

TENTATIVE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2006-____

COALITION GROUP
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS

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

1. The Central Valley Region has more than seven million acres of cropland under irrigation and thousands of individuals and operations generating wastewater that falls into the category of “discharges of waste from irrigated lands,” as defined in Attachment A of Order No. R5-2006-____ (hereafter “Order” or “Conditional Waiver”).
2. The Central Valley Region has thousands of miles of surface waters that are, or may be, affected by discharges of waste from irrigated lands. These discharges may adversely affect the quality of the “waters of the State,” as defined in Attachment A of this Order.
3. Irrigated lands are lands where water is applied to produce crops including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements (WDRs), National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
4. Regional water quality data from the Surface Water Ambient Monitoring Program, the Stormwater Monitoring Program, NPDES Receiving Water Monitoring Reports, and other monitoring programs identify waters of the State with impaired water quality that appears attributable to or influenced by agriculture in areas of irrigated lands.
5. Some water bodies within the Central Valley Region have been listed as impaired pursuant to Clean Water Act Section 303(d). The 303(d) list of impaired water bodies identifies agriculture as a potential source of constituents that impair beneficial uses of some waters within the Central Valley Region and threaten the quality of waters of the State.

LEGAL AND REGULATORY CONSIDERATIONS

6. California Water Code (Water Code) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall

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file with the appropriate Regional Board a report of waste discharge (RWD) containing such information and data as may be required by the Central Valley Water Board, unless the Central Valley Water Board waives such requirement.

7. Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the State depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors. These individual discharges may also have a cumulative effect on waters of the State. Waste discharges from some irrigated lands have impaired and will likely continue to impair the quality of the waters of the State within the Central Valley Region if not subject to regulation pursuant to the Porter-Cologne Water Quality Control Act (codified in Water Code Division 7).
8. Water Code Section 13263 requires the Central Valley Water Board to prescribe WDRs, or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
9. Water Code Section 13269(a) provides that the Central Valley Water Board may waive the requirements to submit a RWD and to obtain WDRs for a specific discharge or specific type of discharge, if the Central Valley Water Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. Water Code Section 13269 further provides that any such waiver of WDRs shall be conditional, must include monitoring requirements unless waived, may not exceed five years in duration, and may be terminated at any time by the Central Valley Water Board.
10. As authorized by Water Code Section 13269, this Order conditionally waives the requirement to file RWDs and obtain WDRs for Dischargers, as defined in Attachment A, who are participants in a Coalition Group that complies with the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*. Some Dischargers will seek coverage under the Individual Discharger Conditional Waiver, and some Dischargers will seek coverage under the Coalition Group Conditional Waiver by joining a Coalition Group.
11. For the purposes of the Conditional Waiver, Water Districts, as defined in Attachment A, may join a Coalition Group for coverage under the Water Code for their discharges from operational spills, discharges resulting from facility maintenance activities, and discharges from drainage and stormwater facilities containing tailwater and/or stormwater from irrigated lands.
12. Attachment A to this Order identifies plans and policies, which contain regulatory requirements that apply to the discharge of waste from irrigated lands. Attachment A also provides definitions of terms for purposes of this Order and an Information Sheet that clarifies the “tributary rule.”

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13. The Conditional Waiver is for owners and/or operators of irrigated lands who have knowingly elected to participate in a Coalition Group approved by the Central Valley Water Board that complies with the Conditional Waiver and formed on their behalf to comply with the Water Code and the Central Valley Water Board's plans and policies.
14. To implement the Conditional Waiver and to provide accountability, the Central Valley Water Board must receive sufficient information to identify Dischargers who have complied with the Water Code by knowingly electing to participate in a Coalition Group that complies with the Conditional Waiver. Attachment B provides two ways that Coalition Groups may provide participant information to the Central Valley Water Board, including by submitting a list(s) that contains specified information or by submitting an electronic map(s) as directed by the Executive Officer. The Central Valley Water Board acknowledges that the Coalition Groups are not responsible for enforcing ~~the terms and conditions of this Conditional Waiver or~~ the Water Code. The Central Valley Water Board acknowledges that the California Rice Commission (CRC) has formed a commodity specific Coalition Group under the Program. The CRC may not provide a list of participants that includes the names and addresses of members of the CRC because Food and Agricultural Code Sections 71089 and 71124(a)¹ specifically identify the names and addresses of members of the CRC as confidential and specifically prohibit the disclosure of such information except by court order. All rice growers in the Sacramento Valley region are mandated to participate in the CRC. The CRC may provide area maps that clearly delineate the rice acreage in the Sacramento Valley that is within the CRC's Coalition Group. Attachment B provides that participant information may be provided by submitting an electronic map(s).
15. Consistent with Water Code sections 13267 and 13269, this Conditional Waiver requires the implementation of a monitoring and reporting program (MRP) as set forth in MRP Order No. R5-2005-0833 for Coalition Groups that is intended to determine the effects of irrigated lands on water quality, to support the development and implementation of the Conditional Waiver, to verify the adequacy and effectiveness of the Conditional Waiver's conditions, and to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver. A Coalition Group that is covered under the Conditional Waiver must comply with MRP Order No. R5-2005-0833, including future revisions.
16. Water Code Section 13267(b)(1) states: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or*

¹ Food and Agricultural Code §71089 states, in part: [The Rice Commission} "shall keep confidential and shall not disclose, except when required by court order after hearing in a judicial proceeding, . . . names and addresses of handlers, producers, [and] processors." Food and Agricultural Code §71124(a) states, in part: "All proprietary information obtained or developed pursuant to this article by the commission or the secretary from any source, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding."

entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

17. Technical reports are necessary to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver and to assure protection of waters of the State.
18. Water Code Section 13269(a)(4)(A) authorizes the Central Valley Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). On 16 June 2005, the State Water Board adopted Order No. 2005-0049 *Adopting Emergency Regulation Revisions to the Fee Schedules Contained in Title 23, Division 3, Chapter 9, Article 1, Section 2200.3 of the CCR*, approving a fee schedule for agricultural waivers. This Conditional Waiver requires each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its participants, to pay an annual fee to the State Water Board in compliance with the fee schedule in Title 23 of the California Code of Regulations.
19. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* and the *Water Quality Control Plan for the Tulare Lake Basin, Second Edition* ([hereafter](#) Basin Plans) designate beneficial uses, establish water quality objectives, contain programs of implementation needed to achieve water quality objectives, and reference the plans and policies adopted by the State Water Board. The water quality objectives are developed to protect the beneficial uses of waters of the State. Compliance with water quality objectives will protect the beneficial uses listed in Finding 21 below.
20. The Conditional Waiver is consistent with applicable Basin Plans because it requires compliance with applicable water quality standards, as defined in Attachment A, and requires the prevention of nuisance. It requires implementation of a monitoring and reporting program to determine effects on water quality and implementation of management practices to comply with applicable water quality standards.
21. Pursuant to the Basin Plans and State Water Board plans and policies, including State Water Board Resolution No. 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of waters in the Central Valley Region include one or more of the following:
 - a. Municipal and Domestic Supply

- b. Agricultural Supply
 - c. Industrial Service Supply
 - d. Hydropower Generation
 - e. Water Contact Recreation
 - f. Non-Contact Water Recreation
 - g. Warm Freshwater Habitat
 - h. Cold Freshwater Habitat
 - i. Migration of Aquatic Organisms
 - j. Spawning, Reproduction and Development
 - k. Wildlife Habitat
 - l. Estuarine Habitat
 - m. Preservation of Biological Habitats of Special Significance
 - n. Shellfish Harvesting
 - o. Navigation
 - p. Rare, Threatened, and Endangered Species
 - q. Freshwater Replenishment
 - r. Groundwater Recharge
 - s. Industrial Process Supply
 - t. Aquaculture
 - u. Commercial and Sportfishing
22. In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy). The purpose of the NPS Policy is to improve the State's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy provides a bridge between the State Water Board's January 2000 *NPS Program Plan* and its 2002 *Water Quality Enforcement Policy*. NPS Policy requires, among other key elements, that an NPS control implementation program's ultimate purpose shall be explicitly stated, and that the implementation program must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements. The Conditional Waiver is consistent with the NPS Policy.
23. State Water Board Resolution No. 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the State until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Board's policies (e.g., quality that exceeds applicable water quality standards). Resolution No. 68-16 also states, in part:

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge

requirements which will result in best practicable treatment and control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

The Central Valley Water Board has information in its records that has been collected by the Central Valley Water Board, dischargers, educational institutions, and others that demonstrates that many water bodies within the Central Valley Region are impaired for various constituents, including pesticides such as Diazinon and Chlorpyrifos, salt, boron, and others. 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 No. 68-16 and it is not necessary for the Central Valley Water Board to conduct an anti-degradation analysis. This Order does not authorize further degradation of such waters.

~~This Order is consistent with Resolution No. 68-16.~~ The Order requires persons who obtain coverage under the Conditional Waiver to comply with applicable water quality standards, protect beneficial uses, and prevent nuisance by implementing MRPs, evaluating the effectiveness of management practices, and where water quality exceeds applicable water quality standards, by identifying and implementing additional management practices to comply with applicable water quality standards. The Conditional Waiver requires management practices to be implemented to achieve applicable water quality standards and to prevent nuisance. These conditions are enforceable and the Conditional Waiver may be terminated at any time.

Where water bodies within the Central Valley Region are of high quality, this Order is consistent with Resolution No. 68-16. This Order prohibits persons from discharging additional wastes not previously discharged. As described above, persons who obtain coverage under this Order are conducting water quality monitoring. The Central Valley Water Board will continue to evaluate the data collected pursuant to monitoring to determine if discharges from irrigated lands are causing degradation of those water bodies. This Order does not authorize further degradation of such water bodies. The Water Board is in the process of preparing an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). Through the preparation of the EIR, the Central Valley Water Board is evaluating management practices and will require implementation of practices to achieve best practicable treatment or control of discharges.

24. Neither the Water Code nor Resolution No. 68-16 requires instantaneous compliance with applicable water quality standards. Discharges from irrigated lands can and/or do contain wastes, as defined in Water Code section 13050, that could affect the quality of the waters of the State. The Conditional Waiver establishes an iterative process that requires Dischargers to evaluate and then implement and/or improve management practices in a timely manner to reduce wastes in discharges where it is determined that discharges from irrigated lands have caused or contributed to exceedances of applicable water quality standards. The Conditional Waiver's

conditions that require evaluation and implementation of management practices will result over time in best practicable treatment or control to assure that pollution and nuisance will not occur and that the highest water quality is achieved. Changes in water quality that may occur as a result of the Conditional Waiver will be to improve, over time, the quality of the waters, not to cause further degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the State and will not unreasonably affect beneficial uses.

25. The United States Environmental Protection Agency adopted the National Toxics Rule (NTR) on 5 February 1993 and the California Toxics Rule (CTR) on 18 May 2000, which was modified on 13 February 2001. The NTR and CTR contain water quality criteria which, when combined with beneficial use designations in the Basin Plans, constitute enforceable water quality standards for priority toxic pollutants in California surface waters. In March 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (known as the State Implementation Plan or SIP), which contains guidance on implementation of the NTR and the CTR. The SIP, which was amended on 12 August 2005, states that implementation of the NTR and the CTR for agricultural nonpoint sources of pollution shall be consistent with the State's NPS Policy.

26. This Order does 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). This Order and Attachments 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 sets forth a condition that requires compliance with the Endangered Species Acts. If a "take" will result from any action authorized under this Order, the dischargers shall 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.

RATIONALE FOR CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

- 26:27. In 1982, the Central Valley Water Board adopted Resolution No. 82-036 that conditionally waived WDRs for 23 categories of discharges, including irrigation return water and storm water runoff (1982 Waiver). Pursuant to Water Code Section 13269, these waivers terminated on 1 January 2003. On 5 December 2002, prior to the termination of the 1982 Waiver, the Central Valley Water Board adopted Resolution No. R5-2002-0201 establishing a new *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central*

Valley Region (2002 Conditional Waiver). On 11 July 2003, the Central Valley Water Board adopted Resolution No. R5-2003-0105 replacing the 2002 Conditional Waiver and establishing a new *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region* (2003 Conditional Waiver).

27.28. The Central Valley Water Board has reviewed the 2003 Conditional Waiver and has determined that additional conditions are required to [implement amendments to Water Code section 13269 that have occurred since adoption of the 2003 Conditional Waiver and to assure protection of](#) water quality.

28.29. The goal of the Conditional Waiver is to improve and protect water quality by reducing discharges of waste and by providing an interim program to regulate discharges of waste from irrigated lands that cause or contribute to conditions of pollution or nuisance (as defined in Water Code Section 13050) or that cause or contribute to exceedances of applicable water quality standards until a long-term water quality regulatory program can be developed for Dischargers covered by this Conditional Waiver.

29.30. The Conditional Waiver sets forth conditions that will require Coalition Groups and/or Dischargers to 1) conduct activities required by MRP Order No. R5-2005-0833 and any revisions thereto; 2) implement and evaluate management practices that will result in achieving compliance with applicable water quality standards in the waters of the State; 3) at the request of the Executive Officer, develop and implement Management Plans, as described in Attachment B, when discharges are causing or contributing to exceedances of ~~an~~ applicable water quality standards; and 4) conduct activities in a manner to prevent nuisance.

30.31. At this time, it is appropriate to adopt a waiver of RWDs and WDRs for this category of discharges because: 1) the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced chemical use, holding times, cover crops, etc.); 2) the Central Valley Water Board has limited facility-specific information and limited water quality data on facility-specific discharges; 3) during the past two years, the Coalition Groups and agencies have been collecting water quality and management practice data in the region; and 4) additional assessment information continues to be collected.

31.32. In addition, it is appropriate to regulate discharges of waste from irrigated lands under a Conditional Waiver rather than individual WDRs in order to simplify and streamline the regulatory process. During this process, additional [facility](#) activity and water quality information will be collected during the term of the Conditional Waiver. An ~~Environmental Impact Report (EIR)~~ is being prepared pursuant to the [California Environmental Quality Act \(CEQA\)](#) to assess alternatives for a long-term water quality regulatory program to ensure the protection of water quality from discharges of waste from irrigated lands to waters of the State.

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32.33. It is not appropriate at this time to adopt individual WDRs to regulate discharges of waste from irrigated lands because there are estimated to be more than 25,000 individual owners and/or operators of irrigated lands who discharge waste from irrigated lands and it is neither feasible nor practicable due to limitations of Central Valley Water Board resources to adopt WDRs within a reasonable time. The Central Valley Water Board supports the approach of allowing Dischargers to be represented by Coalition Groups in that it can provide a more efficient means to comply with many of the conditions contained in the Conditional Waiver.

33.34. It is not appropriate at this time to adopt individual WDRs because although there is information that discharges of waste from irrigated lands have impaired waters of the State, information is not generally available concerning the specific locations of impairments, specific causes, specific types of waste, and specific management practices that could reduce impairments and improve and protect water quality. The conditions of the Conditional Waiver will result in the development of new and additional information on which to base the adoption of individual or general WDRs, if appropriate. The conditions of the Conditional Waiver require actions to protect and improve the quality of the waters of the State within the Central Valley Region. The conditions of the Conditional Waiver may be enforced in a manner similar to enforcement of WDRs. Coverage under the Conditional Waiver may be terminated at any time and the Executive Officer may require any person to submit a RWD and comply with the Water Code pursuant to individual or general WDRs.

34.35. Water Code section 13269 requires that the Water Board determine that any waiver of waste discharge requirements is in the public interest. The Water Board has considered all the comments of the public and finds that this Order waiving waste discharge requirements for dischargers of waste from irrigated lands is in the public interest as further described. The Water Board has many options to regulate discharges of waste, including through individual and general waste discharge requirements, prohibitions in the Basin Plan, and individual and general conditional waivers of waste discharge requirements. Due to the large numbers of dischargers within the scope of the Board's jurisdiction, the lack of direct regulation in the past, the lack of information about the specific sources of discharges of waste from such lands, and the unprecedented scope of the program, it is reasonable to establish an interim conditional waiver that sets forth a process to collect the necessary information and require management plans to control the sources of discharges of waste as that information is developed. The Central Valley Water Board finds that allowing the use of Coalition Groups provides a reasonable way to coordinate the efforts of large groups of dischargers that are not readily identified by the Central Valley Water Board and, if such Coalition Groups adequately comply with the conditions of the Conditional Waiver, the use of Coalition Groups will continue to be a reasonable manner of regulation. The adoption of this Conditional Waiver is also in the public interest because: 1) it was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law; 2) it requires compliance with the Basin Plan and state and federal water quality standards, 3) it includes

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conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the State; [34](#)) it contains more specific and more stringent conditions for protection of water quality compared to the 2003 Conditional Waiver; [45](#)) [it](#) contains conditions that are similar to the conditions of municipal stormwater NPDES permits, including evaluation and implementation of management practices to meet applicable water quality standards and a more specific MRP; [56](#)) given the magnitude of the discharges and number of persons who discharge waste from irrigated lands, it provides for an efficient and effective use of limited Central Valley Water Board resources; and [67](#)) it provides reasonable flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with the Water Code through participation in Coalition Groups.

[35.36.](#) This action to waive the requirement to submit RWDs and to obtain WDRs for discharges of waste from irrigated lands: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits that may be required by other State or local government agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.

[36.37.](#) As part of the Central Valley Water Board's irrigated lands program strategy, the Central Valley Water Board has directed staff to prepare an EIR to evaluate alternatives for a comprehensive, long-term water quality regulatory program to regulate discharges of waste from irrigated lands. The long-term program will enable the Central Valley Water Board to track progress in reducing the amount of waste discharged to waters of the State and measure the effectiveness of management practices implemented in order to meet the goal of compliance with applicable water quality standards. The preparation of an EIR to evaluate currently available and new information will identify and assess alternatives to achieve compliance with applicable water quality standards. The Central Valley Water Board has hired a contractor to prepare the EIR. On 6 March 2006, a draft Existing Conditions Report prepared by the contractor was provided for a 60-day public comment period. During the public comment period, staff of the Central Valley Water Board and the contractor conducted seven public outreach meetings to introduce and discuss the draft Existing Conditions Report.

[37.38.](#) Resolution No. R5-2003-0105 implemented conditional waivers, which are provided for as the regulatory process under California's NPS Policy to meet the requirements of the Water Code. WDRs, including individual WDR-Orders or [G](#)general WDR-Orders, may be adopted in the future for one or more types of discharges of waste from irrigated lands covered by the Conditional Waiver; [if](#), for example, it is determined that the Conditional Waiver is not effective at ensuring that water quality is protected.

[38.39.](#) As time and resources allow, the Central Valley Water Board will further evaluate discharges of waste from irrigated lands to determine if the Conditional Waiver is adequate to improve and/or protect water quality and the beneficial uses of waters of

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the State. This evaluation will characterize these discharges, evaluate the effects of these discharges on waters of the State, and assess the effectiveness of management practices implemented to address impairments of waters of the State.

39.40. Where other State agencies have a regulatory role for activities or pollution addressed by the conditions of the Conditional Waiver, the Central Valley Water Board will work cooperatively with other State agencies in order to effectively regulate discharges of waste from irrigated lands.

SCOPE AND DESCRIPTION OF COALITION GROUP CONDITIONAL WAIVER

40.41. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters, which are waters of the State. The Conditional Waiver is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. The Conditional Waiver is not intended to ~~directly~~ address the lawful application of soil amendments, ~~or~~ fertilizers, or pesticides to land.

41.42. Since the adoption of the 2003 Conditional Waiver, there has been some uncertainty in determining whether or not a particular parcel of irrigated land discharges waste to waters of the State, and if there may be discharges, whether such discharges are intended to be covered within the scope of the Conditional Waiver. This Order provides clarification for Dischargers to determine whether a particular parcel of land discharges waste and provides clarification of the intended scope of the Conditional Waiver with respect to stormwater discharges.

42.43. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters of the State, as described by the scope of the Conditional Waiver. A discharge of waste to surface water subject to the Conditional Waiver is one that could directly or indirectly reach surface waters of the State, which include natural streams, constructed agricultural drains, agricultural dominated waterways, and other non-stream tributaries (see Attachment A, Information Sheet), or to other waters which may be hydrologically connected to such waters of the State. Direct discharges may include, for example, discharges directly from piping, tile drains, ditches or sheet flow to surface waters of the State. Indirect discharges may include, for example, discharges from one parcel to another parcel and then to surface waters of the State. This Conditional Waiver applies to discharges of waste to surface waters of the State as a result of irrigation activities, certain irrigation-water district operations, and stormwater runoff.

43.44. This Conditional Waiver is not intended to apply to those lands that discharge waste to waters of the State only on rare occasions during large storm events. Whether or not an individual parcel will discharge waste to surface waters of the State depends on a number of factors that vary significantly from site to site. These factors include the amount and timing of rainfall, land topography, soil type, and proximity to a surface

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water body. It is the responsibility of the potential discharger to determine whether or not they discharge waste to waters of the State. The Executive Officer will provide a [Question and Answer document \(Q&A\) Fact Sheet](#) to assist owners and operators of irrigated lands in determining whether or not there is a discharge of waste from their lands that is within the scope of this Conditional Waiver.

[44.45.](#) The Conditional Waiver does not cover discharges of waste from irrigated lands that receive liquid waste from sources such as dairy operations and food processors. Owners and/or operators of facilities that receive such liquid waste must obtain WDRs or a separate conditional waiver, as directed by the Central Valley Water Board.

[45.46.](#) The Conditional Waiver ~~does not~~ [is not intended to](#) cover discharges 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 lands described in this finding are not required to submit a RWD or obtain WDRs [unless directed by the Executive Officer or Central Valley Water Board](#).

[46.47.](#) The Conditional Waiver does not apply to discharges that are subject to the NPDES permit program under the Clean Water Act. Discharges of waste from irrigated lands that constitute agricultural return flows as defined in the Clean Water Act are exempt from regulation under the NPDES permit program.

[47.48.](#) The Conditional Waiver does not apply to discharges of waste that are regulated under another Conditional Waiver, individual WDRs or general WDRs. This Order does not supercede the Central Valley Water Board's Basin Plans and policies, including prohibitions (e.g., pesticides) and implementation plans (e.g., Total Maximum Daily Loads), or the State Water Board's plans and policies.

[48.49.](#) The Conditional Waiver provides an alternative regulatory option to WDRs. Coalition Groups, on behalf of their participants, may seek coverage under the Conditional Waiver.

[49.50.](#) The formation, operation, and funding of Coalition Groups is the responsibility of the local entities and/or participants of the Coalition Group.

[50.51.](#) Dischargers are required to comply with the Water Code, but are not required to participate in a Coalition Group. Dischargers may comply with the Water Code by participating in a Coalition Group, by filing for coverage under the Individual Discharger Conditional Waiver, by filing a RWD to obtain individual or general WDRs, or by ceasing to discharge.

[51.52.](#) The Central Valley Water Board does not expect that all applicable water quality standards will be achieved in all waters of the [S](#)state in the Central Valley Region

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within the term of this Order. The conditions of the Conditional Waiver, however, ~~will~~ require actions that will lead to achieving applicable water quality standards. To satisfy the conditions of the Conditional Waiver, Coalition Groups and/or Dischargers must submit technical reports, conduct monitoring of surface waters, implement management practices, evaluate the effectiveness of management practices, refine management practices to improve their effectiveness where necessary, protect against pollution and nuisance, and protect the quality of the waters of the State. MRPs must be submitted to the Central Valley Water Board as required by Water Code Section 13269. Technical reports must be submitted to the Central Valley Water Board in accordance with Water Code Section 13267. The technical reports must document the results of water quality and management practice monitoring, as defined in Attachment A, describe actions taken to correct water quality impairments and nuisance conditions, and identify future actions necessary to improve and protect water quality. The management practices must be designed and implemented to achieve improvements in water quality, achieve compliance with applicable water quality standards and demonstrate compliance with the conditions in the Conditional Waiver and with State and Central Valley Water Board plans and policies. As described in Attachment B, Coalition Groups are required, if requested by the Executive Officer, to develop and implement a Management Plan when a discharge is causing or contributing to an exceedance of an applicable water quality standard.

52.53. To apply for coverage under the Conditional Waiver, a Coalition Group must submit a complete Notice of Intent (NOI) to comply with the conditions of the Conditional Waiver for approval by the Executive Officer. Upon submittal of a complete NOI, the Executive Officer may issue a Notice of Applicability (NOA), after which the Coalition Group will be considered approved and its participants covered under the Conditional Waiver. Those Coalition Groups that submitted an NOI pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.

53.54. Attachment B of the Conditional Waiver describes the terms and conditions that apply to Coalition Groups that represent Dischargers as a common group.

54.55. Pursuant to Water Code Section 13263(g), discharge of waste to waters of the State is a privilege, not a right, and adoption of this Conditional Waiver and the receipt of an NOA from the Executive Officer do not create a vested right to continue the discharge.

55.56. This Conditional Waiver may be terminated at any time by the Central Valley Water Board and may be revised by the Central Valley Water Board after a public hearing. The Executive Officer may terminate the applicability of the Conditional Waiver with respect to a specific Discharger or Coalition Group upon notice to the Discharger or Coalition Group.

56.57. Interested persons were notified that the Central Valley Water Board will consider the adoption of a Conditional Waiver, which conditionally waive WDRs for

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discharges of waste from irrigated lands to surface waters, as described in this Order, and were provided an opportunity for a public hearing and an opportunity to submit written comments.

57.58. In a public hearing, all comments pertaining to this Order were heard and considered.

58.59. The administrative record for this matter includes the administrative record for the 2003 Conditional Waivers and the Central Valley Water Board records since that time.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

59.60. For purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to the CEQA (Public Resources Code Sections 21100 et seq.). On 5 December 2002, the Central Valley Water Board approved an Initial Study and Negative Declaration in Resolution No. R5-2002-0201. Resolution No. R5-2003-0105 modified the Conditional Waivers contained in Resolution No. R5-2002-0201, but did not substantially change the project considered in the Initial Study and Negative Declaration. Additional documents that clarify the basis for the Conditional Waiver are attached to Resolution No. R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration with the clarifications.

60.61. This Order is not a new project that requires preparation of any new environmental documents to comply with CEQA. It is a renewal of an existing project, with modifications. These findings, nevertheless, evaluate whether a subsequent environmental document is required. Public Resource Code section 21166 and Title 14 California Code of Regulations section 15162 (CEQA Guidelines) specify that when the lead agency has adopted a negative declaration for a project, the agency is not required to prepare a subsequent environmental document unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that, in summary: 1) substantial changes are proposed in the project that involve new significant environmental impacts; 2) substantial changes occur with respect to the circumstances of the project; or 3) new information of substantial importance which was not previously known shows that the project will have significant effects. None of the circumstances requiring preparation of subsequent environmental document has occurred.

61.62. The project is the renewal of Conditional Waivers originally adopted in 2003; it is not a new project. Substantial changes ~~have not occurred~~ are not proposed in the project or with respect to the circumstances of the project that would involve new significant environmental effects or a substantial increase in environmental effects. This Order will require ~~additional~~ actions to protect water quality as compared to Resolution No. R5-2003-0105. These actions include annual submittal of participant information, development, implementation of management practices, and implementation of Management Plans as requested by the Executive Officer, and enhanced reporting and communications with regard to exceedances of applicable water quality standards.

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63. Since the adoption of Resolution No. R5-2003-0105 and the Negative Declaration, new information has become available to the lead agency. Central Valley Water Board staff has compiled two years of water quality monitoring data from Central Valley Water Board sources, Coalition Groups, Water Districts and others within the Sacramento River, San Joaquin River, and Tulare Lake Basins. Additional information has been provided by contract with the University of California (UC). Water quality monitoring data from Coalition Groups and Individual Dischargers identified ~~some~~ exceedances of applicable water quality standards. Monitoring conducted through a contract with the University of California and monitoring from Coalition Groups and individual dischargers have identified problem sites in ~~characterized~~ many water bodies since 2004. Information from about 110 monitoring sites through UC monitoring, about 90 monitoring sites from Coalitions, and 24 monitoring sites with Irrigation Districts is providing data that will prove invaluable in characterizing the effects of irrigated agriculture on water bodies in the Central Valley. About 1,758 samples were collected by all of the Irrigated Lands Coalitions, and approximately 739 through the UC contract.

Coalition monitoring consisted primarily of toxicity testing (Phase I) and represents approximately 20 percent of the water bodies within most individual coalition boundaries at this time. Coalitions are required to expand their monitoring sites each year to be able to assess all water bodies within their boundaries, as well as to expand into Phase II monitoring which will include pesticides, nutrients and general water quality parameters.

Much of the existing data provides information about agricultural monitoring sites that were tested for various parameters for the first time, in particular with respect to water column and sediment toxicity. The toxicity evaluates the overall quality of the water or sediment, and accounts for the cumulative effect of multiple stressors, such as combinations of pesticides that individually may not exceed water quality standards.

From the Coalition data, it is now known that sediment and water column toxicity exists throughout the Central Valley. Water column toxicity averages from 5.9 to 13 percent, and sediment toxicity ranges from 21 to 29 percent. Pesticide monitoring data, primarily through the UC contract also provides the information that approximately 92 percent of the water bodies tested indicated detectable levels, with approximately 64 percent exceeding water quality standards.

The UC monitoring data already provides information about toxicity in concert with pesticides, nutrients and other water quality parameters. With the commencement of Phase II monitoring by the Coalitions, the monitoring results will provide more data on additional monitoring sites that will attempt to explain the toxicity detected during Phase I.

Some water quality parameters and chemicals were tested for the first time in these water bodies. This information helps to substantiate that waters within the Central Valley Region are impacted by discharges of waste from irrigated lands but does not

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indicate that there are new impacts not already known at the time of the adoption of the Negative Declaration that shows that this project has significant environmental effects. The Conditional Waivers require compliance with applicable water quality standards and require prevention of pollution and nuisance; they do not allow violation of water quality objectives or degradation of waters of the State. The Conditional Waiver establishes an iterative process that requires Dischargers to evaluate and then implement and/or improve management practices where it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards. In addition, when it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards, the Executive Officer may request a Management Plan, which will identify the management practices that may be implemented, evaluate the effectiveness of existing management practices in achieving applicable water quality standards, and identify additional actions, including, but not limited to, different or additional management practice implementation or education outreach to achieve applicable water quality standards. The Management Plan will also include a schedule to implement the management practices and the means of assessing and evaluating their effectiveness. These conditions are consistent with the Water Code and the Basin Plans.

64. The new data and information were considered in this Order. The new data and information confirm the effects of discharges of waste from irrigated lands on water quality that were previously discussed in the Initial Study and Negative Declaration. The new data and information do not show that there are any new effects of discharges of waste from irrigated lands on water quality the project that were not discussed in the Initial Study and Negative Declaration, nor do they show that the effects discussed would be more severe than discussed in the Initial Study and Negative Declaration. The project is the conditional waiver of waste discharge requirements. This Conditional Waiver does not allow dischargers to degrade waters of the State and does require dischargers to comply with water quality standards, protect beneficial uses, and protect against pollution and nuisance. The project, therefore, does not cause effects that are more severe than discussed in the Initial Study and Negative Declaration. The conditions of the waiver, if complied with, will protect the waters of the State. Therefore, no subsequent environmental document is required for this Order.

IT IS HEREBY ORDERED that:

1. Pursuant to Water Code Sections 13263, 13267, and 13269, each Coalition Group, as defined in Attachment A, that is covered under the Conditional Waiver, in order to meet the provisions contained in Water Code Division 7 and regulations and plans and policies adopted thereunder, shall comply with the terms and conditions contained in Attachment B.
2. Dischargers may not discharge any waste not specifically regulated by the Conditional Waiver except in compliance with the Water Code.

3. Dischargers who are participants in a Coalition Group shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards.
4. Pursuant to Water Code Section 13269, the Central Valley Water Board waives the requirement for Dischargers to submit a RWD and to obtain WDRs for discharges of waste from irrigated lands if the Discharger is a participant in a Coalition Group that complies with the Conditional Waiver and Monitoring and Reporting Program Order No. R5-2005-0833 and any revisions thereto.
5. Pursuant to Water Code Section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other local or governmental agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
6. Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State.
7. The Conditional Waiver shall not create a vested right, and all such discharges of waste shall be considered a privilege, as provided for in Water Code Section 13263.
8. A waiver of WDRs for a type of discharge may be superceded if the State Water Board or Central Valley Water Board adopts specific WDRs or general WDRs for this type of discharge.
9. The Central Valley Water Board may review this Conditional Waiver at any time and may modify or terminate the Conditional Waiver in its entirety, ~~as is appropriate~~. The Executive Officer may terminate applicability of the Conditional Waiver with respect to a Coalition Group or a Discharger who is a participant in a Coalition Group upon notice to the Coalition Group or Discharger.
10. This Order becomes effective on **1 July 2006** and expires on **30 June 2011** unless rescinded or renewed by the Central Valley Water Board. Upon completion of the EIR, the Central Valley Water Board may reopen this Order to reconsider the expiration date.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order and Attachments adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

PAMELA C. CREEDON, Executive Officer

TENTATIVE ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

ORDER NO. R5-2006-____ APPLICABLE WATER QUALITY CONTROL PLANS, DEFINITIONS AND INFORMATION SHEET FOR

COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Order No. R5-2006-____ requires the Coalition Groups and individual Dischargers to comply with applicable state plans and policies and applicable state and federal water quality standards and to take actions to prevent nuisance. The water quality standards are set forth in state and federal plans, policies and regulations. The California Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board) Water Quality Control Plans (Basin Plans) contain specific water quality objectives, beneficial uses, and implementation plans that are applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The State Water Resources Control Board (State Water Board) has adopted plans and policies that may be applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The United States Environmental Protection Agency has adopted the National Toxics Rule and the California Toxics Rule, which constitute water quality criteria that apply to waters of the United States. The specific waste constituents to be monitored within each Coalition Group boundaries and the applicable water quality standards that protect identified beneficial uses for the receiving water will be set forth in the monitoring and reporting program. ~~Specific numeric levels to comply with the applicable water quality standards in receiving waters will be set forth in the Monitoring and Reporting Program.~~

This Attachment A lists the relevant plans, policies, and regulations, contains definitions of terms used in Order No. R5-2006-____, and includes an Information Sheet to clarify the "tributary rule" in the Basin Plans.

WATER QUALITY CONTROL PLANS

The following Basin Plans have been adopted by the Central Valley Water Board and are available on the Central Valley Water Board's website at www.waterboards.ca.gov/centralvalley or by contacting the Central Valley Water Board at (916) 464-3291. Basin Plans are revised periodically.

Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition, revised September 2004

Water Quality Control Plan for the Tulare Lake Basin, Second Edition, revised January 2004

OTHER RELEVANT PLANS AND POLICIES

State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*

State Water Board *Water Quality Control Plan for Temperature in Coastal and Interstate Waters and Enclosed Bays and Estuaries in California*, June 1972

State Water Board Resolution No. 74-43, *Water Quality Control Policy for the Enclosed Bays and Estuaries of California*, May 1974

State Water Board Resolution No. 88-63, *Sources of Drinking Water Policy*, May 1988

State Water Board *Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary*, May 1995

Consolidated Toxic Hot Spots Cleanup Plan, June 1999

Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, May 2004

National Toxics Rule, 40 CFR 131.36

California Toxics Rule, 40 CFR 131.38

DEFINITIONS

The following definitions apply to the Conditional Waiver and Monitoring and Reporting Program as related to discharges of waste from irrigated lands. All other terms shall have the same definitions as prescribed by the Porter-Cologne Water Quality Control Act (California Water Code Division 7), unless specified otherwise.

1. Coalition Group - Any group of Dischargers, participants, and/or organizations that form to comply with the Conditional Waiver. Coalition Groups can be organized on a geographic basis or can be groups with other factors in common such as commodity groups.
2. Discharger - 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 and could affect the quality of the waters of the State.
3. Discharges of waste from irrigated lands – Surface discharges, such as irrigation 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), stormwater runoff flowing from irrigated lands, ~~and/or~~ stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, and/or operational spills containing waste.

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4. Exceedance - For the purposes of the Conditional Waiver, an exceedance is a reading using a field instrument or a detection by a California State-certified analytical laboratory where the detected result is above [an applicable](#) ~~the~~ water quality [standard](#) ~~objective in the Basin Plans~~ for the parameter or constituent. For toxicity tests, an exceedance is a result that is statistically different from the control sample test result.
5. Irrigated lands – Lands where water is applied to produce crops, including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements, National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
6. Irrigation return flow – Surface and subsurface water which leaves the field following application of irrigation water.
7. Liquid waste - Any waste materials, which are not spadable.
8. Monitoring - All types of monitoring undertaken in connection with determining effects on water quality, water quality conditions, and factors that may affect water quality conditions. Monitoring includes, but is not limited to, in-stream water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in water quality, active inspections of operations, and management practice implementation and effectiveness monitoring. The purposes of monitoring include, but are not limited to, supporting the development and implementation of the Conditional Waiver, verifying the adequacy and effectiveness of the Conditional Waiver's conditions, and evaluating each Coalition Group's compliance with the terms and conditions of the Conditional Waiver.
9. Operational spill – Irrigation water that is diverted from a source such as a river, but is discharged without being delivered to or used on an individual field.
10. Receiving waters - Surface waters that receive or have the potential to receive discharges of waste from irrigated lands.
11. Requirements of applicable water quality control plans - Water quality objectives, prohibitions, Total Maximum Daily Load Implementation Plans, or other requirements contained in water quality control plans adopted by the Central Valley Water Board and approved according to applicable law.
12. Stormwater runoff – The runoff of precipitation from irrigated lands.
13. Subsurface drainage – Water generated by installing [and operating](#) drainage systems to lower the water table below irrigated lands. Subsurface drainage systems, deep open drainage ditches, or drainage wells can generate this drainage.

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14. Tailwater – The runoff of irrigation water from an irrigated field.
15. Waste – As defined in California Water Code (Water Code) Section 13050. Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of ~~or~~ whatever nature prior to, and for the purposes of disposal. Waste specifically regulated by the Conditional Waiver includes: earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen, ~~etc.~~; and organic materials, such as pesticides that enter or have the potential to ~~threaten~~ to enter waters of the State. Examples of waste not specifically regulated by the Conditional Waiver include hazardous and human wastes.
16. Water District – California law defines a water district. For purposes of the Conditional Waiver, a water district is 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. Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands, and discharges or threatens to discharge irrigation 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/or stormwater runoff flowing from irrigated lands to other waters of the State.
17. Waters of the State – As defined in Water Code Section 13050. Any surface water or groundwater, including saline waters, within the boundaries of the State. The Conditional Waiver regulates discharges of waste from irrigated lands to surface waters.
18. Water Quality Standards – Water quality objectives in the Central Valley Water Board’s Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies.

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INFORMATION SHEET*

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

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

In response to the Court's three questions:

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

*This Information sheet was added to the 2003 Conditional Waiver by Resolution R5-2005-0137 on 20 October 2005 to address the Court Order.

TENTATIVE ATTACHMENT B

ORDER NO. R5-2006-____

TERMS AND CONDITIONS

COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Attachment B to Order No. R5-2006-____ contains the terms and conditions of the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver). The Conditional Waiver conditionally waives waste discharge requirements (WDRs) and reports of waste discharge for discharges of waste from irrigated lands to surface waters within the Central Valley Region. The Conditional Waiver establishes terms and conditions with which Coalition Groups must comply to obtain coverage under and to be considered in compliance with the Conditional Waiver. Order No. R5-2006-____ defines “discharges of waste from irrigated lands” as including surface discharges, such as irrigation 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), stormwater runoff flowing from irrigated lands, [and/or](#) stormwater runoff conveyed in channels or canals resulting from the discharge [of waste](#) from irrigated lands, [and/or operational spills containing waste](#).

The Coalition Groups and/or Dischargers shall comply with the following conditions:

A. General

1. The Coalition Group and/or Dischargers shall comply with all conditions of the Conditional Waiver, including timely submittal of all technical reports specified in **Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (Water Code), including Central Valley Regional Water Quality Control Board (Central Valley Water Board) orders, or termination of coverage under the Conditional Waiver for Coalition Groups or for individual Dischargers who are participating in Coalition Groups.
2. The reports submitted to comply with the Conditional Waiver shall be signed by a representative authorized by the Coalition Group.
3. Any person signing a report submitted as required by the Coalition Group Conditional Waiver shall make the following certification:

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

4. Coalition Groups shall comply with Coalition Group Monitoring and Reporting Program (MRP) Order No. R5-2005-0833, which is required by the Conditional Waiver, or as revised by the Executive Officer.
5. Each Coalition Group existing as of the effective date of this Conditional Waiver shall submit a list(s) or map(s) sufficient for the Central Valley Water Board to identify which landowners and/or operators of irrigated lands that discharge waste to waters of the State are knowingly participating in the Coalition Group or those that are not participating in the Coalition Group as detailed below:
 - a) A list(s) shall include: a) assessor parcel number, b) parcel size, c) parcel owner or operator name, and d) parcel owner or operator mailing address. To the extent information required by this section may not be disclosed pursuant to Food and Agricultural Code Sections 71089 and 71124(a), the Coalition Group must provide a detailed area map(s) that clearly delineates the coverage area and acreage.
 - b) A map shall be an electronic map (in GIS format specified by the Executive Officer) that is in adequate detail to allow the Central Valley Water Board to efficiently determine, when used in conjunction with County Assessor GIS map information, the following information: a) assessor parcel number; b) parcel size; c) parcel owner or operator name; d) parcel owner or operator mailing address, and e) whether the owner or operator of the parcel is participating in the Coalition Group. To the extent information required by this section may not be disclosed pursuant to Food and Agricultural Code Sections 71089 and 71124(a), the Coalition Group must provide a detailed area map(s) that clearly delineates the coverage area and acreage.

The initial documentation shall be submitted in writing or electronically to the Central Valley Water Board by **30 September 2006**. Thereafter, by **31 July of each year**, the Coalition Group shall submit updated Pparticipant information since the last update. The information provided by a Coalition Group to comply with this condition is subject to public disclosure unless subject to an exemption under applicable law, including the California Public Records Act.

7.6. Coalition Groups that receive a Notice of Applicability after the effective date of this Conditional Waiver shall submit, in writing or electronically, by **31 July of each year**, an updated pPparticipant lList with the information specified in Condition B.1.b below.

7. Coalition Groups and/or Dischargers shall comply with applicable Total Maximum Daily Loads and implementation plans in the Basin Plans.

7.8. Dischargers who are participating in a Coalition Group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance~~improve and protect water quality and to achieve compliance with applicable water quality standards.~~

8.9. Dischargers who are participating in a Coalition Group shall not discharge any waste not specifically regulated by the Conditional Waiver, cause new discharges of wastes from irrigated lands that impair surface water quality, or increase discharges of waste or add new wastes that impair surface water quality not previously discharged by the Discharger. Waste specifically regulated by the Conditional Waiver includes earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen; and organic materials, such as organic pesticides, that enter or have the potential to enter into waters of the State. Examples of waste not regulated by the Conditional Waiver include hazardous waste and human waste.

10. The Central Valley Water Board staff may investigate the property of persons subject to the Conditional Waiver pursuant to Water Code Section 13267(c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of the Conditional Waiver are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with Section 1822.50). In the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.
11. The Coalition Group and/or Dischargers shall take all reasonable steps to prevent any discharge in violation of the Conditional Waiver.
12. The Coalition Group and/or Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system, including management practices and monitoring devices installed or used to achieve compliance with the Conditional Waiver.
13. The discharge of any waste not specifically regulated by the Conditional Waiver is prohibited unless the Discharger complies with Water Code Section 13260(a) and the Central Valley Water Board either issues WDRs pursuant to Water Code Section 13263 or an individual waiver pursuant to Water Code Section 13269 or the time frames specified in Water Code Section 13264(a) have elapsed.

14. This Order does 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). If a "take" will result from any action authorized under this Order, the dischargers shall 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.

B. Technical Reports

1. A Coalition Group, on behalf of its participants who are seeking to be covered under the Conditional Waiver, shall submit a completed Notice of Intent (NOI), which shall contain all of the

information requested in the NOI form, which is included at the end of this Attachment B, in a format as approved by the Executive Officer.

- a. The NOI shall identify the representative(s) authorized to sign reports submitted on behalf of the Coalition Group.
- b. The NOI shall contain a list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. The Participant List may be submitted in writing or electronically and shall include: 1) assessor parcel number; 2) parcel size; 3) parcel owner or operator name; and 4) parcel owner or operator mailing address.

2. A Coalition Group that submits an NOI shall, concurrently, submit a General Report.

- a. The General Report shall identify the lead agencies and/or organizations that will develop a watershed or sub-watershed program, the key contact(s), a description of the watershed, and a commitment to work with the Central Valley Water Board to satisfy the conditions of this Conditional Waiver.
- b. The General Report shall provide a detailed map of the area included within the Coalition Group. The General Report and the map shall identify individual parcels and/or districts that are participating in the Coalition Group.
- c. The General Report shall identify the funding mechanisms that will support the Coalition Group administrative costs, water quality monitoring, management practice evaluation and development, and other costs necessary to ensure compliance with the Conditional Waiver.

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2.3. Upon submittal of a complete NOI and approval of the NOI, the Executive Officer may issue a Notice of Applicability (NOA) to extend coverage to the Coalition Group under the Conditional Waiver. Those Coalition Groups that submitted an NOI and received an NOA pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.

7.4. Each Coalition Group that receives an NOA shall submit and implement a Monitoring and Reporting Program (MRP) Plan as specified in Coalition Group MRP Order No. R5-2005-0833, or as revised by the Executive Officer, which is required by the Conditional Waiver. The purposes of the MRP Plan include, but are not limited to, the following: 1) to determine whether the discharge of waste from irrigated lands within the Coalition Group boundaries causes or contributes to exceedances of applicable water quality standards or causes nuisance; 2) to provide information about the Coalition Group area characteristics, including but not limited to, land use, crops grown, and chemicals used; 3) to monitor the effectiveness of management practices implemented to address exceedances of applicable water quality standards; 4) to determine which management practices are most effective in reducing wastes discharged to surface waters from irrigated lands, 5) to specify details about monitoring periods, parameters, protocols, and quality assurance, 6) to support the development and implementation of the Conditional Waiver, 7) to verify the adequacy

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and effectiveness of the Conditional Waiver's conditions, and 8) to evaluate the Coalition Group's compliance with the terms and conditions of the Conditional Waiver.

9.5. If the Coalition Group wishes to terminate coverage under the Conditional Waiver, the Coalition Group shall submit a complete Notice of Termination (NOT). The NOT form is included at the end of this Attachment B. Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of the Conditional Waiver, unless other Waivers of WDRs, General WDRs, or individual WDRs cover the discharge.

10.6. Upon a determination by either the Coalition Group or Dischargers that a discharge is causing or contributing to an exceedance of an applicable water quality standard, the Coalition Group or Discharger shall promptly notify the Central Valley Water Board in writing. Based on this information or other information available to the Central Valley Water Board, the Coalition Group or Discharger shall, upon written notice by the Central Valley Water Board Executive Officer, submit a technical report called a Management Plan to the Central Valley Water Board as follows:

- a. The Management Plan shall evaluate the effectiveness of existing management practices in achieving applicable water quality standards, identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its Ppparticipants propose to implement to achieve applicable water quality standards, and identify how the effectiveness of those additional actions will be evaluated.
- b. The Management Plan shall include a waste specific monitoring plan and a schedule to implement additional management practices to achieve applicable water quality standards.
- c. The Management Plan shall designate the person(s) who will implement, assess and evaluate the Management Plan and each person's area(s) of responsibility.
- d. The Coalition Group and/or its Ppparticipants shall submit any modifications to the Management Plan required by the Central Valley Water Board and address the Central Valley Water Board's comments within 30 days of written notification, unless otherwise directed by the Executive Officer.

e.e. The Coalition Group and/or its Ppparticipants shall make Management Plans available to the public upon written request. The Central Valley Water Board may provide the public an opportunity to review and comment on submitted Management Plans.

d.

- f. The Management Plan may be incorporated into the Monitoring and Reporting Program Plan, unless the Central Valley Water Board Executive Officer directs an earlier submittal.

7. All reports submitted pursuant to the Conditional Waiver shall be available for public inspection at the Central Valley Water Board offices, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under Water Code Section 13267(b)(2), and the Public Records

Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the reports are exempt from public disclosure. The Central Valley Water Board staff shall determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Valley Water Board staff disagrees with the asserted exemption from public disclosure, the Central Valley Water Board staff shall notify the Discharger prior to making such report or portions of such report available for public inspection.

8. All technical reports submitted pursuant to the Conditional Waiver are required pursuant to Water Code Section 13267. Failure to submit technical reports in accordance with schedules established by the Conditional Waiver and/or its attachments, or failure to submit a complete technical report (i.e., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to Water Code Section 13268.

C. Water Quality Standards

1. Coalition Groups and/or Dischargers must comply with applicable water quality standards, as defined in Attachment A. The specific waste constituents to be monitored within each Coalition Group boundary and the applicable water quality objectives that protect identified beneficial uses for the ~~Specific numeric levels to comply with these applicable water quality standards in~~ receiving waters will be set forth in the MRP. Dischargers shall not cause or contribute to an violation exceedance of any applicable water quality standard.
2. Coalition Groups and/or Dischargers shall; ~~through timely implementation of~~ management practices to achieve best practicable treatment or control of the discharge; that will reduce wastes in the discharges to the extent feasible and that in accordance with the conditions of the Conditional Waiver, including any modifications. Management practices shall be designed to improve water quality and will achieve compliance with applicable water quality standards, ~~to~~ protect the beneficial uses of waters of the State ~~water quality~~, and ~~to~~ prevent nuisance.

D. Time Schedule

Pursuant to Water Code Section 13267, the following technical reports are required to be submitted to the Central Valley Water Board, as directed by the Executive Officer, as a condition of the Conditional Waiver.

Task

MRP Plan

Revised MRP Plan following revision of MRP

Compliance Date

30-150 days after filing of NOI

As directed by the Executive Officer

Task

Compliance Date

Wet Season Monitoring Report as required by the
Coalition Group MRP Order No. R5-2005-0833

30 June of each year*

Coalition Group Participant Documentation (see
Condition A.5)

31 July of each year

Irrigation Season Monitoring Report as required by
the Coalition Group MRP Order No. R5-2005-0833

31 December of each year*

Management Plan

As required by the Executive Officer

*Or as otherwise directed by the Executive Officer

E. Fees

Each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its
[P](#)participants, shall pay a fee to the State Water Resources Control Board in compliance with the fee
schedule contained in Title 23 California Code of Regulations.

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NOTICE OF INTENT

TO COMPLY WITH
ORDER NO. R5-2006-_____

COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS

1. COALITION GROUP INFORMATION

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

The Coalition Group representative's information shall be included in the above information box.

The NOI shall contain a list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. The Pparticipant Llist may be submitted in writing or electronically and shall include: 1) assessor parcel number; 2) parcel size; 3) parcel owner or operator name; and 4) parcel owner or operator mailing address.

The Central Valley Water Board may further specify the information to be included. This information shall be provided to the Central Valley Water Board upon request, within the time specified by the Central Valley Water Board, which time shall not exceed 30 days.

2. REASON(S) FOR FILING

☐ New Discharge or Coalition Group ☐ Existing Coalition Group ☐ Change of Coalition Group boundary	☐ Changes in Ownership/Operator or addition of Discharger(s) to Coalition Group ☐ Other:
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3. ADDITIONAL INFORMATION

Please attach the following information to this NOI:

1. A site map, which shows the geographic boundaries of the Coalition Group and identifies the surface watercourses within these boundaries.
2. Use the space below, or attach additional sheets, to explain any response that needs clarification.

4. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, complete, and that those individual Dischargers listed in the Member Document have elected to join the Coalition Group. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.	
Print Name: _____	Title: _____

Signature: _____	Date: _____

NOTICE OF TERMINATION

TO COMPLY WITH
ORDER NO. R5-2006-_____

COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS

This document is only to be used for Coalition Groups that have been issued a Notice of Applicability by the Executive Officer. Submission of this Notice of Termination constitutes official notification to the Central Valley Water Board that the Coalition Group identified below elects not be covered under Order No. R5-2006-_____, *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*.

1. COALITION GROUP INFORMATION¹

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

¹ The Coalition Group representative's information shall be included in the above information box.

2. REASON FOR TERMINATION

☐ Coalition Group is no longer functioning under the Conditional Waiver for Coalition Groups	☐ Other: Provide Comments _____
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3. CERTIFICATION

I certify under penalty of law that (1) I am not required to be covered under the Coalition Group Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands, and (2) this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I also understand that submittal of this Notice of Termination does not release a facility from liability for any violations of the Coalition Group Conditional Waiver.

Print Name: _____ Title: _____

Signature: _____ Date: _____

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