

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-0137

ADDING
INFORMATION SHEET
TO RESOLUTION NO. R5-2003-0105
CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS
WITHIN THE CENTRAL VALLEY REGION

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

1. On 11 July 2003, the Central Valley 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).
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 Central Valley Water Board violated the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), including California Water Code (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 because the Central Valley Water Board cannot require compliance with water quality objectives, reports are subject to trade secret protection, and that access provisions of the Conditional Waivers 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 of the "tributary rule" to agricultural dominated water bodies and constructed agricultural drains to the Central Valley Water Board to clarify:

"...the extent to which the Waiver is intended to apply to agricultural dominated waterways and constructed agricultural drains and other non-stream tributaries; the extent to which the Waiver purports to impose receiving water limitations upon such water bodies; and, in light of the foregoing, the extent to which the Waiver may rely on application of the Tributary Rule for these purposes." [Ruling, at page 77]

6. On 5 August 2005, the Central Valley Water Board adopted Resolution No. R5-2005-0107 amending Attachments B and C of the Conditional Waivers to address the issue of access to private property for inspections and confidentiality of monitoring reports.
7. On 15 September 2005, the Central Valley Water Board did not take action on a draft Resolution proposing the addition of an Information Sheet, which would provide clarification of the application of the Conditional Waivers to agricultural dominated waterways and constructed agricultural drains to comply with the Court Order.
8. Interested persons were notified that the Central Valley Water Board would consider the adoption of a Resolution to clarify the Conditional Waivers consistent with the Court Order and were provided an opportunity to make comments at a public meeting.
9. In a public meeting, all comments pertaining to the proposed Resolution and Information Sheet were heard and considered.

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10. For purposes of adoption of this Resolution, the Central Valley Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). The Central Valley Water Board adopted Resolution No. R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration for the Conditional Waivers. The clarification of the application of the Conditional Waivers to agricultural dominated waterways and constructed agricultural drains to comply with the Court Order as set forth in the Information Sheet does not require the Central Valley 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. The attached Information Sheet providing a clarification of the application of the Conditional Waivers to agricultural dominated waterways and constructed agricultural drains to comply with the Court Order is hereby added to Resolution No. R5-2003-0105.

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 20 October 2005.

THOMAS R. PINKOS, Executive Officer

Attachment: Information Sheet

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-0137
INFORMATION SHEET

APPLICATION OF RECEIVING WATER LIMITATIONS CONTAINED IN
CONDITIONAL WAIVERS OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS
PURSUANT TO RESOLUTION NO. R5-2003-0105

In July 2003, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) adopted *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (Conditional Waivers or Waiver) (Resolution No. R5-2003-0105). Various parties filed petitions with the State Water Resources Control Board (State Water Board) and filed petitions for writ of mandate in the Sacramento County Superior Court. On 10 May 2005, the Sacramento County Superior Court issued a ruling in the matter of *Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region, et al.*, No. 04CS00235, and *California Farm Bureau Federation v. State Water Resources Control Board, et al.* No. 04CS00264 (Court Order). In that ruling, the Court remanded:

"this action so that Respondents may clarify in its findings the extent to which the Waiver is intended to apply to agricultural dominated waterways and constructed agricultural drains and other non-stream tributaries; the extent to which the Waiver purports to impose receiving water limitations upon such waterbodies; and, in light of the foregoing, the extent to which the Waiver may rely on application of the Tributary Rule for these purposes." (Court Order at 77).

In response to the Court's three questions:

1. The Conditional Waivers apply to all waters of the state within the Central Valley Region, including agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries.
2. The Conditional Waivers impose receiving water limitations upon agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries to the same extent as the Basin Plans.
3. The Central Valley Water Board has designated beneficial uses for listed water bodies, including uses for certain agricultural drains in its Water Quality Control Plans. See Chapter II of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Basin. To address water bodies that are not separately listed in the Water Quality Control Plans, the Regional Board set forth the so-called "tributary rule". The Regional Board generally does not use the tributary rule to determine beneficial uses for constructed agricultural drains and other non-stream tributaries. The tributary rule generally does apply to agricultural dominated water bodies. Even if a water body is not listed and the tributary rule does not apply, beneficial uses of water bodies may be designated pursuant to other laws or policies. For example, designated uses may be based on the United States Environmental Protection Agency's water quality standards regulations. See State Water Board Order WQO 2002-0016 at 6.