

Appendix B

Summary of Comment Letters and Responses to Comments



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To Interested Parties:

SUMMARY OF COMMENT LETTERS AND STAFF RESPONSES REGARDING APRIL 2006 TENTATIVE CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

In July 2003, the Central Valley Regional Water Quality Control Board (hereafter Water Board or Regional Board) adopted Resolution No. R5-2003-0105, *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (2003 Conditional Waivers). On 28 November 2005, the Water Board extended the expiration date of the 2003 Conditional Waivers to 30 June 2006 to allow more time for the public and staff to evaluate proposed revisions to the 2003 Conditional Waivers.

On 19 April 2006, Water Board circulated tentative documents related to the Conditional Waiver Orders for Coalition Groups and Individual Dischargers (April 2006 Tentative Orders) and provided an opportunity to submit written comments. On 26 April, Water Board staff posted on the Water Board website a highlighted version of the Coalition Group Tentative Order showing the proposed revisions. Written comments on the April 2006 Tentative Orders were due by 19 May 2006.

The following is a summary of the comments received and Water Board staff responses:

Carol Hollingsworth, Nevada County Resident – letter dated 12 May 2006, received 18 May 2006

Ms. Hollingsworth requests that Nevada County be exempt from the Program because: 1) Nevada County has very little agriculture other than timber, 2) most of the irrigated lands are permanent pastures which are sprinkler irrigated with little to no run-off, 3) the pastures are cover crops which prevent erosion during storm events, 4) vineyards are the second largest irrigated crop which drip irrigate and use cover crops, 5) Nevada County uses low amounts of chemicals according to Pesticide Use Reports (PURs), and 6) the irrigated pastures provide fire breaks. The letter states that because of the benefits of the irrigated lands and the low risk to waters of the State, that Nevada County should be exempt from Conditional Waivers or be issued a county-wide De Minimis Waiver. The letter includes as attachments an article titled *Researchers Seek Best Ways To Hold Water On A Field* and a copy of the 2004 PUR for Nevada County.

Response:

Water Board staff recognizes that a significant amount of irrigated lands in Nevada County may be considered to have de minimis discharges, but such discharges are currently within the scope of the Conditional Waivers. Such dischargers may have run-off as a result of their irrigation practices or following storm events. As staff resources have allowed, staff has held workshops and has participated in meetings with Nevada County officials and residents and others within the Central Valley Region regarding the issues discussed in the letter and to develop criteria for a De Minimis Conditional

Waiver. Most recently, however, Water Board staff has focused its limited resources on renewing the 2003 Conditional Waivers. Staff intends to develop a De Minimis Conditional Waiver for Water Board consideration as resources allow.

The commenter proposes that dischargers in Nevada County be exempt from the Conditional Waivers. This approach, however, is not appropriate because the Conditional Waivers set forth a voluntary mechanism for dischargers to comply with California Water Code Division 7 (Water Code) by knowingly electing to comply with the requirements of the Conditional Waivers. Dischargers are not required to participate in the Conditional Waivers, but dischargers are required to comply with the Water Code. Growers within Nevada County may comply with the Water Code by submitting a Report of Waste Discharge seeking waste discharge requirements, by enrolling in the Individual Discharger Conditional Waiver, or by joining or forming a Coalition Group. An Conditional Waiver Fact Sheet has been made available to provide information to growers to help them determine if they are “dischargers” within the scope of the Conditional Waivers and, thus, whether they are required to comply with the Water Code using the available mechanisms.

Walter Ward, Modesto Irrigation District (MID) – 18 May 2006

MID supports the proposed five-year term of the Conditional Waivers because it will allow for consistent collection of data and evaluation of multiple years of data in order to determine where water quality problems do and do not occur. MID states that the definition of operational spill “captures the essence of what an operational spill is.” However, the definition of “discharges of waste from irrigated lands” includes operational spills among other things. If the definition of operational spill is correct, that it is undelivered water, then operational spill should not be used as an example of a discharge of waste from irrigated lands. The same rationale applies to the definition of water district. Furthermore, the definition of water district states, “Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands...” The definition of discharger states, “The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State.” According to the definition of “waters of the State,” irrigation district canals are surface waters of the State, so the discharger who makes a discharge to a canal is responsible for the discharge, not the irrigation district. The responsibility for a discharge cannot be removed from the discharger and “handed to a downstream third party.” The reference to water districts being a discharger because it accepts or receives discharges from irrigated lands needs to be removed from the definition.

Response:

Water Code section 13260 sets forth the basis for jurisdiction under the Water Code. The Water Code applies to any person who discharges waste that could affect the quality of the waters of the State. The commenter is correct that a person who discharges waste into a water district’s irrigation canals is a discharger within the meaning of the Water Code, since irrigation canals are “waters of the state.” In some circumstances, the irrigation districts can be considered dischargers, e.g., when the district releases water containing waste into other waters of the State. The Attorney General has opined that a human activity that acts to move water from one source and deposit it in another can result in a discharge subject to regulation as “waste,” even if the water moved is unaltered. See 43 Cal.Ops.Atty.Gen. 217 (1964). In that Opinion, a hydroelectric plant proposed to take water from one water body, which seasonally included high levels of naturally occurring silts or “fines,” and to deposit that water into another water body with a different silt regime. The Attorney General opined that the proposed activity could create “conditions of pollution” in the receiving water, and fell under the definition of “waste.” It did not matter that the silts were not of human origin, but naturally occurring in the water before the human action of moving the water to another water body. In Lake Madrone

Water Dist. V. State Water Resources Control Board (1989), 209 Cal.App.3d 163, the Court found that a water district was subject to the Water Board's discharge requirements governing the release of sediment from a dam. The Court relied, in part, on its conclusion that the sediment discharge was "associated with human habitation" within the meaning of Water Code section 13050(d) because the sediment concentration was a result of the dam, which was built by humans. (*Id.*, at p. 169.) See also, *Southern Cal. Edison v. State Water Resources Control Board*, (1981) 116 Cal.App.3d 751). Similarly, although an irrigation district may not itself add waste to one of its canals, where it moves the waste from the canal to another or from a canal to a natural water body, it is discharging waste within the meaning of the Water Code. Such movement of waste could create a condition of pollution or nuisance (Water Code §13050(l) and (m)); may constitute an "activity" that could affect the quality of the waters of the state (Water Code §13050(i)); and can result in the discharge of waste "associated with human activity" (Water Code §13050(d)).

An "operational spill" refers to unused irrigation supply water, which could contain waste, if waste enters the district's canals. Staff concurs that discharges of waste to irrigation facilities are the responsibility of the individual dischargers, but the discharge of that waste from the district's canal to another water of the State is the district's responsibility. Staff proposes a revision to the definition of "discharges of waste from irrigated lands" to include "operational spills containing waste."

Robert Harris, Shasta Tehama Watershed Education Coalition (STWEC) – 19 May 2006

Along with the letter was an email stating that the STWEC is a subwatershed member of the Sacramento Valley Water Quality Coalition (SVWQC) and that the STWEC supports the comments provided by the SVWQC on the April 2006 Tentative Orders. STWEC commented that the April 2006 Tentative Orders present "a fair and balanced approach for Central Valley irrigated landowners and operators to address agriculture related water quality...are pleased to see that the CVRWQCB has incorporated input from participating coalitions as well as those of outside organizations." STWEC recommends deleting Finding No. 45 regarding the non-commercial irrigators because STWEC would probably lose about one-third of its membership resulting in 1) loss of revenue, 2) future recruitment slowing down, 3) fewer water quality services provided by STWEC or STWEC raising membership fees, 4) members feeling that "they are paying for those who are getting a free ride and who are possibly contributors to water quality issues," 5) management plans being directed towards members only and not non-commercial irrigators who could be contributing to the water quality problem, 6) parcels dropping out of the Program as land use changes but still irrigating resulting in fewer coalition members and more people irrigating, 7) neighbor to neighbor friction with commercial neighbors seeing non-commercial neighbors irrigating but not paying the fees, and 8) STWEC losing ability to meaningfully track level of membership because the current system will no longer be valid as an unknown amount of irrigated acreage will be excluded.

Response:

Finding No. 45 of the April 2006 Tentative Orders is intended as a clarification. The Conditional Waivers were never intended to regulate home gardens or other irrigated features that are intended for personal consumption. Although Finding No. 45 may eliminate some growers from STWEC, deleting the clarification would result in the inclusion of persons who were not intended to be regulated under the Program.

Stevan Stroud, South San Joaquin Irrigation District (SSJID) – 19 May 2006

SSJID notes that by commenting on the April 2006 Tentative Orders, “it is not conceding that the Regional Board may regulate SSJID for the discharge of waste to its canals from an individual discharger that is incidental to irrigation and which SSJID is required to allow under the Water Code, or for operational spills, as in neither case is SSJID discharging waste to waters of the State.” SSJID recommends adding clarification to Finding No. 19 (sic) to state that the list of beneficial uses are not found in every waterway. Finding No. 41 should acknowledge the fact that there are parcels within the Region that will never have runoff and never discharge wastes to surface waters of the State. SSJID states that four definitions in Attachment A need the following clarifications and/or comments:

Discharger - Irrigation districts are not dischargers.

Discharges of waste from irrigated lands – The definition applies to the landowner or operator of irrigated land, and the “tributary rule” may determine that channels or canals are waters of the State.

Irrigation districts may be the owners of those channels or canals used for delivering surface water to cropland just as the creeks and rivers belong to the State of California or the Federal Government.

Operational Spill – An operational spill is waters of the State, but not a “discharge of waste.”

Water District – Any discharge into irrigation facilities, which are waters of the State, would be the responsibility of the landowner or operator as stated in the April 2006 Tentative Orders.

After noting that SSJID has worked with the San Joaquin County & Delta Water Quality Coalition (SJCDWQC) to encourage participation in the coalition, SSJID notes that the part of the water district definition that states, “Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands” is not considering that the dischargers from the irrigated lands are members of the SJCDWQC with their own monitoring and reporting program (MRP) and MRP Plan. SSJID notes this may not be true for all irrigation districts, but consideration needs to be given to those irrigation districts that “fall within the sphere of a coalition group.” Lastly, the April 2006 Tentative Orders do not address the issue of those that have a Notice of Intent (NOI) on file. The Conditional Waivers need to address whether new NOIs will be required.

Response:

Staff disagrees that Finding 21 (not 19) should be clarified as proposed. Finding 21 is simply a factual finding that lists the existing or potential beneficial uses in the waters of the State within the Central Valley Region. To comply with the Conditional Waivers, dischargers must comply with “applicable” water quality standards that apply to the beneficial uses to which they discharge and must protect waters of the State against pollution and nuisance. Dischargers are only required to protect existing and potential beneficial uses of the water bodies to which they discharge; they are not required to protect beneficial uses that do not exist or do not have the reasonable potential to exist. Staff disagrees that Finding No. 41 should be clarified as proposed. The April 2006 Tentative Orders provide clarification with respect to the scope of the Conditional Waivers. In addition, a Conditional Waiver Fact Sheet has been made available that will help persons to determine whether they discharge waste within the scope of the Conditional Waivers.

*Staff disagrees with the proposed clarifications to the definitions listed above. With regard to dischargers, see Response to Comment from Walter Ward. The proposed clarification with respect to the “tributary rule” is inaccurate. The “tributary rule” is used to determine the beneficial uses of some waters of the State, but does not determine whether water bodies **are** waters of the State. An “operational spill” refers to unused irrigation supply water, which could contain waste, if waste enters the district’s canals. An operational spill is not waters of the State. Staff concurs that discharges of waste to irrigation facilities are the responsibility of the individual dischargers, but the discharge of that waste from the district’s canal to another water of the State is the district’s responsibility. Staff*

proposes a revision to the definition of “discharges of waste from irrigated lands” to include “operational spills containing waste.”

With respect to NOIs, Finding No. 52 of the April 2006 Tentative Coalition Group Order makes clear that a new NOI is not required for those Coalition Groups that submitted an NOI in accordance with the 2003 Conditional Waivers (Resolution No. R5-2003-0105).

Joseph C. McGahan, Westside San Joaquin River Watershed Coalition (Westside Coalition) – 19 May 2006

Westside Coalition notes that the Water Board extended the 2003 Conditional Waivers so that stakeholders could work with staff to resolve outstanding issues. Many stakeholders did this and were able to develop a document that will allow coalitions and farmers to continue their water quality control efforts. Although the Westside Coalition would have preferred different language and greater flexibility on several points, the process that the Water Board requested has resulted in an extension that will allow them to proceed. The Westside Coalition commends the efforts to form the Policy Working Group and of the group that made concessions, noting that small successes evolved into major breakthroughs. There are reservations about the April 2006 Tentative Orders, but they are willing to accept it as “a reasonable accommodation of varied interests.” The Westside Coalition states it is unfortunate that the environmental community did not participate in the Policy Working Group and recommends that comments provided by the environmental community on language that the Policy Working Group developed should not be considered because the opportunity to participate and provide input was already extended. Considering the environmental community comments now would be rewarding them for their lack of participation. The Westside Coalition looks forward “to the certainty that a five year waiver will provide.”

Response:

Staff agrees that the Policy Working Group was a good forum for the exchange of ideas and collaboration on issues. Water Code section 13269, however, requires the Water Board to hold a public hearing and consider all comments of the public with respect to a waiver of waste discharge requirements. The Water Board itself is not bound by any proposal that was the result of the Policy Working Group, regardless of who did or did not participate in that Group. The Water Board must consider all comments provided during the public comment period.

Staci Heaton, Regional Council of Rural Counties (RCRC) – 19 May 2006

The RCRC is concerned that no economic impact analysis has been released for public comment so that dischargers covered by the Conditional Waivers can assess associated compliance costs. The letter states, “The additional monitoring and reporting requirements imposed in the waivers both for individual dischargers and for coalition groups will undoubtedly necessitate increased staff time and result in higher compliance costs for dischargers.” RCRC is concerned that typically, these cost increases are disproportionately higher for small rural dischargers and that these “small dischargers” will not be able to sufficiently recover the increased costs. RCRC requests that an economic analysis assessing the compliance costs associated with the waivers be provided to the public for comment before the June 22 hearing. Lastly, RCRC states that the implementation time frame is only nine days, which does not allow sufficient time for the dischargers to successfully execute the new requirements and recommends a stay of enforcement for at least 90 days, which would coincide with the due date for the coalition groups to submit member lists.

Response:

A cost analysis is not required under the Water Code to adopt this Order. The Water Board is required to consider costs where it requires technical reports pursuant to Water Code section 13267, but is not required to consider costs where it requires monitoring reports pursuant to Water Code section 13269. Available cost information is discussed in the Staff Report. The Water Board will also consider costs during the process of developing the EIR.

The adoption of new Conditional Waivers will not affect the MRP requirements. The current MRPs will remain in effect until revised by the Water Board or by the Executive Officer. The MRPs are not scheduled for Water Board consideration at the 22 June meeting, so there are no additional monitoring and reporting requirements imposed at this time.

Water Board staff does not concur with the proposal to “stay” enforcement or with any extension of time for compliance and would not recommend to the Water Board that it extend any compliance dates. The Executive Officer has the discretion to consider appropriate enforcement actions, as necessary, to assure compliance with the Conditional Waivers.

John Beuttler, Allied Fishing Groups – 19 May 2006

The Allied Fishing Groups remain concerned regarding the continued proposal to use waivers for regulating irrigated agriculture due to the significant failure of previous waivers. Many of the groups represented by the Allied Fishing Groups provided comments in 2003 urging the Water Board to adopt provisions that would protect the impaired Delta ecosystem with sufficient provisions to identify the specific sources of pollution associated with agricultural discharges and with enforcement provisions to ensure the appropriate reduction in polluted runoff. At that time, studies were cited regarding toxicity to aquatic life from agricultural discharges. “Additional monitoring by U.C. Davis staff has established that nearly all agriculturally (sic) waterbodies in the Central Valley are toxic to aquatic life in violation of water quality standards.”

It is clear that the Program is a failure. The Program does not compel compliance with its own requirements, lacks accountability by failing to require dischargers to identify themselves, and sends the wrong message by failing to require agriculture to contain their waste as the state requires for thousands of other dischargers. During this time, “the Delta ecosystem has gone from bad to worse.” Key pelagic organisms are on the verge of collapse, with biologists pointing to degraded water quality in the Delta as one of the probable principal causes.

Given the available information, “it is abhorrent that the Board’s Ag Waivers did not provide a toxic reduction program so essential to the restoration of the water quality of the San Francisco Bay-Delta estuary.” The Water Board is now poised to compound this situation by extending a Conditional Waiver that does not correct these serious flaws.

The Water Board needs to direct staff to prepare a general order so the Water Board can compare the advantages and disadvantages of both side by side, as the Water Board has been repeatedly urged in the past. If the Water Board is determined to utilize the “Ag Waiver,” then correct the flaws of past waivers and ensure that the waiver is as effective, enforceable, and practical as a general order. The Conditional Waivers should include performance goals and “yardsticks” to require measurable reductions in pollution mass loading. The Conditional Waivers should include the following provisions: 1) All dischargers must file an NOI to comply with the waiver and prepare individual farm-based pollution prevention plans, 2) coalitions must develop management plans that address all water quality standards,

3) “they must comply with established requirements for discharges to groundwater and surface waters, and their waivers need to contain meaningful deterrents for non-compliance,” and 4) monitoring must include independent third party monitoring and fees to support at least the 18.5 PYs authorized to oversee the Program. These provisions will allow the Water Board to appropriately determine who is participating in the Program, who is actually discharging, what pollutants are being discharged, and who has or has not implemented management practices.

Response:

Water Board staff does not agree with the commenter that the “Program is a failure.” Prior to the “Program,” there was essentially no regulation of discharges from irrigated lands, except in a few notable, but limited circumstances, including the Rice Pesticide Basin Plan Program and the Grasslands Bypass Project. The Conditional Waivers began a unique and ambitious program to begin to regulate irrigated lands. Since 2003, it has resulted in significant Region-wide monitoring and reporting and the implementation of management plans, most notably a plan to address diazinon and chlorpyrifos in the Sacramento/Feather River watershed, which is one of the watersheds that formed the basis for the Program originally. Water Board staff agrees that Delta ecosystem is significantly degraded – many Water Board programs, including the Irrigated Lands Program are attempting to address the impacts to the Delta ecosystem. Water Board staff agrees that the Program has taken longer to implement than expected and that stepped up compliance is essential.

The commenter has not raised new information with respect to the quality of the waters than was raised when the Conditional Waivers were first adopted. The Water Board is aware that some water bodies in the state are affected by discharges from irrigated lands and, therefore, adopted the Conditional Waivers to provide a method of regulating such discharges. The record before the Water Board in 2003 included significant information with respect to the quality of the waters, and monitoring since that time has augmented the existing information. The newer monitoring data support the original information that discharges from irrigated lands affect water quality. The 2003 Conditional Waivers require and the April 2006 Tentative Orders would continue to require dischargers to comply with water quality objectives and to implement management practices to protect waters of the State. In addition, the Coalition Groups must prepare and implement management plans, as directed by the Executive Officer.

Staff disagrees that a general order is needed to compare the advantages of waste discharge requirements versus conditional waivers. Water Code section 13269 has been amended to include provisions that make conditional waivers very similar to waste discharge requirements. To waive waste discharge requirements, the Water Board must find that a conditional waiver is in the public interest and, among other requirements, it must (1) be consistent with applicable water quality control plans, (2) be conditional, (3) include monitoring and reporting, except in limited circumstances, (4) be for a limited term, and (5) be adopted after a hearing. The Water Board may require payment of annual fees, which are already being collected and are a requirement in the April 2006 Tentative Orders.

Similarly, waste discharge requirements must implement the applicable water quality control plans, are adopted after a hearing, and require payment of annual fees. There are no longer significant statutory differences between conditional waivers and waste discharge requirements. The Water Board, as a policy decision, chose to allow the use of Coalition Groups to act on behalf of dischargers to implement the Water Code. The commenter appears to believe that the Coalition Group approach is not working, and, therefore, other methods of regulation should be applied. The commenter has provided no information that would support his conclusion that another method of regulation would result in swifter compliance or swifter improvement in water quality. The Conditional Waivers require compliance with water quality standards, require monitoring, and require management practices to be implemented to correct violations where identified. The Water Board decided to use Conditional Waivers as the regulatory tool for this interim Program due to the unprecedented large-scale nature of the Program.

Other regulatory options may be considered after completion of the Environmental Impact Report (EIR).

Water Board staff agrees with some of the commenter's proposals to improve the Conditional Waivers. Staff agrees with the need for additional PYs to oversee Coalition Group activities and to work closely with Coalition Groups and growers to evaluate monitoring results, help guide future sampling efforts, ensure that appropriate monitoring follow-up occurs when water quality exceedances are found, and ensure that effective management practices are implemented to improve and protect water quality. Staff agrees that the Water Board must know who is participating in the Program. The Water Board will consider various options for determining participants in the Conditional Waivers, including the submittal of lists to identify participants and/or maps to identify participants and/or non-participants. Water Board staff does not agree that it is appropriate for every farm to have a farm-based pollution prevention plan at this time, but does agree that management plans should be prepared at the farm or watershed level where water quality problems are present. The April 2006 Tentative Orders require the implementation of management practices and require the submittal of management plans upon the request of the Executive Officer, as do the existing Conditional Waivers. Water Board staff agrees that enforcement of water quality standards is essential to this Program and that non-compliers should be subject to enforcement. Water Board staff does not agree that independent third-party monitoring is necessary to properly implement the Program, but does agree that the MRPs must be implemented and enforced in a timely manner.

Water Board staff has proposed revisions to the April 2006 Tentative Orders to clarify the condition to implement management practices.

Sonke Mastrup, Department of Fish and Game (DFG), 19 May 2006

DFG provided a letter with five comments, which are: 1) managed wetlands are included in the definition of irrigated lands and are therefore regulated under the Program, 2) because wetland habitat in the Central Valley has been reduced by 90 percent from historic levels, it is essential to manage remaining wetlands for full fish and wildlife benefits, 3) DFG continues funding and participation in the waiver process through the Westside Coalition and the SVWQC, 4) DFG believes a De Minimis Waiver may provide a more appropriate structure for addressing Basin Plan water quality objectives relative to the suite of environmental benefits provided by managed wetlands, and 5) DFG continues to be challenged by increasing regulatory efforts to control non-point source (NPS) pollution which affects managed outflow and adds that it is counterproductive to develop treatment wetlands as a remediation tool within one program and be regulated as NPS polluters within another.

Response:

Staff agrees that managed wetlands provide numerous environmental benefits. However, in some cases, the water leaving the downstream end of the wetland contains additional and/or higher concentrations of constituents, which could impair water quality. Work has not continued on the proposed De Minimis Waiver due to staff attrition and to the delay in renewing the 2003 Conditional Waivers. The Conditional Waivers are a mechanism for dischargers to comply with the Water Code by knowingly electing to comply with the requirements of the Conditional Waivers.

Steve Macaulay, California Urban Water Agencies (CUWA), 19 May 2006

CUWA urges the Water Board to adopt the April 2006 Tentative Orders because they provide a reasonable approach to continuing the process of understanding the effects of agricultural activities on water quality while a long-term program is developed. CUWA commends staff and the Executive

Officer for engaging the stakeholders in the Policy Working Group and the Technical Issues Committee and appreciates being invited to participate in the discussions. CUWA also appreciates that staff understands CUWA concerns regarding the protection of drinking water supplies in the Central Valley. CUWA urges the Water Board to continue the collaborative stakeholder process while developing the long-term program.

Response:

Staff appreciates all of those who participated in the Policy Working Group and Technical Issues Committee for the efforts to collaborate on language for the Conditional Waivers and MRPs. CUWA comments are noted.

Group of 11 Organizations - 19 May 2006

The letter summarizes the immense amount of time, money, and effort to implement the Program and commends the Board and staff for their efforts. The Group of 11 Organizations believes the best way to ensure continued improvement in agricultural water quality is through adoption of the proposed five-year April 2006 Tentative Orders. Attached to the letter is a comment letter from William J. Thomas dated 19 May 2006 on behalf of the Coalitions.

The attachment to the Group of 11 letter, prepared by William J. Thomas, discusses the many efforts of the coalition groups, including the involvement in various working groups, and states that a general accord has been reached as a result of the tireless efforts of all the participants, noting that the environmental community did not participate in the Policy Working Group. The letter states that there are extensive amendments creating difficulty for interested parties to focus on the key substantive changes and some changes insert ambiguity or potential internal conflicts. Although the April 2006 Tentative Orders may not take the form of precisely what the Coalitions would have suggested, it is generally an acceptable set of amendments, subject to specific points called out in the letter and as listed below:

- 1) Finding Nos. 13 and 14 implement the changes proposed by the Policy Working Group, but there are other references throughout the April 2006 Tentative Orders that need to be changed to be consistent with Finding Nos. 13 and 14 (Attachment B - Section A Paragraph 5 & 6, and Section B Paragraph 1, and the NOI, Section 1).
- 2) Two findings need to be modified because they are too broad as written: Amend Finding No. 1 as follows: “operations generating or having the potential to generate wastewater...” Amend Finding No. 32 as follows: “who discharge or have the potential to discharge waste...”
- 3) Finding No. 35 includes language that states the obvious, but is too vague to provide any indication of its purpose. The Coalitions recommend rephrasing as follows: “shall not be interpreted in a manner inconsistent with any other law, including the federal Clean Water Act.”
- 4) The Question and Answer document referenced in Finding No. 43 is fundamental to the agreement of the Policy Working Group and should be developed and promulgated contemporaneously with passage of the Conditional Waivers.
- 5) Reference to “discharger” in Attachment A definitions 2 and 3 and Attachment B opening paragraph must be parallel with the language agreed upon by the Policy Working Group discussions.
- 6) Findings Nos. 51 and 62 should include reference to the Exceedance and Communication Reports required by the current MRP.
- 7) Finding No. 62 includes the added language “caused or contributed to exceedances” which, if from the federal Clean Water Act, should be removed since agricultural discharges are exempt

from that law. The heightened standard imposes an additional burden on the coalitions for any amount of a pollutant detected rather than where the agricultural discharge actually exceeds the “water quality objective.”

- 8) The definition of water district is overly broad because it makes a water district a “discharger” by merely accepting, transferring, or conveying tailwater without adding waste to such water.
- 9) Attachment B, Paragraph 9 includes language that is unclear and could be misinterpreted to mean that a farmer cannot change the cropping pattern or farming practice. This language should be modified before a misinterpretation is advocated or enforcement or litigation occurs.
- 10) The insertion of “water quality standards” in place of “water quality objectives” creates confusion, and the Coalitions prefer “water quality objectives.”
- 11) References to specific numeric levels should be removed from the Conditional Waivers to maintain the integrity of the Conditional Waivers and because specific numeric levels cannot be adopted outside the regulatory process set forth by the Legislature.
- 12) Attachment B, Paragraph C needs to specifically refer to Paragraph 18 of Attachment A.

The letter by Mr. Thomas concludes by summarizing the above bullets into six categories, urges staff and Water Board members to amend the April 2006 Tentative Orders as the Coalitions propose, and states the Coalitions have acted in good faith.

Response:

The April 2006 Tentative Orders contain revisions that are based on several reasons, including the discussions in the Policy Working Group, modifications to the Water Code since 2003, modifications to State Water Board policies [such as the “Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program” (NPS Policy)], editorial changes to make the document more readable, public comments, clarifications of intent and scope noted during the last 3 years of implementation of the Program, and clarifications to take into account staff experience with implementing the Waivers. The following is a response to each of the items listed:

- 1) Finding 14 in the April 2006 Tentative Order describes the changes proposed by the Policy Working Group. Staff agreed to present the language proposed by the Policy Working Group and has fulfilled this agreement as shown by the April 2006 Tentative Orders. The Water Board will consider various options for determining participants in the Conditional Waivers.*
- 2) Comments noted and revision recommended.*
- 3) Comment noted.*
- 4) The Question and Answer document (now termed “Fact Sheet”) is intended to provide information and is not intended to be adopted by the Water Board. It may be modified as additional questions arise during implementation of the Program. The Fact Sheet is part of the agenda package for the 22 June Board meeting.*
- 5) The comment is unclear. Attachment A definition 2 refers to “discharger,” but not definition 3. Definition 2 matches the language that the Policy Working Group developed. This language is contained in Finding 42. Definition 3 and Attachment B, 1st Paragraph, do not discuss the term “discharger.”*
- 6) Findings Nos. 51 and 62 refer to “technical reports,” but those reports are more specifically set forth and described in the Attachments and MRPs. Specific references to those reports are not necessary in the findings.*
- 7) Finding 62 is consistent with the Water Code, which authorizes the Water Board to regulate any discharges of waste that could affect the quality of the waters of the State. The use of the phrase “cause or contribute to exceedances” does not constitute a “heightened standard.” Discharges that cause or contribute to exceedances of water quality standards clearly “affect the quality of the waters of the state.” To maintain consistency in terminology with other programs, including point source discharge*

programs, and to protect waters of the State from discharges of waste, it is appropriate to address those discharges that cause or contribute to exceedances of water quality standards.

8) See Response to Comment from Walter Ward.

9) The portion of the condition that refers to not allowing the discharge of waste not specifically regulated by the Coalition Group Conditional Waiver is broad enough that it does not prevent growers from changing crops or practices. The condition describes waste specifically regulated by the Coalition Group Conditional Waiver. This condition puts people on notice that if they discharge waste that is not covered by the Conditional Waivers, they may need to seek waste discharge requirements for such discharges, including, for example, domestic wastewater.

10) The term "Water quality standard" is clearly defined in the April 2006 Tentative Orders to include both Basin Plan water quality objectives and federal water quality criteria and the beneficial uses.

11) The comment is an incorrect interpretation of the Water Code and the Basin Plan. To comply with Water Code section 13269, the Conditional Waivers must require compliance with the Basin Plan standards. The Basin Plan includes both narrative and numeric water quality objectives. The Basin Plan also includes a specific policy that sets forth the method by which the Water Board implements narrative water quality objectives. Implementation of narrative objectives through use of numeric levels does not violate the Water Code and does not require rulemaking. The Conditional Waivers require compliance with all water quality objectives, including both numeric and narrative objectives, that are applicable to the beneficial uses of the water bodies to which a participant discharges waste. Given that the Conditional Waivers apply generally, the Conditional Waivers require compliance with applicable water quality standards, but the specific objectives that apply within a particular watershed may be set forth in the MRPs. Initially, the MRPs required monitoring for a broad range of constituents to provide a baseline of information. The MRPs may be modified to more selectively set forth the specific constituents and concentrations that must be monitored to address the specific applicable water quality standards. Attachment A has been revised to clarify that the numeric levels are for purposes of monitoring.

12) Comment noted; Item C.1 does refer to the definition of "water quality standards" in Attachment A.

David Guy, SVWQC – 19 May 2006

The SVWQC requests Finding No. 45 be deleted "from the proposed Irrigated Lands Program (ILP) at this time" because the subwatersheds that have been more inclusive believe the finding will undermine both current and future participation. The letter later states that if it is the intent of the Program to effectively address water quality issues from irrigated lands, then staff should postpone the inclusion of this finding and work with coalition groups to clarify the issues in a manner that will help improve water quality throughout the Central Valley.

Response:

Finding No. 45 of the April 2006 Tentative Orders is intended as a clarification. The Conditional Waivers were never intended to regulate home gardens or other irrigated features that are intended for personal consumption. Although Finding No. 45 may eliminate some growers from Coalition Groups, deleting the clarification would result in the inclusion of persons who were not intended to be regulated under the Program.

Debra C. Liebersbach, Turlock Irrigation District (TID) – 19 May 2006

The letter notes that many of the concerns raised by previous comments still remain, especially that the April 2006 Tentative Orders fail to incorporate acknowledgement that the responsibility for discharges

of waste to waters of the State lies with those who discharge the wastes, not with those who convey those waters after they receive the waste. As such, the previous comments submitted by Debra Liebersbach and Peter McGaw on behalf of the TID are incorporated by reference. TID is supportive of the agricultural waiver process, has elected to join as an individual discharger, and has submitted all necessary reports.

The April 2006 Tentative Orders state, "Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands..." which is an incorrect statement of law since Porter-Cologne regulates discharges of waste to waters of the State, not transfers. This language is also inconsistent with earlier statements by Water Board staff, which acknowledged that the responsibility for waste discharges lies with those that generate the waste, not with those that receive the waste.

The definition of "discharge of waste from irrigated lands" has been expanded and is inconsistent with California law and with the November 2005 Responses to Comments documents. "Mere conveyance of waste already added by others to waters of the state is not a "discharge of waste." (Does the State "discharge waste" when the San Joaquin River passes the gauge at Vernalis?)" The Conditional Waivers need to recognize that "discharge of waste from irrigated lands" which a water district "accepts or receives" are already covered under the Conditional Waivers. The letter includes a reference to Water Code Section 13260 (a) and Finding No. 6 of the April 2006 Individual Discharger Tentative Order, which states the responsibility lies with those generating and discharging the waste to waters of the State.

The requirements as they are proposed will impose duplicate monitoring, costs, and other requirements on many growers. Both individual dischargers and members of a coalition group must implement management practices and characterize their own discharges. Based on this, all discharges of waste from irrigated lands are required to be adequately monitored and mitigated.

In reference to Finding No. 14 of the Individual Discharger Conditional Waiver provided in the April 2006 Tentative Orders, it is unreasonable to double regulate local growers with land within a water district that applies for coverage as an individual. The grower should individually or through a coalition group characterize the effects of their waste. Monitoring by the water district should focus on the use of pesticides or other practices of the water districts themselves that could potentially affect water quality.

The letter acknowledges staff responses to comments in November 2005 and refers to portions of the April 2006 Tentative Orders where the language referred to was incorporated. The letter goes on to point out the definition of water district is not consistent with staff's responses to comments in November 2005 and recommends the following changes in the Individual Discharger Conditional Waiver:

- Add "The individual discharger to a conveyance system (a conveyance system that discharges to, or is itself, waters of the State) is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements."
- The definition of "discharges of waste from irrigated lands" should be modified as "Surface discharges, such as irrigated return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains) and stormwater runoff flowing from irrigated lands."

- The definition of “water district” should be modified as “California law defines a water district as any district or other political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. (Water Code Section 20200.) Such districts include, but are not limited to, irrigation districts, county water districts, California water districts, water storage districts, reclamation districts, county waterworks districts, drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, community services districts, water management districts, flood control districts, flood control and floodwater conservation districts, flood control and water conservation districts, water management agencies, and water agencies.”
- Condition A.6 of the Individual Discharger Conditional Waiver proposed in the April 2006 Tentative Orders should be modified as “Dischargers shall implement management practices as necessary to achieve compliance with applicable water quality objectives...”
- Condition A.7 should be removed.

The letter provides a brief discussion of the changes listed as bulleted items above.

Response:

See Response to Comments from Walter Ward. Staff concurs that discharges of waste to irrigation facilities are the responsibility of the individual dischargers, but the discharge of that waste from the district's canal to another water of the State is the district's responsibility. Staff responses regarding this issue have been consistent. It is unclear to staff how growers would be “double regulated” or would pay twice for the cost of monitoring. The water district is responsible for complying with the Water Code for its discharges of waste to waters of the State. The Water Board has no authority to dictate water district costs to its irrigators. Staff disagrees with the proposed modifications to the definitions, but agrees that the definition of “water district” should be modified to make clear that the water district is a discharger if the water district discharges waste to a different water body. Staff does not concur with the proposed modification to Condition A.6 of the Tentative Individual Discharger Conditional Waiver because the existing language provides a broader goal for the management practices. Staff does not concur with removing Condition A.7; the portion of this condition that refers to not allowing the discharge of waste not specifically regulated by the Individual Discharger Conditional Waiver is broad enough that it does not prevent growers from changing crops or practices. The condition describes waste specifically regulated by the Individual Discharger Conditional Waiver. This condition puts people on notice that if they discharge waste that is not covered by the Conditional Waivers, they may need to seek waste discharge requirements for such discharges, including, for example, domestic wastewater.

Paul Boch, County of Nevada, Community Development Agency – 19 May 2006

The letter supports Finding No. 45 because it addresses who should be in the Program and who is not required to be in. The irrigated agriculture in Nevada County provides fire breaks where wildfire is considered one of the greatest threats to life, property, and natural resources. Nevada County request that a De Minimis Waiver be granted for foothill areas where pesticide use by irrigated agriculture is less than 60,000 pounds per year and irrigated lands are less than 10 percent of the land area until storm water is properly addressed for all properties in the foothills.

Response:

See Response to Comments of Carol Hollingsworth.

John Hewitt, California Farm Bureau Federation (Farm Bureau) – 19 May 2006

The Farm Bureau believes the Water Board's directive for staff to collaborate with stakeholders "has been satisfied in principal with a mutually acceptable solution" and that with modifications proposed in their letter, the Conditional Waivers "provides a satisfactory interim regulatory framework to facilitate the implementation of management practices, and the collection and dissemination of information necessary to protect and improve water quality during the development of a long-term regulatory strategy."

The letter includes four attachments: Farm Bureau Comments on the Waiver Renewal, Economic Cost Studies from the Los Angeles and Central Coast Regional Water Boards, emails, and various articles. The following summarizes the Farm Bureau Comments on the Waiver Renewal.

The Farm Bureau proposes the following modifications to Finding No. 45:

The Conditional Waiver ~~does not~~ is not intended to cover dischargers of waste from irrigated lands used for gardens, vineyards, small orchards, small pastures, and small greenhouses that are used for the purpose of producing crops and/or animals for personal consumption or use, and the product or service is not sold commercially. Owners and operators of irrigated land described in this finding are ~~not~~ required to ~~submit a RWD or obtain WDRs~~ follow all appropriate laws and regulations.

The Conditional Waivers should incorporate an evaluation of the costs associated with, or related to, complying with its regulatory requirements because there are costs that should be evaluated and disclosed on the record for public consideration and so the Water Board can make an informed decision. The Farm Bureau notes that the Los Angeles and Central Coast Water Boards conducted an economic analysis of their proposed waiver programs.

The Farm Bureau recommends removing language that references specific numeric levels to comply with applicable water quality standards because it will "impose standards based on water quality objectives that were not adopted in conformance with the requirements of the Water Code (see Section 13241), result in violations of the administrative procedures act, and result in an impermissible delegation of RWQCB authority (see Section 13223)." The removal of this language is permissible and protective of water quality since Finding No. 23 states, "comply with applicable water quality standards, protect beneficial uses, and prevent nuisance..." and the Basin Plan establishes a process by which to evaluate compliance.

"As currently required, Coalition Groups would, in some instances, have to assign beneficial uses for the first time to a waterway and in others, translate narrative water quality objectives into numeric limits." Farm Bureau recommends removing this requirement. The Water Board cannot "impose" water quality standards or require their promulgation by Coalition Groups by adopting a Conditional Waiver. This is a violation of the Administrative Procedures Act. Water Code Section 13223 "expressly prohibits the RWQCB from delegating "the issuance, modification, or revocation of any water quality control plan, [and] water quality objective..." to its Executive Officer and presumably the public." The April 2006 Tentative Orders would violate this restriction in requiring the development of specific numeric levels in the MRP that is subject to the exclusive approval of the Executive Officer. Therefore, the requirement to develop and insert numeric water quality standards into the MRPs must be removed.

The following are editorial changes or explanations related to the April 2006 Coalition Group Conditional Waiver:

Finding No. 7 – Remove reference to “depth to groundwater” since the Program does not cover discharges to groundwater.

Finding No. 27 – Farm Bureau questions the need for “[A]dditional conditions are required to protect water quality” when it is previously stated that changes in the Program are necessary.

Finding No. 40 – Farm Bureau notes the use of “private lands” in the finding and questions whether the intent of the Program to regulate public lands

Finding No. 40 – Farm Bureau recommends modifying the last sent of the finding as follows: “The Conditional Waiver is not intended to ~~directly~~ address the lawful application of soil amendments, ~~or fertilizers, or pesticides to land.~~”

Attachment A, Definition 2 – the definition should follow those persons required to file a report of waste discharge under Water Code Section 13260 and recommends “Discharger – The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could affect the quality of waster of the state.”

Response:

Staff partially concurs with the modifications to Finding No. 45 as proposed and has made revisions to the April 2006 Tentative Orders. A cost analysis is not required under the Water Code to adopt these Orders. The Water Board is required to consider costs where it requires technical reports pursuant to Water Code section 13267, but is not required to consider costs where it requires monitoring reports pursuant to Water Code section 13269. Available cost information is discussed in the Staff Report. The Water Board will also consider costs during the process of developing the EIR.

Water Code section 13269 requires conditional waivers to be consistent with applicable water quality control plans. To comply with section 13269, the April 2006 Tentative Orders require compliance with water quality objectives, both numeric and narrative, and federal water quality criteria, and require protection of the beneficial uses. The commenter incorrectly interprets the April 2006 Tentative Orders and Water Code section 13241. The April 2006 Tentative Orders do not require Coalition Groups to assign beneficial uses or establish water quality objectives. The Basin Plan sets forth the beneficial uses and water quality objectives to protect those beneficial uses. The Water Board is not “establishing water quality objectives” in the Conditional Waivers – it is implementing existing water quality objectives consistent with the Basin Plan. Because the Conditional Waivers are generally applicable, the MRPs will set forth monitoring parameters for waste constituents specific to a particular Coalition Group area consistent with the applicable water quality standards and existing and potential beneficial uses in that area. This approach is consistent with the Water Code and the Basin Plan. Attachments A and B have been revised for clarity.

The Conditional Waiver is adopted pursuant to Water Code section 13269, not Water Code section 13263. There is no requirement in Water Code section 13269 for the Water Board to evaluate the factors in Water Code section 13241. The Water Board is proposing to waive waste discharge requirements. Dischargers may choose to take advantage of this Conditional Waiver on a voluntary basis; if not, the dischargers would be required to submit a report of waste discharge and obtain waste discharge requirements, which must comply with Water Code sections 13263 and 13241.

At this time, the Water Board is not proposing to adopt or modify MRPs. Water Code section 13223 authorizes the Water Board to delegate to the Executive Officer the authority to request technical reports pursuant to Water Code section 13267. If the Executive Officer were to issue MRPs pursuant to Water Code section 13267, it would not be a violation of the Water Code for the Executive Officer pursuant to such delegation to require monitoring to evaluate compliance with water quality objectives. The Executive Officer routinely issues MRPs for cleanup sites and other situations that requiring

monitoring to determine compliance with water quality objectives. Such actions do not constitute the adoption of water quality objectives or water quality control plans.

Finding 7 has not been revised because the finding contains a factual statement that is correct. Finding 27 has been partially revised to address the comment. Finding 40 has been partially revised to address the comment. Discharges of pesticides to surface waters of the United States require an NPDES permit, so the Finding is limited to discharges to land. Attachment A, Definition 2 has been partially revised to address the comment.

Hicham ElTal, Merced Irrigation District – 19 May 2006

The comments provided in the letter are in regards to Finding No. 40 and definitions of “discharger,” “discharges of waste from irrigated lands,” “operational spill,” and “water district” provided in Attachment A. The Merced Irrigation District asks why is the waiver set up to regulate dischargers that discharge to irrigation district facilities twice? Whether the discharger is covered as an individual or as a coalition member, the discharger will be paying for coverage twice and this language transfers the responsibility of monitoring, reporting, and correcting water quality problems from the discharger to the irrigation district. Staff needs to define “certain irrigation district operations” in Finding No. 40 because “certain operations” is very vague. Including operational spills in the definition of “discharges of waste from irrigated lands” contradicts the definition of operational spill. Operational spills should be removed from the definition of “discharges of waste from irrigated lands.”

Response:

See Response to Comments of Walter Ward.

Bill Jennings, California Sportfishing Protection Alliance (CSPA) – 19 May 2006

The letter is submitted on behalf of CSPA and the Deltakeeper Chapter of Baykeeper and incorporates comments and exhibits submitted in 2002, 2003, 2004, and 2005. Consideration of a renewed waiver must take into account that: 1) Central Valley water quality is suffering from agricultural runoff pollution, 2) there is no compliance with simple monitoring and reporting requirements, 3) there is no measurable progress, 4) there is no enforcement against bad actors, 5) there are no management plans required to prevent future pollution, 6) there is no identification of coalition members, 7) there are insufficient resources that lead to an insufficient regulatory program, 8) there are no protections for groundwater, and 9) the Program is a failure.

The letter describes the failure of regulating the agricultural community and states: 1) the pollution control requirements are vague, 2) the waiver does not require compliance with water quality standards in the foreseeable future, 3) requirements do not establish any clear pollution control objectives, such as estimating current pollution loadings, 4) there is no requirement for farmers to maintain pollution control plans, 5) the inadequacy of the fee structure compromises Water Board oversight and enforcement, 6) coalition-based structure makes the requirements largely meaningless and unenforceable, 7) the monitoring program is insufficient, 8) past staff experiences and common sense clearly show that the proposed program structure will not help the Water Board protect water quality with limited resources, and 9) a new environmental document must be prepared. Furthermore, the proposed waiver “contravenes” numerous policies and binding provisions of the Water Code and does not serve the interests of California’s 35 million residents.

Better alternatives to the waiver exist, such as a general order. Based on the above, the Water Board should “reject the proposed Waiver” and “...instead instruct staff to prepare a revised order requiring the issuance of general waste discharge requirements (WDRs) incorporating the conditions long recommended by the environmental community.” If the Water Board proceeds with waivers, then the waivers must include: 1) all dischargers must file “notices of intent to comply” and reports of waste discharge, 2) enrollees must prepare individual farm-based pollution prevention plans, 3) coalitions must develop management plans that address all water quality standards violations, 4) specific timelines, performance measure and yardsticks, critical for measuring compliance and success, must be included as conditions, 5) enrollees must comply with set requirements for discharges to groundwater, not just surface water, 6) the monitoring component must include independent third party monitoring, 7) a new environmental document must be prepared, circulated and considered for any renewal of the waiver, and 8) any new waiver must sunset upon completion of the EIR that is presently being developed.

The letter lists the following as major concerns and provides further detailed information to support each of the concerns. Please see the letter posted at [www.waterboards.ca.gov/centralvalley/...](http://www.waterboards.ca.gov/centralvalley/) for the specific detailed information.

- I. The public interest findings are not supported by the weight of the evidence. There is no evidence as to what, if any, additional pollution control measures the discharger coalitions will apply, when and where they would apply, or whether they would be effective.
 - A. The evidence overwhelmingly demonstrates that discharges from agriculture have violated water quality objectives and will do so again in the future pursuant to the conditions of the waiver.

Response: Water Board staff agrees that discharges of waste from irrigated lands have resulted in violations of water quality standards and that monitoring data collected pursuant to the 2003 Conditional Waivers support that conclusion. The staff disagrees that the Conditional Waivers allow farmers to continue to discharge waste in violation of water quality standards. The Conditional Waivers specifically prohibit the discharge of waste in violation of water quality standards, require dischargers and Coalition Groups to implement management practices to address exceedances of water quality standards, and authorizes the Executive Officer to require management plans to address violations. The essential nature of the comment is that enforcement is not proceeding in a manner considered adequate by the commenter. It is unclear how waste discharge requirements would, in this circumstance, create a different standard. As described in Response to Comments of John Buettler, Water Code sections 13269 and 13263 are very similar since section 13269 was revised in recent years. Consistent with waste discharge requirements, the Conditional Waivers require compliance with water quality standards and require actions to attain compliance where there are exceedances. The commenter appears to prefer, as a policy matter, that the Water Board not allow the use of Coalition Groups. The Water Board has the authority under the Water Code to decide, as a policy matter, to allow the use of Coalition Groups in a conditional waiver. The staff and Executive Officer are proceeding with enforcement as resources allow and based on Water Board priorities. Enforcement includes directing dischargers and/or Coalition Groups to prepare management plans, as information becomes available. Waste discharge requirements would not increase the number of staff or increase enforcement or include conditions not otherwise required by the Conditional Waivers.

- B. The evidence graphically establishes that coalitions have failed to comply with waiver conditions.

Response: Water Board staff agrees that compliance is an issue, but that is a function of enforcement, not the use of a conditional waiver. The commenter, as a policy matter, prefers the use of waste discharge requirements, but the Water Board has discretion to establish a conditional waiver. With respect to Participant Lists, the Water Board will consider various options at the 22 June Board meeting.

C. The evidence establishes the Water Board cannot or will not enforce fundamental waiver conditions.

Response: Water Board staff disagrees with the comment that the Water Board will not enforce the Conditional Waivers. Due to the unprecedented size and scope of this Program, implementation has taken longer than hoped. The Water Board has not relinquished its authority to require compliance by individuals or to take enforcement actions. It has chosen, as a policy matter, based on the huge scope of the regulated community, to use a conditional waiver approach. The commenter appears to disagree with that approach, but it is not apparent how waste discharge requirements or another regulatory approach would result in faster compliance. The use of waste discharge requirements would not result in significantly different conditions, since the Conditional Waivers require compliance with water quality objectives, monitoring and other conditions.

Furthermore, the comment which states, "The new Executive Officer then directed staff to exclude requirements in the proposed Waiver requiring submittal of membership..." is not a true statement. Water Board staff was directed by the Water Board to work within the Policy Working Group to discuss and resolve issues, including issues involving Participant lists. The new Executive Officer did not direct staff to do anything contrary to the direction of the Water Board. The April 2006 Tentative Orders require submittal of participant information, and the Water Board will consider alternative participant information submittal conditions, as described in the staff report.

D. The evidence shows the waiver's monitoring program is deficient.

Response: Water Board staff does not agree that the monitoring program is deficient but does agree that compliance with current monitoring has been deficient. Revisions to the current MRPs are being considered separately from the renewal of the Conditional Waivers.

E. Waiving substantial waste discharges that violate water quality objectives is not in the public interest and inconsistent with the intent of the legislature.

Response: Water Code section 13269 authorizes the Water Board to waive waste discharge requirements if such waiver is in the public interest. The statute does not define what is in the public interest. The Water Board has considered the goals of the Water Code and the interests of the public, including environmental and discharger interests. The use of a conditional waiver in this circumstance does not violate the policies of the State Water Resources Control Board, which specifically contemplate the use of waivers for nonpoint source discharges and the use of third parties. See, e.g., the State Water Board's NPS Policy.

F. Waiving WDRs for discharges of agricultural wastes that have been identified as causing or contributing to the further decline of the Sacramento-San Joaquin Delta and California's beleaguered fisheries cannot be in the public interest.

Response: The Conditional Waivers do not authorize discharges of waste from irrigated lands to violate water quality standards. Similar to waste discharge requirements, they require compliance with water quality standards and actions to correct violations when identified. The Conditional Waivers are in the public interest because they regulate discharges that have, essentially, not been regulated in the past. The commenter appears to disagree, as a policy matter, that the use of Coalition Groups is appropriate. The State Water Board's NPS Policy specifically acknowledges the use of third parties for nonpoint source control programs: "A primary advantage of the development of third-party programs is their ability to reach multiple numbers of dischargers who individually may be unknown to the [Water Board]." See NPS Policy at page 9. The NPS Policy also specifies that Regional Water Boards may use whatever mix of organizational approaches they deem appropriate, including regional, watershed, discharger community, and others. See NPS Policy at page 9.

- G. The waiver's conditions violate the Water Code by exempting agriculture from having to comply with water quality objectives for the foreseeable future.
1. The waiver cannot ensure attainment of water quality standards
 2. The waiver's de facto time schedule is illegal and cannot be in the public interest

Response: The Conditional Waivers require compliance with water quality standards, including Basin Plan water quality objectives and federal water quality criteria. The iterative process set forth in the Conditional Waivers is similar to the iterative process set forth in municipal storm water permits. Attachment B specifically requires compliance with water quality standards and requires Coalition Groups and dischargers to implement management practices to achieve water quality standards. In response to the comment, Attachment B has been modified to clarify the purposes of the management practices and to state that they must be implemented by Coalition Groups and/or Dischargers as a condition of the Conditional Waiver. The Executive Officer may request a Management Plan at any time and that management plan must, among other requirements, evaluate the effectiveness of existing management practices in achieving applicable water quality standards, propose a time schedule to implement its plan and achieve water quality standards, identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its participants propose to implement to achieve applicable water quality standards, and identify how the effectiveness of those additional actions will be evaluated.

- H. The waiver conditions do not assure pollution reductions by individual farms.
1. Farm-specific pollution prevention plans are needed to assure reductions in pollution loadings
 2. All coalition members must affirmatively opt-in to a coalition and provide relevant information
 3. Adequate fees are essential to the success of any sustainable program addressing agricultural pollution discharges

Response: The Conditional Waivers require Dischargers to comply with water quality standards and require implementation of management practices as a condition of the waiver. In response to the comment, Attachment B has been revised to clarify the purposes of management practices and state that they must be implemented by Coalition Groups and/or Dischargers as a condition of the Conditional Waiver. The Executive Officer may request a Management Plan at any time and that management plan must, among other requirements, evaluate the effectiveness of existing management practices in achieving applicable water quality standards, propose a time schedule to implement its plan and achieve water quality standards, identify additional actions,

including different or additional management practices or education outreach that the Coalition Group and/or its participants propose to implement to achieve applicable water quality standards, and identify how the effectiveness of those additional actions will be evaluated. This approach is consistent with the NPS Policy, which includes as elements of an NPS pollution control implementation program, the development of management practices and plans to correct problems. The NPS Policy recognizes that this is an iterative process. See NPS Policy at page 11. With respect to identification of Coalition Group participants, the April 2006 Tentative Orders require dischargers to “knowingly elect” to participate in a Coalition Group, if that is the option they choose to comply with the Water Code. With respect to fees, the fee schedule is set by the State Water Board. Water Board staff agrees that adequate fees are necessary to support staff.

- I. The Water Board cannot assume that a program that fails to reach out to individual dischargers will be effective because the boards have not gathered any evidence about who, what, where or when farming discharges occur.

Response: The NPS Policy recognizes that the use of third party programs is appropriate. The Water Board has entered into a contract to develop an EIR to support a long-term program to regulate discharges of waste from irrigated lands. As part of the preparation of the EIR, information about management practices is being collected. In addition, the Executive Officer has required management plans in two instances that have resulted in the implementation of management practices.

- J. In order for coalitions to be successful, they must be subject to clear conditions, goals and rational checks & balances.
1. The agricultural discharge program must limit the size of coalitions
 2. The agricultural discharge program must establish a clear deadline for all dischargers to comply with water quality objectives
 3. Coalitions must be obligated each year to determine their existing loadings and estimate the next year’s reductions
 4. Water Board review and approval of key milestones must be included in the Program
 5. The current conditions and numerous assertions in the proposed waiver rely on assumptions and conjecture rather than the weight of the evidence

Response: The Water Board’s direction with respect to development of the EIR was to establish a program to meet water quality objectives within 10 years. The EIR is still under development. With respect to Coalition Groups, the Water Board chose, as a policy matter, to allow Coalition Groups to act on behalf of dischargers for purposes of the Conditional Waivers. The Water Board may terminate such coverage at any time and require individuals to seek other coverage under the Water Code. It is unclear how waste discharge requirements or another regulatory approach would address the problems noted by the commenter. There are more than 25,000 dischargers. This number of dischargers would be extremely cumbersome to regulate no matter what regulatory approach is used. The Conditional Waivers require calculation of loads. Staff will use this information to assess water quality effects. The staff provides regular Program updates to the Water Board in the form of Information Items and Executive Officer’s Reports, and this will continue.

- II. The proposed waiver must address increasing pollution of groundwater from agricultural activities.

Response: Water Board staff agrees that groundwater is an extremely important resource in the Central Valley. The Water Board has chosen to address impacts to groundwater in the EIR and will consider whether and how to regulate such discharges at that time.

- III. The proposed waiver is inconsistent with the Water Board's Basin Plan and the State and Federal Antidegradation Policies.
- A. The Water Board's finding that the waiver is consistent with State Water Board Resolution No. 68-16 is contrary to law, not supported by the weight of the evidence and inconsistent with other findings
 - 1. Neither the dischargers nor the Water Board have demonstrated that agricultural discharges that add concentrations of pollutants well above natural background levels are to the maximum benefit of the public or will comply with objectives
 - 2. The waiver violates the State Water Board Resolution 68-16 because that policy requires the Board to adopt waste discharge requirements for discharges to high quality waters. The legislature intended that waivers be reserved for insubstantial discharges of waste and that WDRs be issued to discharges triggering the policy's mandates
 - 3. The Water Board does not know what control measures are or may be implemented by agricultural discharges now or in the future and has no evidence that "best practicable treatment or control" is required by the waiver
 - B. The waiver is inconsistent with the Basin Plan, including the pesticide implementation policy
 - C. The Water Board failed to consider the Federal Antidegradation Policy
 - D. The waiver is inconsistent with the NPS Policy

Response: A.1 The Water Board staff agrees that discharges of waste above water quality objectives and background conditions is not to the maximum benefit of the people of the State. The Conditional Waivers, however, do not authorize discharges of waste to agricultural lands above water quality objectives or that affect beneficial uses or cause nuisance. The Conditional Waivers explicitly prohibit such discharges. They also require Coalition Groups and/or Dischargers to implement management practices to protect the waters of the State. Attachment B has been revised to address this comment. The Conditional Waivers set forth conditions that are similar to conditions that are set forth in waste discharge requirements, including compliance with water quality standards, monitoring, and implementation of management practices to protect water quality and prevent nuisance.

A.2 and 3 The Conditional Waivers do not violate the State Water Board's "Antidegradation" Policy (Resolution 68-16). The Water Code authorizes, and the NPS Policy affirms, the use of conditional waivers to address nonpoint source pollution. It is not a violation of the Water Code to allow conditional waivers of waste discharge requirements. Water Code section 13269 does not limit conditional waivers to insubstantial discharges of waste. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). Such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution 68-16, and it is not necessary for the Water Board to conduct an anti-degradation analysis. This Order does not authorize further degradation of such waters. The Conditional Waivers do not allow discharges to further degrade waters of the State because they require compliance with water quality objectives, protection of beneficial uses, and prevention of nuisance. Attachment B has been clarified to make clear that management practices must implement best practicable treatment or control. This approach is similar to waste discharge requirements that require compliance with water quality standards and implementation of best practicable treatment or control.

B. The Conditional Waivers are not inconsistent with the Basin Plan. Similar to waste discharge requirements, they require compliance with the Basin Plan, monitoring, and implementation of management practices. The Water Board staff notes the comment with respect to the Basin Plan pesticide implementation policy at page IV-34.00 and agrees that the intent of that policy was not implemented thoroughly in the past. The proposed Conditional Waivers implement the intent of the Basin Plan implementation policy. At the time of adoption of that policy, Resolution No. 82-036 simply listed "irrigation return water and storm water runoff" as one of the categories waived. The Conditional Waivers impose conditions far beyond those imposed by Resolution No. 82-036, including compliance with water quality standards, monitoring and reporting requirements, implementation of management practices, and submittal of management plans. The Water Board staff disagrees with the statement about the effectiveness of management practices. The Executive Officer required the submittal of management plans to address diazinon and chlorpyrifos in the Sacramento and Feather River watersheds. The management plans require the dischargers to comply with the new labeling requirements for those pesticides that are likely to result in achieving water quality objectives in those water bodies. The Water Board staff intends to continue to enforce the conditions of the Conditional Waivers.

C. The Conditional Waivers implement the Water Code, not the Clean Water Act, and therefore, do not explicitly require compliance with the federal anti-degradation policy. Resolution No. 68-16, however, is implemented consistent with the federal anti-degradation policy and has been approved by USEPA as consistent with the federal policy.

The Conditional Waivers are not inconsistent with the NPS Policy. The Conditional Waivers contain conditions or findings that address the five key elements of the NPS Policy. Consistent with Element 1 (purpose of NPS program), the Conditional Waivers require compliance with water quality standards, protection of beneficial uses, and prevention of pollution or nuisance. In response to the comment, Attachment B has been revised for clarity. Consistent with Element 2 (description of management practices), the Conditional Waivers require implementation of management practices to comply with water quality standards, protect beneficial uses, and prevent pollution or nuisance. The Conditional Waivers require Coalition Groups and Individual Dischargers to submit management plans that specifically identify the management practices used, as directed by the Executive Officer. Coalition Groups and Dischargers must describe and implement management practices consistent with Element 2. The Water Board will also be evaluating management practices in the environmental impact report. Implementation of the NPS Policy is an iterative process and additional steps are ongoing to implement this Element. Element 3 (time schedule and milestones) recognizes that it may take time to achieve water quality objectives and that various processes may be needed. The Conditional Waivers require all Coalition Groups and Dischargers to implement management practices to achieve compliance with water quality standards. There is no time schedule because that is required as a condition of the Conditional Waivers. Where management plans are required, such management plans must include time schedules to achieve compliance with water quality standards. Monitoring and reporting are required on a set time schedule and management plans are required as directed by the Executive Officer as water quality problems are identified. Consistent with Element 4 (feedback mechanisms), the Conditional Waivers require monitoring and reporting and such reports are available to the public. The Water Board frequently holds meetings to obtain updates and provide an opportunity for public review. Consistent with Element 5, the Conditional Waivers make clear the enforcement mechanisms, including termination of the Conditional Waivers. The Water Board may consider other options to assure implementation of the NPS Policy.

- IV. The Water Board's Negative Declaration violates CEQA and is not based on substantial evidence.

Response: The Water Board adopted a Negative Declaration prior to adoption of the 2003 Conditional Waivers. That Negative Declaration and the 2003 Conditional Waivers were challenged in State Superior Court. The Court upheld the Negative Declaration. See Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region, Case No. 04CS00235, and California Farm Bureau Federation v. State Water Resources Control Board, et al., Case No. 04CS00264, Sacramento County Superior Court, 9 May 2005. The proposed action before the Water Board is the renewal of the Conditional Waivers with modifications – it is not a new project. Water Code section 13269 authorizes a renewal of the Conditional Waivers. Therefore, a new environmental document is not required to support the renewal. The Water Board, however, has analyzed whether a subsequent environmental document is necessary. The Water Board may not prepare a subsequent environmental document except as required by the CEQA Guidelines section 15162. The commenter has pointed out new information available since the adoption of the Negative Declaration. Such information confirms the existence of water quality concerns, but does not support the conclusion that different measures than those already included in the Conditional Waivers, including the proposed renewal, are needed to address those concerns. The Conditional Waivers require compliance with water quality standards. The commenter's concern relates to the need to enforce the terms of the Conditional Waivers, not that the Waivers' conditions are not sufficient. If the Water Board were to agree with the commenter, it would need to rescind the Conditional Waivers and wait while an environmental impact report (EIR) is being prepared before it could adopt another regulatory scheme. Such an approach would not be in the public interest. The Conditional Waivers require compliance with water quality objectives, monitoring, implementation of management practices, and submittal of management plans. Without the Conditional Waivers, none of those conditions would be in place. Staff has revised the April 2006 Tentative Orders to provide a re-opener in the event the EIR is complete prior to the end of the term of the renewed Conditional Waivers.

- V. The proposed waiver violates State and Federal Endangered Species Acts.

Response: The proposed Conditional Waiver does not violate the State or Federal Endangered Species Act. The April 2006 Tentative Orders do not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). Fish and Game Code section 2086 requires the Department of Fish and Game to adopt regulations to address effects of agricultural activities. Any taking of a species is not prohibited while management practices developed under this program are followed. The Water Board staff has provided the April 2006 Tentative Orders to the Department of Fish and Game for review. Fish and Game Code section 5650 prohibits discharge of materials that are deleterious to fish, plant life, or bird life and subjects violators to civil penalties for such actions. Section 5650 does not apply to discharges that are in compliance with waste discharge requirements or a waiver of waste discharge requirements. Enforcement of the Fish and Game Code is under the jurisdiction of the Department of Fish and Game and local District Attorneys. The federal Endangered Species Acts applies to actions taken by federal agencies, not state agencies. Where a federal approval is required, the federal agency must consult pursuant to Section 7.

The April 2006 Tentative Orders require compliance with applicable water quality standards, including water quality objectives set forth in the applicable water quality control plans and federal water quality criteria set forth in federal regulations. Compliance with such objectives will result in protection of the beneficial uses of waters of the state. Attachment B has been revised to set forth a condition that notifies dischargers of their responsibility to comply with the Endangered Species Acts. If a "take" will result from any action authorized under the April 2006 Tentative Orders, the dischargers must obtain authorization for an incidental take prior to construction or operation of the project. The dischargers shall be responsible for meeting all requirements of the applicable Endangered Species Act.

The letter included the following attachments:

- Supplemental Petition For SWRCB/OCC File A-1586(f)
- Deltakeeper Chapter of Baykeeper, CSPA, and San Joaquin Audubon Presentation Slides from June 2005 Joint State and Central Valley Water Board Meeting

Additional Responses: See Response to Comments of John Beuttler.

Carrie McNeil, Deltakeeper Chapter of BayKeeper (Deltakeeper) – 19 May 2006

The letter begins by stating there is “strong opposition to the proposed conditional waiver for irrigated agriculture.” Three years ago, Deltakeeper stated the 2003 Conditional Waiver would be insufficient to protect the water resources. The 2003 Conditional Waiver has continued to allow discharge from seven million acres of irrigated agriculture into a severely impaired Delta ecosystem without any enforcement action on polluters, compliance with monitoring requirements, or accountability. U.C. Davis and coalition monitoring results establish that virtually all agriculturally dominated waterbodies violate numerous water quality standards, most are toxic to aquatic life, and unfit to support protected public trust uses. Miles of rivers and streams are unsafe for uses such as fishing, swimming, and/or drinking. California’s Delta ecosystem is crashing rapidly, and biologists point to degraded water quality as one of the principal causes. In Fall 2005, the Little Hoover Commission found in its CALFED analysis that “The Delta is so critical to California’s future that no water policy will be successful if the estuary is not restored.”

The April 2006 Tentative Order “protects the interests of industrial agriculture but certainly not those of the public.” Given the severity of the pollution, general WDRs rather than a waiver “should be developed as the most effective and enforceable approach for addressing agricultural pollution.” Staff drafted general WDRs, but no action was taken on them. Efforts to extend the current waiver must compare the effectiveness, enforceability, costs, and efficacy of the proposed new waiver with potential general WDRs.

If the Water Board chooses to extend the waivers, it must include the following provisions: 1) All dischargers must file an NOI to comply with the waiver, 2) enrollees must prepare individual farm-based pollution prevention plans, 3) coalitions must develop management plans that address all water quality standards violations, 4) enrollees must comply with set requirements for discharges to groundwater, not just surface waters, 5) the monitoring component must include independent third party monitoring, and 6) fees must be set to support at least the 18.5 PYs authorized to oversee the Program.

The April 2006 Tentative Order essentially cedes the Board’s statutory responsibility to protect waterways to industry advocacy groups. Under the current Program, the Water Board does not know

who is participating in the Program, who is discharging, what pollutants are being discharged, or who has or has not implemented management practices. “The health of California’s water supply and Delta depends on the Regional Board acting now to fix its broken agricultural runoff program.”

Response: See Response to Comments of John Beuttler and Bill Jennings. Staff agrees with the need for additional PYs to oversee Coalition Group activities and to work closely with Coalition Groups and growers to evaluate monitoring results, help guide future sampling efforts, ensure that appropriate monitoring follow-up occurs when water quality exceedances are found, and ensure that effective management practices are implemented to improve and protect water quality. The comments regarding additional provisions for a conditional waiver are noted.

Senator Sheila Kuehl, Senate Committee on Natural Resources and Water (Senate Committee), 19 May 2006

The letter states that the proposed Conditional Waivers will degrade Central Valley water quality, in particular the Delta, instead of addressing the numerous significant problems affecting some of the state’s most valuable resources. The Senate Committee states, “Certain minimum requirements, including individual enrollment of every discharger, must be included in the new waiver for it to be a viable vehicle for improving surface and ground water quality in the Central Valley.” The letter provides statistics of constituents of concern detected in California and the Central Valley, a quote from the Little Hoover Commission on its CALFED analysis, and information from studies performed in the Delta.

The letter points out that the Legislative Analyst’s Office found that “the level of compliance is low” with the 2003 Conditional Waivers stating, “...the discharger Coalitions have repeatedly failed to comply with even the minimal terms of the current waiver, including:

- failure to comply with the monitoring and reporting provisions of the waiver;
- failure to identify currently applied best management practices (BMPs) to control pollution, propose new BMPs, identify who has or has not implemented specific management measures, or describe how the effectiveness of applied BMPs will be monitored; and
- failure to present a detailed plan of action to address identified water quality violations.”

The letter notes that despite these “failures,” the Board has not initiated any enforcement action and has only requested one management plan. The Tentative Orders fail to contain requirements essential to success, such as preventing further pollution of groundwater and a list of who is participating. The letter points out that the Central Coast Irrigated Lands Program requires both these components and has about 90 percent of irrigated acres enrolled. The amount of staff time used for identifying dischargers “exacerbates the waiver’s significant understaffing problem.”

The April 2006 Tentative Orders: 1) fail to require enrollees to sign up as intending to comply with the waiver, 2) fail to require management plans even when standards are already being violated unless the Executive Officer uses his/her discretion to order it, 3) fails to include groundwater requirements, 4) weakens the existing waiver by removing all references to a timeline for compliance, 5) compounds problems by removing the basic accountability of having the Executive Officer provide regular updates to the Water Board, 6) is weaker for excluding water quality objectives, and 7) is weaker for not releasing a revised MRP at the same time as the Conditional Waivers.

If the Water Board chooses to extend the waivers, it must include the following provisions: 1) All dischargers must file a NOI to comply with the waiver, 2) enrollees must prepare individual farm-based

pollution prevention plans, 3) coalitions must develop management plans that address all water quality standards violations, 4) enrollees must comply with set requirements for discharges to groundwater, not just surface waters, 5) the monitoring component must include independent third party monitoring, and 6) fees must be set to support at least the 18.5 PYs authorized to oversee the Program. The Water Board does not know who is discharging pollutants, what pollutants are being discharged, who is participating in the waiver program, or who has or has not implemented BMPs.

Response: The Water Board and staff share the commenter's concern that waters of the State within the Central Valley are degraded and that strong measures are needed. Staff concurs that the statistics provided in the letter show that California's water supply has been degraded over time, which is why the Water Boards have multiple programs to address the varying sources of degradation, including the Clean Water Act section 303(d) program (TMDLs), the toxic hot spots program, NPDES permits, and others. Staff does not concur that the April 2006 Tentative Orders will degrade Central Valley water quality. The Conditional Waivers contain conditions similar, and in some cases, more stringent, than requirements that are typically included in waste discharge requirements. The Conditional Waivers require compliance with water quality standards, protection of beneficial uses, and prevention of pollution and nuisance. They also require follow-up actions for exceedances detected and implementation of management practices that will reduce the amount of waste being discharged to waters of the State. They require monitoring and reporting programs.

It is important to keep this program in perspective. It is unprecedented in the State, and possibly in the country, to establish such a large regulatory program. The NPS Policy recognizes the use of third-party programs, in part because third parties have the ability to reach large numbers of dischargers who individually may be unknown to the Water Board. The Water Board has had experience with other large programs, including the industrial and construction storm water program, which includes approximately 6,500 dischargers. The industrial storm water program also uses group monitoring plans to assist dischargers in achieving compliance with the general storm water permit. It took several years for the Water Board to identify and obtain compliance from dischargers who were subject to the storm water NPDES permit program due to the large numbers of potential dischargers. The Irrigated Lands Program encompasses significantly larger numbers of dischargers and would also take many years to identify and obtain compliance from such a large number of individual dischargers without the cooperation of the third parties. It is reasonable, therefore, for the Water Board to choose, as a policy matter, to allow for the use of third party programs.

The comments regarding the Coalition Groups' failure to comply with the monitoring and reporting provisions, to identify currently applied best management practices, and to present a detailed plan of action to address identified water quality violations implies that none of these activities have occurred, which is not accurate. Staff continues to work with the Coalitions regarding these issues, which has increased awareness of the intent of the Conditional Waivers and progress towards completing its requirements. Based on these ongoing collaborative efforts, which have also resulted in increased participation by growers in the Coalition Groups, enforcement has not been taken against the Coalition Groups.

Staff does not consider the Program a failure but agrees that more work is needed. Significant information and data have been collected that would not have been collected without the Conditional Waivers and a collaborative process has taken place to work through issues of the Program. As discussed in other responses, the conditional waivers under the current law are similar to the requirements of waste discharge requirements. The conditions of the conditional waiver, if complied with, will protect water quality. Whichever regulatory method is used, enforcement is a key to compliance. The Water Board staff is committed to implementing and enforcing the terms of the

Conditional Waiver. Due to the unprecedented nature of the program, the Water Board recognizes that it has taken longer to implement than expected, but expects dischargers to comply with the Conditional Waivers.

The Program provides regular updates to the Board in the form of Executive Officer Reports and informational items. Since April 2005, the Program has prepared updates in each of the Executive Officer Reports presented to the Board.

Staff does not concur that the Tentative Orders proposed for Water Board consideration weaken the Program. Many of the changes proposed strengthen the Conditional Waivers and Program. For example, changing to water quality standards provides a condition that is more inclusive and thus more appropriate to use in order to comply with all State plans and policies. Based on the schedule for EIR for the long-term program, groundwater is not currently proposed for inclusion in the Program, but it will be evaluated through the EIR now being developed. Some aspects of the Conditional Waivers have remained consistent, such as the Executive Officer requesting management plans. Based on the request for and receipt of two management plans, the consistency of the requirements for management plans has proven effective.

The Program's MRPs are continually evaluated, which is evident by the fact that the Coalition Group MRP was revised 10 months ago, in August 2005. Although staff is not proposing modifications to the MRPs at the June 2006 Board Meeting, proposed modifications will be provided later in 2006.

Staff agrees with the need for additional PYs to oversee Coalition Group activities and to work closely with Coalition Groups and growers to evaluate monitoring results, help guide future sampling efforts, ensure that appropriate monitoring follow-up occurs when water quality exceedances are found, and ensure that effective management practices are implemented to improve and protect water quality, and to take enforcement actions as appropriate.