

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-

AMENDING
RESOLUTION NO. R5-2003-0105
CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS
WITHIN THE CENTRAL VALLEY REGION
ATTACHMENTS B AND C

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

1. On 11 July 2003, the Water Board adopted Resolution No. R5-2003-0105, *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (Conditional Waivers); and
2. On 22 January 2004, the State Water Resources Control Board (State Water Board) adopted Order WQO 2004-0003, which upheld the Conditional Waivers and Monitoring and Reporting Programs with minor revisions.
3. On 26 February 2004, DeltaKeeper, WaterKeepers Northern California, Environment California, the Natural Resources Defense Council, Inc., and California Sportfishing Protection Alliance (collectively "DeltaKeeper"), filed a petition for peremptory writ of mandate in Sacramento County Superior Court (Court). Deltakeeper alleged that in approving the Conditional Waivers, the Water Board violated the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), including Water Code section 13269, and the California Environmental Quality Act (CEQA) by relying on a negative declaration instead of preparing an Environmental Impact Report (EIR).
4. On 3 March 2004, the California Farm Bureau Federation (Farm Bureau) also filed a petition for peremptory writ of mandate in Court. The Farm Bureau alleged that the scope of the required reports violated the Water Code, that the Water Board cannot require compliance with water quality objectives, that reports are subject to trade secret protection, and that access provisions of the Waiver were improper.
5. On 9 May 2005, the Court substantially upheld the Conditional Waivers, including upholding the Conditional Waivers with respect to CEQA and Water Code section 13269. The Court granted, in part, the Farm Bureau's petition with respect to staff access to private property for inspections and confidentiality of monitoring reports. The Court also remanded the matter to the Water Board to clarify the application of the "tributary rule" to agricultural dominated water bodies and constructed agricultural drains.

6. Water Code section 13267(c) grants the Water Board authority to inspect the facilities of any person to ascertain whether the purposes of the Porter-Cologne Act are being met. (Water Code § 13267(c).) However, except in emergencies, that section permits the Water Board to enter on private property only upon consent or a warrant issued upon good cause:

"The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant." (Water Code § 13267(c); *see also* Civ. Proc. Code § 1822.52.)
7. The Court found that Section A.7, *Conditions - General* of the Conditional Waivers would mislead a discharger into believing that he must consent to an inspection of his property or risk violating a condition of the Conditional Waivers.
8. Attachments B and C of Resolution No. R5-2003-0105, attached, Section A.7, *Conditions – General* has been revised to clarify the application of Water Code section 13267(c) to inspections of dischargers' property.
9. Water Code section 13267(b)(2) provides that information submitted to the Water Board that may reveal trade secrets is not subject to public inspection. That section provides:

"When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies." [Water Code § 13267(b)(2).]
10. Attachments B and C of Resolution No. R5-2003-0105, Section B.9, *Technical Reports* states, "Except for material determined to be confidential in accordance with California law and regulations, all Reports submitted pursuant to this Waiver shall be available for public inspection at the Regional Board offices. NOI, General Reports and data on waste discharges, water quality, geology, and hydrology shall not be considered confidential."
11. The Court found that Section B.9 was not consistent with Water Code section 13267(b)(2).

12. Attachments B and C of Resolution No. R5-2003-0105, Section B.9, *Technical Reports* has been revised to be consistent with Water Code section 13267(b)(2).
13. Interested persons were notified that the Water Board would consider the adoption of a Resolution, which amends Attachments B and C of the Conditional Waivers and were provided an opportunity for a public hearing and an opportunity to submit written comments.
14. In a public hearing, all comments pertaining to the amended Resolution and its Waivers were heard and considered.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

For purposes of adoption of this Resolution, the Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). The Water Board adopted Resolution R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration for the Conditional Waivers. The revisions to Attachments B and C of the Conditional Waivers as set forth herein do not require the Water Board to prepare a subsequent or supplemental EIR or negative declaration because the revisions do not constitute substantial changes to the project as specified in Title 14 California Code of Regulations sections 15162 or 15163.

THEREFORE BE IT RESOLVED:

1. Resolution No. R5-2003-0105, dated 11 July 2003, adopting the Conditional Waivers and as revised on 22 January 2004 by State Water Board Order WQO 2004-0003 is hereby amended based on the above findings.
2. Attachments B and C of Resolution No. R5-2003-0105, Section A.7, *Conditions – General* shall be amended to state:

”Dischargers shall allow Regional Board staff, upon reasonable notification, access onto the affected property to determine compliance with conditions of this Waiver, subject to CWC section 13267(c) ¹.”

Footnote¹

”CWC Section 13267(c) states: “In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing

with Section 1822.50) or Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.””

3. Attachments B and C of Resolution No. R5-2003-0105, Section B.9, *Technical Reports* shall be amended to state:

“All materials submitted pursuant to this Waiver shall be available for public inspection at the Regional Board offices, except for Reports, or portions of such Reports, subject to an exemption in accordance with California law and regulations, including CWC section 13267(b)(2) and the Public Records Act. NOIs shall not be considered confidential. If the Discharger asserts that such Reports, or portions of such Reports, are subject to an exemption, the Discharger must provide information to the Regional Board describing how those portions of the Reports contain trade secrets or secret processes or are otherwise exempt from public disclosure. Any Discharger that is claiming that all or a portion of a Report is exempt from public disclosure shall submit two copies of the Report. The first copy shall be a complete, unredacted Report; the second copy shall be a complete Report with only the portion(s) claimed to be exempt redacted. Both copies of such Reports shall clearly indicate on each page’s header ‘Discharger Asserts that Portions of this Report are Exempt from Public Disclosure.’ The Water Board staff shall determine whether any such Report qualifies for an exemption from public disclosure, and shall treat those Reports accordingly.”

4. Amended Attachments B and C of Resolution No. R5-2003-0105 are attached to this Resolution.

I, THOMAS R. PINKOS, 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 5 August 2005.

THOMAS R. PINKOS, Executive Officer

Attachments: Amended Attachment B, Resolution No. R5-2003-0105
Amended Attachment C, Resolution No. R5-2003-0105