

STAFF REPORT

WORKSHOP ON RENEWAL OF CONDITIONAL WAIVERS FOR DISCHARGES FROM IRRIGATED LANDS

20 October 2005 - Board Meeting

INTRODUCTION

On 11 July 2003, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted:

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

The Irrigated Lands Conditional Waiver Program (Program) and the interested community and stakeholders has faced many challenges and achieved many goals in the three years since the adoption of the initial Conditional Waivers. A chronology of Program activities is attached, which lists the efforts of Central Valley Water Board staff and stakeholders to develop and enhance the Conditional Waivers.

The Conditional Waivers describe a specific path for owners and operators of irrigated lands, including water districts, nursery owners, and managed wetland operators, to achieve compliance with the California Water Code (Water Code). The Conditional Waivers and MRPs set the minimum requirements for these entities to comply with the Water Code. This staff report describes the activities to renew and improve the Conditional Waivers, which expire on 31 December 2005.

OUTREACH

Conditional Waiver Renewal

To start the renewal process, in April 2005, Central Valley Water Board staff began an extensive outreach effort by meeting with Water Districts, Coalition Groups, DeltaKeeper, the Department of Pesticide Regulation (DPR), Department of Food and Agriculture, and the California Farm Bureau (see attached chronology). These meetings were listening sessions to solicit feedback on how the Program has worked in the last two years and to hear any specific modifications that stakeholders would like staff to consider during the renewal process.

Comments received at these meetings were both broad ranging and very specific. Issues included, among others, the expiration date of the new Conditional Waivers; definition of who is a Discharger; clarification of irrigated pasture; possible criteria for De Minimis Conditional Waiver; data sharing amongst State agencies; Agricultural Commissioner Memorandum of Understanding; out of sync grant cycles; roles of California Departments of Food and Agriculture and Pesticide Regulation in Conditional Waiver process; characterization of agriculture effects on water quality; appropriate Conditional Waiver approaches to water quality problems; impairment strategies; timely submission of Exceedance Reports; and specific management practices to correct water quality impairments.

Staff also conducted three public workshops to provide information on the renewal process and to gather feedback regarding the Program and renewal process. The workshops were held in Modesto on 29 August,

in Colusa on 1 September, and in Tulare on 8 September. During these workshops, staff also provided an update on progress towards development of a De Minimis Conditional Waiver. Staff has held several meetings with interested persons regarding the development of a De Minimis Conditional Waiver, as shown in the attached chronology.

Coalition Group Monitoring and Reporting Program

Although the MRPs do not expire, Central Valley Water Board staff discussed proposed changes to existing MRPs during the outreach efforts. On 6 May 2005, staff circulated for public comment a draft revised MRP for Coalition Groups. The revision process began based on discussions in the Technical Issues Committee. The due date for comments on the draft revised MRP was 3 June 2005. Staff had not received any comments on the draft revised MRP, so on 2 June, staff circulated for public comment a second revised MRP for Coalition Groups for comment. Most of the additional revisions resulted from discussions in the Management Practices Working Group. The due date for comments on the second revised MRP was 17 June 2005.

Staff received comments from seven coalition groups, two laboratories, and the DPR on the proposed revised MRP. On 21 July, staff circulated a summary of comments received and responses to the comments, along with the proposed final Coalition Group MRP. On 15 August 2005, the Executive Officer issued MRP No. R5-2005-0833 for Coalition Groups.

Water District Monitoring and Reporting Program

In April 2005, Central Valley Water Board staff provided a preliminary draft MRP and scheduled meetings with five Water Districts in the San Joaquin Valley. The Water Districts requested that Board staff tour their Water Districts to help craft the MRP. After the tours, Board staff modified the draft MRP and provided the Water Districts an opportunity to preview it on 10 August. Water Districts provided comments on this draft MRP, and Board staff evaluated and considered these comments in the proposed MRP for Water Districts. On 3 October, Central Valley Water Board staff provided a response to the comments received on the draft Water District MRP sent out on 10 August.

PROCESS

Staff has scheduled a workshop to hear comments on proposed renewal documents at the 20 October 2005 Central Valley Water Board meeting. The documents were available for review beginning 5 October 2005.

Staff have evaluated the comments received during the meetings with stakeholders and public workshops along with the analytical results from the Phase I and II UC Davis Cooperative Extension sampling, and the monitoring conducted by Coalition Groups, Individual Dischargers, and Water Districts under the Program. In addition, staff has evaluated the Irrigated Lands Programs in Regions 3 and 4 to find ways to improve the Program in Region 5.

Based on the extensive outreach and evaluation effort, in the renewal package, Central Valley Water Board staff proposes to revise a major portion of the Conditional Waivers and MRPs. Two orders are proposed, one specific to Coalition Groups and the other specific to Individual Dischargers. The proposed Coalition Group order includes two attachments. Attachment A provides information on water quality objectives, a table of receiving water limitations, and a list of definitions. Attachment B is the Coalition Group Conditional Waiver, and includes the Notice of Intent (NOI) and Notice of Termination

(NOT) forms. The Coalition Group Conditional Waiver also includes a Coalition Group MRP; compliance with the Coalition Group MRP is a condition of the Coalition Group Conditional Waiver.

Similarly, the proposed Individual Discharger order has two attachments, the same Attachment A as the Coalition Group Conditional Waiver, and Attachment B, which is the Individual Discharger Conditional Waiver, including the NOI and NOT forms. However, this Conditional Waiver includes two MRPs, one for Individual Dischargers and one for Water Districts that enroll as Individual Dischargers.

Each of the three proposed MRPs include the same three attachments: 1) an example field data sampling form, 2) sample format for results tabulation, and 3) outline of information to include in a Quality Assurance Project Plan.

CONTENT

Consistency with Conditional Waivers

The proposed Conditional Waivers still include the approach of using Coalition Groups to address water quality problems on a watershed or area basis in the Central Valley Region. Watershed-specific requirements are still in place based upon characteristics of the watershed and the receiving water quality conditions. There are still two proposed Conditional Waivers, one for Coalition Groups and one for Individual Dischargers, and monitoring and assessment are still essential components in both Conditional Waivers.

Proposed Changes

Staff are proposing many changes to the Conditional Waivers and their associated MRPs to streamline them and make them more effective and efficient. There is consistent terminology, better language readability, and improved overall comprehension. In addition, some findings are updated to reflect changes in Water Code Section 13269 and to evaluate requirements of the California Environmental Quality Act.

Proposed Order Changes

The most significant change to the structure of the Order is that Central Valley Water Board staff propose two orders instead of one. The significance of this change is that the expiration date of the order can be different for each, the Executive Officer can terminate one order and associated Conditional Waiver without terminating the other one, and the findings for each order can be specific to Coalition Groups and Individual Dischargers.

Staff are proposing an expiration date of 31 December 2010, or a 5-year renewal, for the Coalition Group Order. In addition to providing additional time to assess the effectiveness of the Program, the five years will provide Coalition Groups an opportunity to address various issues, including continued development of long-term funding for Coalition activities; improved grower participation; refined water quality monitoring activities; identification of management practices which protect water quality; the start of monitoring at additional Phase I monitoring sites; and implementation of Phase II monitoring activities at existing monitoring sites.

The most significant changes to the content of the Order and Coalition Group Conditional Waiver are the proposals to have members of Coalition Groups enroll directly with the Central Valley Water Board

and develop and maintain a Farm Water Quality Plan (FWQP) on-site. The enrollment requirement will increase stakeholder accountability and the FWQP will identify appropriate management practices for irrigation management, nutrient management, pesticide management, and erosion control. The schedule for Coalition Group individual member enrollment and development of the FWQP is based on farm size. Enrolling directly with the Central Valley Water Board and the requirement for a FWQP is consistent with other Regional Board irrigated lands conditional waivers and is consistent with state statutes.

Staff are proposing an expiration date of 31 December 2008 for the Individual Discharger Order. Proposing different expiration dates will allow staff to focus future renewal efforts on one Conditional Waiver at a time.

Proposed Attachment A Changes

Attachment A for the Coalition Group and Individual Discharger Orders are very similar. Both list some water quality objectives provided in the Basin Plans and Program-specific definitions. The major change to Attachment A is that it now includes a table of receiving water limitations. This will make it easier for Dischargers and Coalition Groups to compare sample results to receiving water limits and determine if the results trigger the need to submit an Exceedance Report.

Proposed Attachment B Changes

In both the Coalition Group and Individual Discharger Orders, Attachment B is the Conditional Waiver, which now includes the NOI and NOT forms. Central Valley Water Board staff propose to reduce the number of report submittals by combining the Watershed Evaluation Report (or Farm Evaluation Report for Individual Dischargers) and the Implementation Plan with the MRP Plan. The elements of each report are still required, but they are combined to produce one streamlined and clear document that describes and justifies the specific monitoring plan.

Similarly, staff propose to eliminate the General Report and include its elements in the NOI, resulting in one complete and effective document with all the information needed to enroll in one of the Conditional Waivers. The proposed Attachment B also removes the specific date in the compliance schedule to submit a NOI. This will allow flexibility for new Coalition Groups to form and participate in the Program.

Proposed Coalition Group MRP Changes

As discussed in the Outreach Section, Central Valley Water Board staff conducted several public comment periods on drafts of the Coalition Group MRP, and the Executive Officer issued MRP No. R5-2005-0833. MRP No. R5-2005-0833 includes the following changes:

- o clarified the amount of toxicity that would trigger a Toxicity Identification Evaluation (TIE);
- o revised language to require management practice evaluations only when receiving water limitations are exceeded;
- o expanded monitoring table to include analytical methods, practical quantitation limits, and monitoring frequency;
- o revised list of constituents to monitor;
- o clarified reporting requirements when receiving water limitations are exceeded at monitoring locations;
- o removed specific due dates for report submittals; and
- o required twice a year monitoring reports.

Staff propose the following changes to MRP No. R5-2005-0833 based on comments from Coalition Groups, other interested persons, and Central Valley Water Board staff, and evaluation of analytical data reported in the Annual Monitoring Reports and other studies:

- o streamline language to follow a rational order and improve understanding;
- o add requirement to prepare a Long-Term Monitoring Strategy;
- o replace monitoring “phases” with Long-Term Monitoring Strategy;
- o require toxicity and chemical sampling concurrently;
- o clarify TIE sampling requirements;
- o modify nutrient reporting limits and constituents based on laboratory capabilities;
- o expand monitoring table to include additional constituents;
- o clarify technical reports required for receiving water limitation exceedances;
- o require electronic monitoring data submittals; and
- o add example results table and field sampling form as attachments to the MRP.

Proposed Individual Discharger MRP Changes

Most of the proposed changes to the Individual Discharger MRP are the same as those proposed for the Coalition Group MRP, including streamlined language, concurrent toxicity and chemical sampling, twice a year monitoring reports, clarified technical reports for receiving water limitations exceedances, revised monitoring table, clarified TIE requirements, and example results table and field sampling form. However, the most significant change is the creation of two separate MRPs: one for Individual Dischargers, as before, and one for Water Districts that enroll as Individual Dischargers. The requirements in both MRPs are mostly the same, but the MRP for Water Districts includes requirements specific to Water District practices.

The following is a list of the proposed changes to MRP No. R5-2003-0827:

- o streamline language to follow a rational order and improve understanding;
- o revise language to require management practice evaluations only when receiving water limitations are exceeded;
- o expand monitoring table to include analytical methods, practical quantitation limits, monitoring frequency, and additional constituents;
- o revise list of constituents to monitor;
- o remove specific due dates for report submittals;
- o require twice a year monitoring reports;
- o add Long-Term Monitoring Strategy requirement (only in Water District MRP);
- o require toxicity and chemical sampling concurrently;
- o clarify the amount of toxicity that would trigger a TIE;
- o clarify TIE sampling requirements;
- o modify nutrient reporting limits and constituents based on lab capabilities;
- o clarify technical reports required for receiving water limitation exceedances;
- o require electronic monitoring data submittals; and
- o add example results table and field sampling form as attachments to the MRPs.

SUMMARY

Throughout the extensive outreach efforts, data and information evaluations, and conditional waiver renewal process, staff has worked with stakeholders to clarify, modify, and improve the Conditional Waivers. Central Valley Water Board staff appreciates stakeholder efforts to work with staff to overcome Program challenges and improve the Program.

CENTRAL VALLEY WATER BOARD STAFF CONTACTS FOR WORKSHOP REPORT

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