

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2003-0102

CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS
WITHIN THE CENTRAL VALLEY REGION
RESOLUTION NOS. R5-2002-0201 AND R5-2002-0228

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

1. On 5 December 2002, the Regional Board adopted a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver), Resolution No. R5-2002-0201 and a Negative Declaration, Resolution No. R5-2002-0228.
2. The following day, 6 December 2002, the Regional Board voted on a motion to reconsider the adopted Conditional Waiver, which motion failed on a vote of three-to-three.
3. The Regional Board held a public hearing on 24 April 2003 to consider comments from staff and the public regarding the Conditional Waiver.
4. The Regional Board passed a motion on 24 April 2003 giving direction to staff regarding revisions to staff's proposed revised Conditional Waiver, and concluding that the Regional Board would take no action on the Conditional Waiver at the 24 April 2003 meeting.
5. By letter dated 30 May 2003 the State Water Resources Control Board's Office of Chief Counsel advised Regional Board member Beverly Alves that California Water Code (CWC) Section 13207 prevents her from participating as a Regional Board member in the Regional Board's consideration or adoption of the Conditional Waiver since she is the co-owner of a farming business that could be subject to the Conditional Waiver.
6. Ms. Alves participated and voted in the 5/6 December 2002 actions, and participated in the Regional Board's deliberations on 24 April 2003 but did not vote on the motion.
7. The California Attorney General has indicated that he does not intend to take any action pursuant to Section 13207.
8. DeltaKeeper, San Francisco BayKeeper, Natural Resources Defense Council, California Public Interest Research Group, The Ocean Conservancy, California Sportfishing Protection, which represent various environmental interests (collectively,

- the “environmental interests”) believe that the Conditional Waiver is void or voidable because one or more Regional Board members has a conflict of interest.
9. The environmental interests have claimed that the Regional Board violated requirements of the Bagley-Keene Open Meeting Act at the April 2003 board meeting.
 10. Representatives of the environmental interests claim a lack of trust in the Regional Board and the process of considering and adopting the Conditional Waiver.
 11. The Attorney General concluded that the Regional Board’s process was tainted.
 12. The Regional Board, its staff and representatives of the environmental interests and agricultural community have spent countless hours in developing an agricultural regulatory program.
 13. The Regional Board is committed to a fair and open process that allows the Regional Board to consider public comments on the Conditional Waiver, and desires to retain the trust of both the environmental and agricultural interests.
 14. The Regional Board desires to eliminate any taint and cure any procedural errors that occurred in connection with Resolutions Nos. R5-2002-0201 and R5-2002-0228, so that it can reconsider those Resolutions, subsequent staff proposals and reports, and public comment.
 15. The Regional Board provided public notice of this hearing.
 16. Regional Board counsel has concluded that the Regional Board can legally adopt a Conditional Waiver and environmental document, either as adopted in December 2002 or as further revised by the Regional Board, as long as any Regional Board members with a conflict of interest or common law bias recuse themselves from the proceedings.
 17. The Regional Board is taking this action solely to cure any bias or other procedural defects that may taint the Conditional Waiver process, and does not intend for this Resolution to express any position on the substantive or technical merits of those actions.
 18. The Regional Board considered all testimony and evidence at a public hearing on 10 July 2003.

