

**INFORMATION REPORT
ON
ISSUES RELATED TO
COALITION GROUP MEMBERSHIP LISTS
IRRIGATED LANDS
CONDITIONAL WAIVER PROGRAM**

20 October 2005 – Board Meeting

Introduction

Resolution R5-2003-0105 *Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waivers) authorizes the Executive Officer to request a list of Coalition Group participants (Membership Documents). In a 26 August 2005 letter, the Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) requested Coalition Groups enrolled in the Irrigated Lands Conditional Waiver Program (Program) to submit Membership Documents by 26 September.

As requested in Central Valley Water Board Chairman Bob Schneider's 30 August letter to Coalition Groups, staff met with Coalition Groups on 14 September and discussed the request for Membership Documents. On 16 September, the Executive Officer sent another letter to the Coalition Groups extending the deadline to 1 November to submit the Membership Documents. That letter also stated that the issue would be scheduled as an Information Report at the 20-21 October Board meeting so the Central Valley Water Board can hear the issues surrounding the matter and provide direction to the Executive Officer and staff. The letters referenced above are attached to this Information Report.

Issues related to fees, including implementation of the State Water Resources Control Board (State Water Board) fee regulations and support of Program staff, are relevant to the discussion of Membership Documents. Fee issues are described in this Information Report.

Background

As early as the December 2002 Board meeting, the Central Valley Water Board has considered the issue of whether Coalition Groups should be required to identify owners and operators of irrigated lands in their jurisdiction who have joined the Coalition Groups. The December 2002 *Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region* included a requirement for Coalition Groups to maintain a membership list. In January 2003, agricultural interests proposed an "exclusionary identification system concept" whereby only those dischargers who were not members of the Coalition Group would be identified. Coalition Groups were concerned about the cost and time to collect specific discharger information and about potentially taking on a regulatory role. Staff did not

support this concept, and in April 2003, proposed additional requirements for the membership lists.

In July 2003, staff crafted a compromise by revising the Notice of Intent (NOI) to significantly reduce the amount of identification information collected by the Coalition Groups at the time the NOI is filed. Staff also proposed that the Coalition Groups, as a requirement of the Conditional Waiver, maintain contact information for each member Discharger and be required to provide this information to the Central Valley Water Board upon written request by the Executive Officer. The Board adopted this compromise language in the July 2003 Conditional Waivers.

In August 2003, six agricultural interests and one environmental interest submitted petitions to the State Water Resources Control Board (State Water Board) regarding these actions. On 22 January 2004, the State Water Board adopted Order WQO 2004-0003, which upheld the Conditional Waivers and MRPs with minor revisions. This Order supported the Central Valley Regional Board's approach to membership lists, but required the Central Valley Water Board to revise the language regarding Membership Documents as follows:

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 Regional Board may further specify the information to be included. This information shall be provided to the Regional Board upon request, within the time specified by the Regional Board, which time shall not exceed thirty days.

Both the State and Central Valley Water Boards expressed reasons for requiring the membership lists. The primary reason for requiring Coalition Groups to maintain a Membership Document is to determine whether dischargers are complying with the Porter-Cologne Water Quality Control Act. Without the Membership Document, the Board is not able to identify which of the three options an irrigated lands discharger has chosen to comply with the Water Code (i.e., Coalition Group Conditional Waiver, Individual Discharger Conditional Waiver, or Report of Waste Discharge for individual Waste Discharge Requirements). Also, staff is not able to determine which dischargers have chosen **not** to comply with the Water Code and who thus could be subject to enforcement efforts.

The requirements of the Program focus on the nature and quality of the information to be reported to the Central Valley Water Board. The Program maximizes the flexibility for the Coalition Groups to determine the structure and operations that will work best for their respective areas. However, this flexibility does not discount the need for

Coalition Group accountability. Although the Water Code focuses enforcement on persons who discharge waste, not on Coalition Groups, it also authorizes the Central Valley Water Board to enforce the conditions of a waiver. Since “group accountability” has become a crucial issue in the proposed Conditional Waiver renewal and the Central Valley Water Board does not have enforcement authority against a Coalition Group, there is the potential consequence that if a Coalition Group fails to comply with the waiver requirements, termination of coverage for Coalition Group members may occur.

Program Compliance Measures Taken

Staff has used several tools to identify irrigated lands dischargers who are not in compliance with the Water Code, including discussions with and requests of Coalition Groups, the issuance of orders pursuant to Water Code Section 13267, and a written request for Membership Documents from the Coalition Groups.

During the last nine months, the Executive Officer has issued Water Code Section 13267 Orders to:

- 51 growers in Yolo County
- 39 growers in Madera County
- 38 growers in Fresno County
- 58 growers in Sutter County
- 58 growers in Butte County
- 39 growers in Yuba County; and
- 40 growers in Colusa County

The purpose of these Water Code Section 13267 Orders is to serve both as an educational tool to inform growers of their alternatives to meet Water Code requirements and as a requirement for the grower to submit a technical report. Staff conducts follow-up on the recipients’ technical reports to verify the description of their irrigated lands and the status of their compliance with Water Code requirements.

Central Valley Water Board staff has observed numerous pipes in ditch banks and drainage canals in the southern San Joaquin Valley area. In September 2005, staff began to focus on identifying larger growers who were not complying with the Water Code in the Counties of Kern, Tulare, King and Fresno. Identifying local drainage collection and transport facilities (drains, pipes, etc.) will help determine whether growers in the southern San Joaquin Valley area discharge to surface water and/or groundwater. In either instance, landowner and/or operator of these lands who receive Water Code Section 13267 Orders are required to report on their compliance with the Water Code for discharges to surface water.

Future priorities for Water Code Section 13267 Orders will include counties within Coalition Group jurisdictions that have a low participation rates, such as the Sacramento

Valley Water Quality Coalition, the East San Joaquin Water Quality Coalition, and the San Joaquin County and Delta Water Quality Coalition. As these priorities develop, staff will refine its enforcement efforts throughout the Central Valley Region.

Since the recent issuance of Water Code Section 13267 Orders to growers in the Sacramento Valley Water Quality Coalition jurisdiction, the Program's Public Outreach and Compliance Unit staff has received about 35 telephone calls from Coalition Group members who received this Order. All these telephone conversations included an element of anger on the part of the recipient. The growers expressed anger and frustration that they were already performing their regulatory duties and should not be bothered to gather information that the Coalition Group representative and Agricultural Commissioner's office possessed. Staff explained to these growers that staff was not able to remove Coalition Group member names from the list of enforcement order recipients since the Central Valley Water Board does not have that information, and that growers should discuss their concerns directly with their Coalition Group representatives.

The Water Code Section 13267 Orders were an initial step by staff to maximize Program compliance while educating and informing growers of legal requirements. Program staff is developing a strategy and schedule to issue Water Code Section 13267 Orders in all counties within the Central Valley Region. This strategy will provide more detail to the Enforcement Strategy stated in December 2004.

Membership Document Submittal Request

Another tool to determine compliance with the Water Code is contained in the Conditional Waivers, which authorize the Executive Officer to request Membership Documents from Coalition Groups.

Given the inefficiency of using Section 13267 Orders to determine compliance with the Water Code, staff began discussions in August 2005 with Coalition Groups regarding the need for the Membership Documents. For example, staff discussed the issue with Coalition Group representatives at several meetings in August, and staff of the Fresno Office sent letters to representatives of three sub-watershed within the Southern San Joaquin Water Quality Coalition that required submittal of the Membership Documents as part of the information needed to address the Annual Monitoring Report review. (See attached letters: Kaweah River sub-watershed, dated 3 August 2005, No. 7; Tule River sub-watershed, dated 22 August 2005, No. 11; and Kern River sub-watershed, dated 22 August 2005, No. 12)

On 26 August 2005, the Central Valley Water Board's Executive Office sent a letter (copy of one letter attached) to the nine Coalition Group representatives requiring submittal of their Membership Documents within 30 days (by 26 September). The letter also requested information regarding Coalition Group outreach efforts.

Following receipt of the letters, Coalition Group representatives expressed concern about the process and the legality for such letters to the staff and members of the Board. On

14 September 2005, several Coalition Group representatives met with Regional Board members, staff, and legal counsel to discuss the process. On 16 September 2005, the Executive Officer sent letters (copy of one letter attached) to the same nine Coalition Group representatives 1) extending the deadline for Membership Document submittal to 1 November 2005 and 2) rescinding the request for Coalition Groups to submit information on their public outreach efforts. Legal counsel had advised the Executive Officer and explained to the Coalition Group representatives that it is the opinion and advice of the Office of Chief Counsel that the Conditional Waivers authorize the Water Board to request the Membership Document at any time, but that the Water Board should request the Membership Document if there is evidence of exceedances of water quality objectives.

At a 1 September 2005 Conditional Waiver Renewal Workshop in Colusa, Central Valley Water Board staff received comments from some Coalition Group members stating they were comfortable with the Coalition Group either providing their names or alternative information, such as the Assessor Parcel Numbers of their lands, to the Central Valley Water Board. Other growers were not comfortable with this. Telephone conversations between staff and some Coalitions Group leaders and local Agricultural Commissioners indicate that significant thought is being put into potential alternative submittals to the Membership Document, which would address the Program enforcement needs that were the basis of the original requirement.

Alternatives to the Membership Document may vary among Coalition Groups, sub-watersheds, and/or geographic areas. Staff has scheduled meetings with Coalition Group representatives to discuss potential alternatives, such as lists of assessor parcel numbers enrolled with the Coalition Group, boundaries of participating lands accompanied by a list of non-participants, or other information that replaces growers' personal information. Some Coalition Groups are in the process of providing alternative information. Staff will evaluate any proposed information alternatives. Two Coalition Group leaders have stated they may be able to submit the Membership Document, as requested.

On 26 September 2005, the East San Joaquin Water Quality Coalition proposed two alternatives. The first one was to submit a list of the approximately 3,000 "Non-Responders" to letters from the Coalition Group offering regulatory coverage under the Conditional Waiver for Coalition Groups. (Not all names on the list are irrigated land owners/operators; therefore, this is not a non-member/non-complier list.) The second alternative to have Central Valley Water Board staff provide the list of proposed recipients of Water Code Section 13267 Orders to the Coalition Group, which would

remove members names from the list and return a revised list to Central Valley Water Board staff.

State Water Board Fee Regulations

Beginning in July 2004, State Water Board staff began discussions with irrigated lands stakeholders, including Central Valley Coalition Group representatives, to develop a statewide irrigated lands conditional waiver annual fee schedule. State Water Board staff presented tentative fee schedule information and request for stakeholder feedback at the February 2005 Public Advisory Committee (PAC) meeting in Modesto. The proposal was to base Coalition Group fees on the acres of irrigated lands within the Coalition Group boundary.

On 16 June 2005, the State Water Board adopted the Conditional Waiver Annual Fee Schedule to support Irrigated Lands Programs statewide, and on 17 June, sent letters to representatives from the nine Central Valley Region Coalition Groups to gather information for actual fee invoicing. In these letters, State Water Board staff changed the basis of the fee collection to say that Coalition Groups must only pay for acres enrolled in the Coalition Group, not the total acres within its boundaries. Coalition Group representatives provided percent participation information to State Water Board staff, as shown in the attached 26 August 2005 Memorandum from the Chief of the State Water Board Division of Administrative Services.

The percentage of grower participation in the various Coalition Groups and geographical areas of the Central Valley Region varies. The table below provides information on grower participation, which Coalition Group representatives provided in 1) written reports, 2) presentations to the June 2005 Joint State Water Board and Central Valley Water Board Meeting, 3) PAC meetings, and 4) Coalition Group outreach presentations provided at growers' meetings.

As shown in the table below, some participation information Coalition Groups provided to State Water Board staff differs from participation information presented in reports and various public meetings. In addition to addressing Program and grower accountability and enforcement for dischargers not complying with the Water Code, accurate membership information is needed to ensure that the resources necessary to implement an effective local Program are available.

Coalition Group	Total Group Irrigated Lands Acreage	Central Valley Water Board Percent Participation Information from Coalition Groups (Estimated Acreage Covered By Program)		State Water Board Percent Participation Information From Coalition Groups (Estimated Acreage Covered By Program) ¹	
Sac Valley Water Quality Coalition	2,145,000	60% 75% (9/30/05)	858,000	50%	1,000,000
California Rice Commission	500,000	100%	500,000	103%	516,000
Goose Lake Coalition Group	7300	TBD	TBD	70%	5,120
East San Joaquin Water Quality Coalition	1,250,000 ²	65%	812,500	43	517,661
San Joaquin County and Delta Coalition	545,000	85%	463,250	35%	348,800
San Luis Water District	66,500	TBD ³	TBD ³	50%	33,250
Westside San Joaquin River Watershed Coalition	334,000	87%	290,580	84%	460,482
So. San Joaquin Water Quality Coalition	4,400,000	70%	3,080,000	20	1,000,000
Westlands Water District	570,000	75%	427,500	102%	438,889
Root Creek Water District	26,000	70%	18,200	38%	15,000

¹ See Attached State Water Resources Control Board Memorandum, dated 26 August 2005, Agricultural Waiver Fees

² Coalition Group to refine estimates after determining decrease in irrigated lands due to recent years of development.

³ The San Luis Water District automatically enrolled all growers in their coalition since the membership fee is part of the District fees. The District proposes to conduct a survey to their growers to identify which growers "knowingly elect" to participate in the Coalition, as required in the Conditional Waiver Order. This level of participation is To Be Determined (TBD).

Staff Resource Issues And Fees

On 30 August 2005, the Central Valley Water Board received a copy of a 26 August 2005 Memorandum (attached) from the Chief of the State Water Board's Division of Administrative Services to its Executive Director. This memorandum lists the three fee tiers for growers, one for Coalition Groups that collect the fees, one for Coalition Groups that do not collect the fees, and one for Individual Dischargers. The memorandum also lists the percent acreage enrollment information that Coalition Groups provided to State Water Board staff, and projected revenue and expenditures for the statewide Agricultural Waiver Program. The memorandum concludes that a shortfall of fee collection would result in a deficit of \$8,322,012 to fund the statewide programs through the fiscal year 2006/2007. Central Valley Water Board staff will attend a meeting at the State Water Board on 5 October 2005 to further discuss program budget issues.

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