

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-0107

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:

“The Regional Board staff may investigate the property of persons subject to this Conditional Waiver pursuant to CWC Section 13267 (c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of this Conditional Waiver 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 Code of Civil Procedure Part 3 (commencing with Section 1822.50). 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.”

RESOLUTION NO. R5-2005-0107  
AMENDING RESOLUTION NO. R5-2003-0105,  
CONDITIONAL WAIVER OF WASTE DISCHARGE  
REQUIREMENTS FOR DISCHARGES FROM IRRIGATED  
LANDS WITHIN THE CENTRAL VALLEY REGION  
ATTACHMENTS B AND C

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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 Conditional Waiver shall be available for public inspection at the Water Board offices, except for Reports, or portions of such Reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under CWC section 13267(b)(2), and the Public Records Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a Report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the Report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the Reports are exempt from public disclosure. The Water Board staff shall determine whether any such Report or portion of a Report qualifies for an exemption from public disclosure. If the Water Board staff disagree with the asserted exemption from public disclosure, the Water Board staff shall notify the Discharger prior to making such Report or portions of such Report available for public inspection.”

- 3 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

## AMENDED ATTACHMENT B

RESOLUTION NO. R5-2003-0105  
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR DISCHARGES FROM IRRIGATED LANDS  
FOR COALITION GROUPS  
PURSUANT TO  
CALIFORNIA WATER CODE SECTION 13269

Attachment B to Resolution No. R5-2003-0105 constitutes a “Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands for Coalition Groups” (Waiver). This Waiver conditionally waives waste discharge requirements and reports of waste discharge for discharges (e.g. irrigation return flow, tailwater, operational spill(s), storm water runoff and subsurface drainage) from irrigated lands to surface waters within the Central Valley Region. This Waiver establishes conditions that Coalition Groups must implement to obtain coverage under and to be considered in compliance with the Waiver.

### A. Conditions - General

1. The Coalition Group shall comply with all conditions of this Waiver, including timely submittal of all technical reports specified in **Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (CWC), including Water Board orders, the imposition of civil liability, cessation of coverage under this Waiver, or referral to the Attorney General.
2. The Reports submitted to comply with this Waiver, shall be signed by a representative authorized by the Coalition Group.
3. Any person signing a Report submitted as required by this Waiver makes the following certification, whether written or implied:

*“ I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”*

4. Coalition Groups shall comply with Coalition Group Monitoring and Reporting Program (MRP) No. R5-2003-0826, which is part of this Waiver, or as revised by the Executive Officer.
5. Individual Dischargers of a Coalition Group shall implement management practices to improve and protect water quality and to achieve compliance with applicable water quality objectives identified in **Attachment A**.
6. Individual Dischargers of a Coalition Group shall not discharge any waste not specifically regulated by this Waiver. Waste specifically qualifying for conditional discharge under this Waiver includes: earthen materials, including soil, silt, sand, clay, rock; inorganic materials, (such as metals, salts, boron, selenium, potassium, nitrogen, etc.); organic materials, (such as organic

pesticides) that enter or threaten to enter into waters of the state. Examples of waste not qualifying for conditional discharge under this Waiver include, hazardous waste and human waste.

7. The Regional Board staff may investigate the property of persons subject to this Conditional Waiver pursuant to CWC Section 13267 (c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of this Conditional Waiver 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 Code of Civil Procedure Part 3 (commencing with Section 1822.50). 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.
8. Individual Dischargers of Coalition Groups shall not cause new discharges of wastes from irrigated lands that impair surface water quality. Individual Dischargers of Coalition Groups shall not increase discharges of waste or add new wastes that impair surface waters not previously discharged by the individual Discharger.
9. The Coalition Group and/or individual Dischargers shall take all reasonable steps to prevent any discharge in violation of this Waiver.
10. The Coalition Group and/or individual Dischargers shall maintain in good working order and operate as efficiently as possible any facility, control system, including management practices and monitoring devices installed or used to achieve compliance with this Waiver.
11. The discharge of any waste not specifically regulated by this Waiver described herein is prohibited unless the Discharger complies with CWC section 13260(a) and the Water Board either issues waste discharge requirements pursuant to CWC section 13263 or an individual waiver pursuant to CWC section 13269 or the time frames specified in CWC section 13264(a) have elapsed.

## **B. Technical Reports**

1. A Coalition Group, on behalf of individual Dischargers, seeking to discharge under this Waiver, shall submit a completed Notice of Intent (NOI), **Attachment D.1** on or before **1 November 2003**.
  - a. The NOI shall contain all of the information requested in Attachment D.1 in a format as approved by the Executive Officer.
  - b. The NOI shall identify the representative authorized to sign reports submitted on behalf of the Coalition Group.
  - c. 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

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 thirty (30) days.

2. A Coalition Group that submits a NOI shall, concurrently, submit a General Report.
  - a. The General Report shall identify the lead agencies and/or organizations that will develop a watershed or sub-watershed program, the key contact(s), a description of the watershed, and a commitment to work with the Water Board to satisfy the conditions of this waiver.
  - b. The General Report shall provide a detailed map of the area included within the Coalition Group. The General Report and the map shall identify participating landowners and operators, Districts, etc. (member individual Dischargers) which discharge or threaten to discharge waste from irrigated lands to surface waters and are to be covered under the conditions of the Coalition Group Waiver.
  - c. The General Report shall identify the funding mechanisms that will support the Coalition Group administrative costs, water quality monitoring, management practice evaluation and development, and other costs necessary to ensure compliance with the Waiver.
3. Upon submittal of a complete and approved NOI, coverage under this Waiver will be extended to the Coalition Group and the Executive Officer will issue a Notice of Applicability (NOA).
4. Each Coalition Group that receives a NOA shall submit and implement a Monitoring and Reporting Program Plan as specified in Coalition Groups MRP Order No. R5-2003-0826. The purpose of the MRP Plan is: 1) to determine whether the discharge of waste from irrigated lands within the area included within the Coalition Group causes or contributes to exceedances of receiving water limitations or causes nuisance; 2) to monitor the implementation of existing management practices to determine which are effective in meeting receiving water limitations; and 3) to determine which management practices are most effective in reducing wastes discharged to surface waters from irrigated lands.
5. Each Coalition Group that receives a NOA shall submit an Annual Monitoring Report as specified in Coalition Groups MRP Order No. R5-2003-0826.
6. Upon a determination by either an individual Discharger or the Coalition Group that a discharge is causing or contributing to an exceedance of receiving water limitations specified in **Part C. Receiving Water Limitations** of this Waiver, the Coalition Group or individual Discharger shall promptly notify the Water Board in writing. Based on this information or other information available to the Water Board, the Coalition Group shall, upon written notice by the Water Board Executive Officer, submit a technical report called a Management Plan to the Water Board as follows:



- a. The Management Plan shall evaluate the effectiveness of existing management practices in achieving water quality objectives and identify additional actions, including different or additional management practice implementation or education outreach, etc., the Coalition Group proposes to implement to achieve water quality objectives.
  - b. The Management Plan shall include a waste specific monitoring plan and an implementation schedule to address the exceedance.
  - c. The Coalition Group and/or individual Dischargers shall submit any modifications to the Management Plan required by the Water Board and address the Water Board's comments within thirty (30) days of written notification unless otherwise directed by the Executive Officer.
  - d. The Coalition Group and/or individual Dischargers shall be make the Management Plan available to the public upon written request. The Water Board may provide the public an opportunity to review and comment on submitted Management Plans.
  - e. The Management Plan may be incorporated into the Monitoring and Reporting Program Plan unless the Water Board directs an earlier submittal.
7. Each Coalition Group that receives a NOA shall submit a Watershed Evaluation Report as provided in Coalition Group Monitoring and Reporting Program No. R5-2003-0826.
  8. If the Coalition Group wishes to terminate coverage under this Waiver, the Coalition Group shall submit a complete Notice of Termination (NOT), **Attachment E**. Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of this Waiver, unless other Waiver of Waste Discharge Requirements (WDRs), General WDRs, or individual WDRs cover the discharge.
  9. All materials submitted pursuant to this Conditional Waiver shall be available for public inspection at the Water Board offices, except for Reports, or portions of such Reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under CWC section 13267(b)(2), and the Public Records Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a Report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the Report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the Reports are exempt from public disclosure. The Water Board staff shall determine whether any such Report or portion of a Report qualifies for an exemption from public disclosure. If the Water Board staff disagree with the asserted exemption from public disclosure, the Water Board



staff shall notify the Discharger prior to making such Report or portions of such Report available for public inspection.

10. All Reports submitted pursuant to this Waiver are required pursuant to CWC section 13267. Failure to submit reports in accordance with schedules established by this Waiver, the attachments of this Waiver, or failure to submit a complete report (e.g., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to CWC section 13268.

**C. Receiving Water Limitations**

1. The following receiving water limitations are based upon water quality objectives contained in the **Attachment A**. As such, the following limitations are a required part of this Waiver. Individual Dischargers in Coalition Groups shall not cause:
- a. Concentrations of dissolved oxygen to fall below 7.0 mg/l, 6.0 mg/L or 5.0 mg/l as specified in the Basin Plans.
  - b. Oils, greases, waxes, or other materials to form a visible film or coating on the water, surface or on the stream bottom.
  - c. The normal ambient pH to fall below 6.5, exceed 8.5, or change by more than 0.5 units.
  - d. Oils, greases, waxes, floating material (liquids, solids, foams, and scums) or suspended material to create a nuisance or adversely affect beneficial uses.
  - e. Aesthetically undesirable discoloration.
  - f. Fungi, slimes, or other objectionable growths.
  - g. The turbidity to increase as follows:
    1. More than 1 Nephelometric Turbidity Units (NTUs) where natural turbidity is between 0 and 5 NTUs.
    2. More than 20 percent where natural turbidity is between 5 and 50 NTUs.
    3. More than 10 NTUs where natural turbidity is between 50 and 100 NTUs.
    4. More than 10 percent where natural turbidity is greater than 100 NTUs.
  - h. Deposition of material that causes nuisance or adversely affects beneficial uses.
  - i. The normal ambient temperature to be altered more than 5°F.
  - j. Taste or odor-producing substances to impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses.
  - k. Radionuclides to be present in concentrations that exceed maximum contaminant levels specified in the California Code of Regulations, Title 22; that harm human, plant, animal or aquatic life; or that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life.
  - l. Aquatic communities and populations, including vertebrate, invertebrate, and plant species, to be degraded.
  - m. Toxic pollutants to be present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health.

- n. Violation of any applicable water quality objective in the Water Board's Basin Plans or any water quality standard for receiving waters adopted by the Water Board or the State Water Resources Control Board pursuant to the Clean Water Act and regulations adopted thereunder.
2. Coalition Groups and/or their member individual Dischargers shall comply with receiving water limitations. The Coalition Groups and/or individual Dischargers shall, through timely implementation of management practices, reduce wastes in the discharges in accordance with the conditions of this Waiver, including any modifications. Management practices shall be designed to improve and achieve compliance with receiving water limitations, to protect water quality, and prevent nuisance. If exceedance(s) of receiving water limitations persist notwithstanding implementation of management practices and other requirements of this Waiver, the Coalition Group shall submit a Management Plan as specified in **Part B. Technical Reports** of this Waiver.

#### **D. Time Schedule**

Pursuant to CWC Section 13267, the following reports are required to be submitted to the Water Board on or before the dates in the time schedule below as a condition of the Waiver:

| <b><u>Task</u></b>                                                                                                                                           | <b><u>Compliance Date</u></b>               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| NOI, General Report <sup>1</sup>                                                                                                                             | <b>1 November 2003</b>                      |
| Watershed Evaluation Report <sup>1</sup>                                                                                                                     | <b>1 April 2004</b>                         |
| Monitoring and Reporting Program Plan                                                                                                                        | <b>1 April 2004</b>                         |
| Water quality or sediment sample collection shall begin by                                                                                                   | <b>1 July 2004</b>                          |
| First Annual Monitoring and Reporting Program Report as required by the Coalition Group Monitoring and Reporting Program Order No. R5-2003-0826 <sup>1</sup> | <b>1 April 2005</b>                         |
| Management Plan                                                                                                                                              | <b>As required by the Executive Officer</b> |

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<sup>1</sup> NOI and the General Report submittal requirements are provided in the Waiver. The Watershed Evaluation and Monitoring and Reporting report requirements are provided in Coalition Group Monitoring and Reporting Program No. R5-2003-0826

Revised: 7/24/03  
Revised: 3/12/04 pursuant to SWRCB WQO 2004-0003  
Revised: 8/5/05 pursuant to Resolution R5-2005-0107

## AMENDED ATTACHMENT C

RESOLUTION NO. R5-2003-0105  
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR DISCHARGES FROM IRRIGATED LANDS  
FOR INDIVIDUAL DISCHARGERS  
PURSUANT TO  
CALIFORNIA WATER CODE SECTION 13269

Attachment C to Resolution No. R5-2003-0105 constitutes a “Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands for Individual Dischargers” (Waiver). This Waiver conditionally waives waste discharge requirements and reports of waste discharge for discharges (e.g. irrigation return flow, tailwater, operational spill(s), storm water runoff and subsurface drainage) from irrigated lands to surface waters within the Central Valley Region. This Waiver establishes conditions that individual Dischargers must implement to obtain coverage under and to be considered in compliance with the Waiver.

Individual Dischargers may be required to undertake additional actions to mitigate identified water quality impacts to improve and protect water quality. The Water Board will work closely with those individual Dischargers to resolve water quality impairments.

### A. Conditions - General

1. Dischargers shall comply with all conditions of this Waiver, including timely submittal of all technical reports specified in **Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (CWC), including Water Board orders, the imposition of civil liability, cessation of coverage under this Waiver, or referral to the Attorney General.
2. The Reports submitted to comply with this Waiver shall be signed by a representative authorized by the Discharger.
3. Any person signing a Report submitted as required by this Waiver makes the following certification, whether written or implied:

*“ I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”*

4. Dischargers shall comply with Individual Discharger Monitoring and Reporting Program No. R5-2003-0827, which is part of this Waiver, or as revised by the Executive Officer.
5. Dischargers shall implement management practices to improve and protect water quality and to achieve compliance with applicable water quality objectives identified in **Attachment A**.

6. Dischargers shall not discharge any waste not specifically regulated by this Waiver. Waste specifically qualifying for conditional discharge under this Waiver includes: earthen materials, including soil, silt, sand, clay, rock; inorganic materials, (such as metals, salts, boron, selenium, potassium, nitrogen, etc.); organic materials, (such as organic pesticides) that enter or threaten to enter into waters of the state. Examples of waste not qualifying for conditional discharge under this Waiver include hazardous waste and human waste.
7. The Regional Board staff may investigate the property of persons subject to this Conditional Waiver pursuant to CWC Section 13267 (c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of this Conditional Waiver 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 Code of Civil Procedure Part 3 (commencing with Section 1822.50). 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.
8. Dischargers shall not cause new discharges of wastes from irrigated lands that impair surface water quality. Dischargers shall not increase discharges of waste or add new wastes that impair surface waters not previously discharged.
9. Dischargers shall take all reasonable steps to prevent any discharge in violation of this Waiver.
10. Dischargers shall maintain in good working order and operate as efficiently as possible any facility, control system, including management practices and monitoring devices installed or used to achieve compliance with this Waiver.
11. The discharge of any waste not specifically regulated by this Waiver described herein is prohibited unless the Discharger complies with CWC section 13260(a) and the Water Board either issues waste discharge requirements pursuant to CWC section 13263 or an individual waiver pursuant to CWC section 13269 or the time frames specified in CWC section 13264(a) have elapsed.

## **B. Technical Reports**

1. A Discharger, seeking to discharge under the conditions of this Waiver, shall submit a completed Notice of Intent (NOI), **Attachment D.2** on or before **1 November 2003**.
  - a. The NOI shall contain all of the information requested in **Attachment D.2** in a format as approved by the Executive Officer.
  - b. If the Discharger will not be signing the reports, the NOI shall identify the representative authorized to sign reports submitted on behalf of the Discharger.

2. A Discharger that submits an NOI shall, concurrently, submit a General Report.
  - a. The General Report shall identify the owner/operator, farm location, the key contact(s), a description of nearby surface waters as required in this Waiver and **Attachment D.2**, and a commitment to satisfy the conditions of the Waiver.
  - b. The General Report shall provide a detailed map of the farm area. The General Report and map(s) shall identify the discharge points which discharge wastes as described in this Waiver from irrigated lands to surface waters and are to be covered under the conditions of the individual Discharger Waiver.
  - c. The General Report shall also identify and discuss the following: crops commonly grown; chemicals (pesticides, fertilizers, etc.) commonly applied in a manner that may result in the material coming in contact with irrigation water or stormwater; management practices utilized to reduce or eliminating the discharges of wastes to surface water which may impair water quality; names of water bodies receiving the discharge(s); details of any subsurface drainage collection system, and other information as requested by the Executive Officer.
3. Upon submittal of a complete and approved NOI, coverage under this Waiver will be extended to the Discharger and the Executive Officer will issue a Notice of Applicability (NOA).
4. Each Discharger that receives an NOA shall submit and implement a Monitoring and Reporting Program Plan as specified in Individual Discharger Monitoring and Reporting Program Order No. R5-2003-0827. The purpose of the Monitoring and Reporting Program Plan is: to determine whether the discharge of waste from irrigated lands within the area included within the Watershed Group causes or contributes to exceedances of receiving water limitations or causes nuisance; to monitor the implementation of existing management practices to determine which are effective in meeting receiving water limitations; and to determine which management practices are most effective in reducing wastes discharged to surface waters from irrigated lands.
5. Each Discharger that receives an NOA shall submit an Annual Monitoring and Reporting Program Report as specified in Individual Discharger Monitoring and Reporting Program Order No. R5-2003-0827.
6. Upon a determination by the Discharger that a discharge is causing or contributing to an exceedance of receiving water limitations specified in **Part C. Receiving Water Limitations** of this Waiver, the Discharger shall promptly notify the Water Board in writing. Based on this information or other information available to the Water Board, the Discharger shall, upon written notice by the Water Board Executive Officer, submit a technical report called a Management Plan to the Water Board as follows:

- a. The Management Plan shall evaluate the effectiveness of existing management practices in achieving water quality objectives and identify additional actions, including different or additional management practice implementation, etc., the Discharger proposes to implement to achieve water quality objectives.
  - b. The Management Plan shall include a waste specific monitoring plan and an implementation schedule to address the exceedance.
  - c. The Dischargers shall submit any modifications to the Management Plan required by the Water Board and address the Water Board's comments within 30 days of written notification unless otherwise directed by the Executive Officer.
  - d. The Dischargers shall make the Management Plan available to the public upon written request. The Water Board may provide the public an opportunity to review and comment on submitted Management Plans.
  - e. The Management Plan may be incorporated into the annual Monitoring and Reporting Program report unless the Water Board directs an earlier submittal.
7. Each Discharger that receives an NOA shall submit a Farm Evaluation Report as provided in Individual Discharger Monitoring and Reporting Program No. R5-2003-0827.
  8. If the Discharger wishes to terminate coverage under this Waiver, the Discharger shall submit a complete Notice of Termination (NOT), **Attachment E**. Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of this Waiver, unless other Waiver of WDRs, General WDRs or individual WDRs cover the discharge.
  9. All materials submitted pursuant to this Conditional Waiver shall be available for public inspection at the Water Board offices, except for Reports, or portions of such Reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under CWC section 13267(b)(2), and the Public Records Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a Report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the Report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the Reports are exempt from public disclosure. The Water Board staff shall determine whether any such Report or portion of a Report qualifies for an exemption from public disclosure. If the Water Board staff disagree with the asserted exemption from public disclosure, the Water Board staff shall notify

the Discharger prior to making such Report or portions of such Report available for public inspection.

10. All Reports submitted pursuant to this Waiver are required pursuant to CWC section 13267. Failure to submit reports in accordance with schedules established by this Waiver, the attachments of this Waiver, or failure to submit a complete report (e.g., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to CWC section 13268.

### C. Receiving Water Limitations

1. The following receiving water limitations are based upon water quality objectives contained in **Attachment A**. As such, the following limitations are a required part of this Waiver. The Dischargers shall not cause:
  - a. Concentrations of dissolved oxygen to fall below 7.0 mg/l, 6.0 mg/L or 5.0 mg/l as specified in the Basin Plans.
  - b. Oils, greases, waxes, or other materials to form a visible film or coating on the water, surface or on the stream bottom.
  - c. The normal ambient pH to fall below 6.5, exceed 8.5, or change by more than 0.5 units.
  - d. Oils, greases, waxes, floating material (liquids, solids, foams, and scums) or suspended material to create a nuisance or adversely affect beneficial uses.
  - e. Aesthetically undesirable discoloration.
  - f. Fungi, slimes, or other objectionable growths.
  - g. The turbidity to increase as follows:
    1. More than 1 Nephelometric Turbidity Units (NTUs) where natural turbidity is between 0 and 5 NTUs.
    2. More than 20 percent where natural turbidity is between 5 and 50 NTUs.
    3. More than 10 NTUs where natural turbidity is between 50 and 100 NTUs.
    4. More than 10 percent where natural turbidity is greater than 100 NTUs.
  - h. Deposition of material that causes nuisance or adversely affects beneficial uses.
  - i. The normal ambient temperature to be altered more than 5°F.
  - j. Taste or odor-producing substances to impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses.
  - k. Radionuclides to be present in concentrations that exceed maximum contaminant levels specified in the California Code of Regulations, Title 22; that harm human, plant, animal or aquatic life; or that result in the accumulation of radionuclides in the food web to an extent that presents a hazard to human, plant, animal, or aquatic life.
  - l. Aquatic communities and populations, including vertebrate, invertebrate, and plant species, to be degraded.
  - m. Toxic pollutants to be present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal,



- or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health.
- n. Violation of any applicable water quality objective in the Water Board's Basin Plans or any water quality standard for receiving waters adopted by the Water Board or the State Water Resources Control Board pursuant to the Clean Water Act and regulations adopted thereunder.
2. Dischargers shall comply with receiving water limitations. Dischargers shall, through timely implementation of management practices, reduce wastes in the discharges in accordance with the conditions of this Waiver, including any modifications. Management practices shall be designed to improve and achieve compliance with receiving water limitations, to protect water quality, and prevent nuisance. If exceedance(s) of receiving water limitations persist notwithstanding implementation of management practices and other requirements of this Waiver, the Discharger shall submit a Management Plan as specified in Part B. Technical Reports of this Waiver.

#### **D. Time Schedule**

Pursuant to CWC Section 13267, the following reports are required to be submitted to the Water Board on or before the dates in the time schedule below as a condition of the Waiver:

| <b><u>Task</u></b>                                                                                                                                                 | <b><u>Compliance Date</u></b>               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| NOI, General Report <sup>1</sup>                                                                                                                                   | <b>1 November 2003</b>                      |
| Watershed Evaluation Report <sup>1</sup>                                                                                                                           | <b>1 April 2004</b>                         |
| Monitoring and Reporting Program Plan                                                                                                                              | <b>1 April 2004</b>                         |
| Water quality or sediment sample collection shall begin by                                                                                                         | <b>1 July 2004</b>                          |
| First Annual Monitoring and Reporting Program Report as required by the Individual Discharger Monitoring and Reporting Program Order No. R5-2003-0827 <sup>1</sup> | <b>1 April 2005</b>                         |
| Management Plan                                                                                                                                                    | <b>As required by the Executive Officer</b> |

<sup>1</sup> NOI and the General Report submittal requirements are provided in the Waiver. The Watershed Evaluation and Monitoring and Reporting report requirements are provided in Individual Discharger Monitoring and Reporting Program No. R5-2003-0827