of the public, including environmental and discharger interests. The use of a conditional waiver in this circumstance does not violate the policies of the State Board, which specifically contemplate the use of conditional waivers for nonpoint source discharges. The Conditional Waivers are in the public interest because they regulate discharges that have, essentially, not been regulated in the past.

Response to Environmental Groups Contention 6

The Conditional Waiver does not comply with explicit requirements in State Board Resolution No. 68-16, the State Board's APU 90-004 regarding a legally acceptable anti-degradation analysis, or the federal anti-degradation policies.

The Water Board staff agrees that discharges of waste above water quality standards or above background conditions that cause pollution is not to the maximum benefit of the people of the state. The Conditional Waivers, however, do not authorize discharges of waste from agricultural lands that (1) are above water quality standards, (2) cause exceedances of water quality standards in receiving waters, (3) affect beneficial uses, or (4) cause nuisance. The Conditional Waivers explicitly prohibit such discharges. They also require Coalition Groups and/or dischargers to implement management practices to protect the waters of the state. The Conditional Waivers set forth conditions that are similar to conditions that are set forth in waste discharge requirements, including compliance with water quality standards, monitoring, and implementation of management practices to protect water quality and prevent nuisance.

The Conditional Waivers do not violate the State Board Resolution No. 68-16. The Water Code authorizes, and the NPS Policy affirms, the use of conditional waivers to address non-point source pollution. It is not a violation of the Water Code to allow conditional waivers of waste discharge requirements. Water Code section 13269 does not limit conditional waivers to insubstantial discharges of waste. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). Such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution No. 68-16, and it is not necessary for the Regional Board to conduct an anti-degradation analysis. The Conditional Waivers do not authorize further degradation of such waters. The Conditional Waivers do not allow discharges to further degrade waters of the state because they require compliance with water quality standards, protection of beneficial uses, and prevention of nuisance. The Conditional Waiver makes clear that management practices must implement best practicable treatment or control. This approach is similar to waste discharge requirements that require compliance with water quality standards and implementation of best practicable treatment or control.

Response to Environmental Groups Contention 7

The Conditional Waiver is inconsistent with the provisions of the State's NPS Policy.

The Conditional Waivers are not inconsistent with the NPS Policy. The Conditional Waivers contain conditions or findings that address the five key elements of the NPS Policy. Consistent with Element 1 (purpose of NPS program), the Conditional Waivers require compliance with water quality standards, protection of beneficial uses, and prevention of pollution or nuisance. Consistent with Element 2 (description of management practices), the Conditional Waivers require implementation of management practices to comply with water quality standards, protect beneficial uses, and prevent pollution or nuisance. The Conditional Waivers require Coalition Groups and/or dischargers to submit management plans that specifically identify the management practices used, as directed by the Executive Officer. Coalition Groups and/or Dischargers must describe and implement management practices consistent with Element 2. The Regional Board also will evaluate management practices in the programmatic EIR for the

long-term regulatory program. Implementation of the NPS Policy is an iterative process and additional steps are ongoing to implement this Element.

Element 3 (time schedule and milestones) recognizes that it may take time to achieve water quality standards and that various processes may be needed. The Conditional Waivers require all Coalition Groups and dischargers to implement management practices to achieve compliance with water quality standards. There is no time schedule because that is required as a condition of the Conditional Waivers. Where management plans are required, such management plans must include time schedules to achieve compliance with water quality standards. Monitoring and reporting are required on a set time schedule, and management plans are required as directed by the Executive Officer as water quality problems are identified.

In addition, at its August 2006 meeting, the Regional Board added a condition that requires management plans to be submitted whenever there is more than one exceedance of a water quality standard in three years, unless the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.

Consistent with Element 4 (feedback mechanisms), the Conditional Waivers require monitoring and reporting, and these reports are available to the public. The Regional Board frequently holds meetings to obtain updates and provide an opportunity for public review and comment.

Consistent with Element 5, the Conditional Waivers make clear the enforcement mechanisms, including termination of the Conditional Waivers. The Regional Board may consider other options to assure implementation of the NPS Policy.

Response to Environmental Groups Contention 8

The Conditional Waiver does not comply with the specific requirements of the Basin Plan's Pesticide Control Policy.

The Conditional Waivers are not inconsistent with the Basin Plan. Similar to waste discharge requirements, they require compliance with the Basin Plan, monitoring, and implementation of management practices. The Regional Board staff agrees that the intent of the Basin Plan pesticide implementation policy (Basin Plan, page IV-34.00) was not implemented thoroughly in the past. The Conditional Waivers implement the intent of the Basin Plan implementation policy. At the time of adoption of that policy, Resolution No. 82-036 simply listed "irrigation return water and storm water runoff" as one of the categories waived. The Conditional Waivers impose conditions far beyond those imposed by Resolution No. 82-036, including compliance with water quality standards, monitoring and reporting requirements, implementation of management practices, and submittal of management plans.

cc: See Next Page

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