
Central Valley Regional Water Quality Control Board

4 June 2014

David Guy, President
Bruce Houdesheldt, Director, Regulatory Affairs
Northern California Water Association
455 Capitol Mall # 335
Sacramento, CA 95814

CONDITIONAL NOTICE OF APPLICABILITY ISSUED TO THE NORTHERN CALIFORNIA WATER ASSOCIATION TO SERVE AS A THIRD-PARTY UNDER GENERAL ORDER R5-2014-0030

Thank you for the 10 April 2014 application to serve as a third-party entity to represent owners and operators of irrigated lands within the Sacramento River Watershed subject to General Order R5-2014-0030 (Order). The application was submitted by the Northern California Water Association (NCWA), which has been an umbrella organization for the irrigated lands served by the Sacramento Valley Water Quality Coalition (SVWQC) since 2003. Supplemental information was provided in an email and attachment on 13 May 2014.

This letter serves as a Conditional Notice of Applicability and conditional approval of NCWA to serve as the third-party group under the Order. Based on the application, the supplemental email, SVWQC's record of representing growers and the attached review, NCWA and its subsidiary organizations conditionally meet the requirements to serve as the third-party as described in section VIII.A. of the Order. Additional documentation related to organizational governance and accountability is necessary to complete the verification of NCWA's and SVWQC's qualifications per the requirements of the Order.

A final Notice of Applicability confirming NCWA as the third-party under the General Order will be issued upon submission of an addendum to the application that 1) identifies the methods by which summaries of fees and revenues required by the Order are readily available to Members in every watershed; 2) provides copies of bylaws of the subsidiary organizations and copies of agreements between collaborating organizations; and 3) provides a copy of the Memorandum of Agreement between NCWA and the subsidiary subwatershed organizations.

The addendum to the application should be submitted no later than 27 June 2014.

The enclosed table lists compliance dates associated with the issuance of this Conditional Notice of Applicability; all other compliance dates described in the General Order R5-2014-0030 apply.

We appreciate the NCWA's commitment to make the new program a success and look forward to working with you and the SVWQC participants to protect water quality in the Sacramento

River Watershed. If you have questions regarding this letter, please contact Joe Karkoski at (916) 464-4668, or by e-mail at Joe.Karkoski@waterboards.ca.gov.

Original signed by

Pamela C. Creedon
Executive Officer

Enclosures: Table of Compliance Dates Associated with Issuance of the NOA
Staff Memorandum: Review of Application to Serve as Third-Party

cc: **[via email only]**
Susan Fregien, Central Valley Water Board
Mark Cady, Central Valley Water Board

COMPLIANCE DATES FOR THE THIRD-PARTY REPRESENTING GROWERS IN THE SACRAMENTO RIVER WATERSHED AND MEMBERS UNDER ORDER R5-2014-0030

Effective compliance dates associated with the 4 June 2014 Conditional Notice of Applicability (NOA) issued to the Northern California Water Association to serve as a third-party under General Order R5-2014-0030.

| Due Date | Requirements |
|-------------------------|---|
| 21 July 2014 | Provide Members with a notice of requirements and process for the Notice of Confirmation and Farm Evaluation Template |
| 4 August 2014 | Propose templates for managed wetland reporting |
| 2 September 2014 | Groundwater Quality Assessment Report outline |
| 2 October 2014 | Non-member enrollment deadline |
| | Groundwater Quality Assessment Report |
| 4 June 2015 | Sediment Discharge and Erosion Assessment Report |
| | Comprehensive Groundwater Quality Management Plan |

Central Valley Regional Water Quality Control Board

TO: Joe Karkoski
Supervising Water Resources Control Engineer
Irrigated Lands Regulatory Program

FROM: Mark Cady
Environmental Scientist
Monitoring and Implementation Unit
Irrigated Lands Regulatory Program

DATE: 30 May 2014

SUBJECT: APPLICATION TO SERVE AS A THIRD-PARTY FOR THE SACRAMENTO RIVER WATERSHED UNDER GENERAL ORDER R5-2014-0030

On 10 April 2014, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) received the Northern California Water Association's (NCWA) application to serve as a third-party representing growers in the Sacramento River Watershed and fulfill the requirements and conditions of Waste Discharge Requirements General Order R5-2014-0030 (Order). The final application with attachments is enclosed with this review. No other applications to serve as the third-party under the Order were received by the 11 April 2014 deadline. After conversations between Central Valley Water Board staff and NCWA representatives, NCWA provided a supplemental email and attachment further supporting the application.

NCWA has been serving as the umbrella organization for the irrigated lands served by the Sacramento Valley Water Quality Coalition (SVWQC) since 2003. The application discusses the NCWA's ability and intent to fulfill the role of the third-party entity under the Order, representing member owners and operators of irrigated lands. In evaluating the application, staff also considered SVWQC's performance under the Conditional Waivers (Order No. R5-2006-0053 and Order No. R5-2003-0105).

Based on the above considerations and staff's understanding of the intent of the Order, the application does not sufficiently document the ability of NCWA and the SVWQC to fulfill the requirements of the Order. Staff recommends that a conditional Notice of Applicability (NOA) be issued to NCWA to serve as the third-party under the Order. A final approval should depend upon submission of an addendum to the application that identifies the methods by which summaries of fees and revenues required by the order are readily available to Members in every watershed; provides copies of bylaws of the subsidiary organizations and/or copies of agreements between collaborating organizations; and provides a copy of the Memorandum of Agreement between NCWA and the subsidiary subwatershed organizations.

Section VIII of the Order requires the third-party to submit the application within 30 days of the effective date of the order. The application was received on 10 April 2014, which meets this condition (Order effective date is 12 March 2014). The Order establishes factors that the

Executive Officer will consider in determining whether to approve the application (section VIII.A). The factors from the Order and staff evaluation are below.

I. Ability of the third-party to carry out the identified third-party responsibilities.

NCWA proposes to represent the entire Sacramento River Watershed, as defined in the Order. Based on the performance record under the Conditional Waiver, NCWA and SVWQC have demonstrated the ability to manage the fee collection and payment of the State Water Board fees, to conduct monitoring that conforms to quality assurance/quality control requirements, to prepare and submit plans and reports, to provide notifications and disseminate information to members, to conduct outreach and education, to develop and implement management plans, and to work with Central Valley Water Board staff.

Below is an itemized summary of requirements identified in section IV.C. of the Order, and a brief discussion of NCWA's ability to carry out each of the responsibilities, based on the application, the supplemental email and information in Central Valley Water Board files:

1. The Order requires that the third-party provide the board with documentation of its organizational or management structure, and of persons responsible for ensuring that program requirements are fulfilled. The application letter provides both a narrative description and a chart describing the organizational structure and the roles and responsibilities of the participating organizations in SVWQC. Bruce Houdesheldt, of NCWA, is identified as a responsible person for ensuring that requirements associated with the Irrigated Lands Regulatory Program are fulfilled. Additionally, an attachment to the supplementary email provides information on the organizational structure and staffing of the subwatershed groups, which are subsidiary to NCWA, as described in Order section VIII. A. 3.

The SVWQC Management Advisory Council is comprised of one representative from each of the thirteen Subwatershed Coalition Groups, who are listed with the names of their subwatershed groups in the application. In most cases these representatives are farmer-members of SVWQC. The Management Advisory Council regularly meets with NCWA to discuss development of program requirements and implementation of the Order and the associated Monitoring and Reporting Program. NCWA and the Subwatershed Groups are parties to a binding Memorandum of Agreement (MOA) that delineates the roles and responsibilities of the respective groups. See comments below on the governance structure under sections II through IV.

SVWQC has a website to provide information about the coalition, monitoring results, submitted reports, recommended management practices and subwatershed contacts. Staff recommends that the documentation of the third-party's organizational structure, and roles and responsibilities be made available on the website. The availability of documentation for Members is a requirement of the Order.

2. The third-party is required to prepare annual summaries of expenditures of fees and revenue necessary to comply with the Order. The summaries must be made readily available to members. NCWA prepares an annual budget that is reviewed by the SVWQC Management Advisory Council. The application letter states that owners and operators of irrigated lands are briefed on costs annually at Subwatershed Group Member meetings, and financial expenditures are available to members on request. In the supplemental email

NCWA states that “financial expenditures are provided to Members in a variety of ways (e.g., publication in Subwatershed newsletters) and are readily available.” NCWA’s application provides examples, but does not provide clearly identified, accessible methods by which Members in every watershed have to access the summaries of fees and revenues required by the order.

3. If the third-party group receives a notice of violation (NOV) from the board, the third-party must, within 30 days of receipt, provide Members in the area addressed by the NOV appropriate information regarding the reason(s) for the violation. The third-party group must provide confirmation to the board of each notification. A summary of all notices of violation received by the third-party group must be provided to all Members annually, as part of a written or electronic communication to Members. The application letter states that NCWA will mail or email correspondence to all members within the area affected by any NOV within 30 days of receiving an NOV from the Central Valley Water Board, and that a summary of all notices will be included in the Summary Annual Report mailed to all members at the end of each year.
4. The Order requires that the third-party develop and implement plans to track and evaluate the effectiveness of water quality management practices, pursuant to approved management plans. According to Central Valley Water Board files, starting in 2008, NCWA has developed and implemented Management Plans designed to track and evaluate the implementation of management practices. Management Plan implementation has included 1) conducting additional Management Plan Monitoring, 2) additional outreach and education to targeted members, 3) documenting current and newly implemented management practices, and 4) conducting annual evaluations of the effectiveness of management practices in the annual Management Plan Progress Report.
5. The Order requires that the third-party provide timely and complete submittal of any required plans or reports. NCWA has represented members within this region under the previous orders since 2003 and has submitted plans and reports in compliance with the Conditional Waivers. NCWA and SVWQC have provided clarifications when additional information was requested.
6. The third-party is required under the Order to conduct required water quality monitoring and assessments and provide timely and complete submittal of required reports. Under the Conditional Waivers (Orders R5-2006-0053 and R5-2003-0105), NCWA has contracted with Larry Walker Associates (LWA) to conduct required water quality monitoring and assessments in conformance with quality assurance/quality control requirements. LWA subcontracted with Pacific EcoRisk to perform monitoring while LWA performed data management, planning and report preparation for the monitoring program. The application letter states that water quality monitoring and assessments will continue to be conducted in accordance with the Quality Assurance Project Plan and contracted through LWA. For the new groundwater components, NCWA has engaged CH2M Hill to prepare the assessment report and will use existing and new consultants to meet the requirements described in the Order.
7. Within 45 days of receiving a Notice of Applicability (NOA) from the Central Valley Water Board, the third-party must inform its Members of the Order’s requirements by providing a notice of the deadline and process required to complete the Notice of Confirmation and Farm Evaluation template. The application letter states that NCWA will meet this

requirement, and will provide the necessary membership forms to new members requesting to join within the 120-day new member sign-up period.

8. The Order requires that the third-party must maintain attendance lists for third-party outreach events, and provide an annual summary of education and outreach activities to the Central Valley Water Board, along with copies of the educational and management practice information provided to the growers. SVWQC performs education and outreach to growers through annual member meetings, grower outreach meetings on Management Plans and other meetings held by County Agricultural Commissioners and similar opportunities. NCWA documents member attendance at meetings and documents outreach and education events in reports to the Central Valley Water Board. Working with UC Cooperative Extension, crop specialists, commodity groups and Subwatershed Groups, NCWA creates, publishes, and distributes management practice information to members. NCWA and the Subwatershed Groups produce materials and/or maintain websites for members that provide management practices information. Under the Conditional Waivers (Order No. R5-2006-0053 and Order No. R5-2003-0105), NCWA has provided copies of all outreach materials and documentation of outreach events in its annual monitoring reports.
9. Under the Order, the third party is required to work cooperatively with the Central Valley Water Board to ensure all Members are providing required information and taking necessary steps to address exceedances or degradation identified by the third-party or board. According to its application, NCWA has been working closely with the Central Valley Water Board staff since 2003 to ensure that all Members are providing required information and are taking necessary steps to address identified water quality problems.

The Order also requires (in Section IV.C.9) Membership lists be submitted that identify growers known the by third-party who have failed to implement practices, fail to respond to information requests, failed to participate in studies, or failed to provide confirmation of participation in outreach. The supplemental email from NCWA states that "Participant lists submitted by NCWA as the third-party will provide the information identified in Section IV.C.9, under the Order R5-2014-0030."

10. The Order requires that the third-party take ultimate responsibility for ensuring activities conducted by other groups on its behalf achieve the order's requirements. The application letter states that NCWA uses the Subwatershed Groups and LWA to perform work necessary for the implementation of the Order. LWA contracts for the monitoring and performs analysis and reporting duties. The Subwatershed Groups collect fees and conduct grower outreach and member relations. The application letter states that "NCWA accepts full responsibility for all information submitted" to the Central Valley Water Board. The supplemental email quotes the Order, Section IV.C.10: "The third-party is responsible for any activities conducted on its behalf."
11. Under the Order, the third party must collect and submit any fees from Members required by the State Water Board. The SVWQC Subwatershed Groups collect fees from members, including required State Water Board fees. NCWA has submitted to the State all fees as required and states it will continue to do so.

II. Whether the third-party is a legally defined entity (i.e., non-profit corporation; local or state government; Joint Powers Authority) or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to its members.

The supplemental email states that NCWA is a 501(c)6 organization registered with the California Secretary of State and shows that five of the 13 Subwatershed Groups are also organizations registered with the Secretary of State. Staff found listings for three more of the subwatershed entities on the Secretary of State website bringing the total to eight subwatersheds represented by organizations identified on the website. The email attachment shows the organizational structure and staffing levels for organizations in each of the subwatersheds. According to the attachment, these organizations vary in structure and the degree to which they are formally constituted. The legal status of the Subwatershed Groups include 501(c)3, 501(c)5, and 501(c)6 organizations, and some operate under the management of, or with support from RCDs and/or Farm Bureaus. Of the five subwatersheds that staff could not locate on the Secretary of State website, one is listed in the email attachment as a 501(c)6, three are operated cooperatively by one or more RCDs, and one appears to be operated cooperatively by the local RCD and Farm Bureau. Accountability to members would be better demonstrated if the application included the bylaws of the subsidiary organizations, and/or copies of agreements between collaborating organizations.

III. Whether the third-party has binding agreements with any subsidiary group (e.g., subwatershed group) to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done so transparently and with accountability to the third party. If the third-party will not rely on any subsidiary group to carry out any of its responsibilities, the third-party must state that in its application letter.

The NCWA application provides a narrative description and a table of roles and responsibilities of the cooperating organizations. NCWA has a binding MOA with the Subwatershed Groups and lists those organizations and their representatives to the SVWQC Management Advisory Council in the application. A copy of the MOA has not been provided, but the details of the MOA are described in the supplemental email as being included in various sections of the original application. However, staff does not think this provides reasonable assurance that the "third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done so transparently and with accountability to the third party" (Order Section VIII.A.3). A copy of the MOA should be provided.

IV. Whether the third-party has a governance structure that includes a governing board of directors composed in whole or in part of Members, or otherwise provides Members with a mechanism to direct or influence the governance of the third-party through appropriate by-laws.

The NCWA application states that SVWQC is guided by a Management Advisory Council. The Board of Directors of each Subwatershed Group designates the representatives to Management Advisory Council and appoints the Subwatershed Coordinator who conducts outreach and education for the SVWQC members at the subwatershed level. This governance structure should be documented in the application with copies of bylaws and any agreements between participating organizations. The mechanisms by which Members can direct or influence governance must be clearly described and documented in the application.