

California Regional Water Quality Control Board  
Central Valley Region

Response to Written Comments for  
Tentative Waiver of Reports of Waste Discharge and  
Waste Discharge Requirements  
for  
Specific Types of Discharge within the Central Valley Region

This document contains the responses to written comments received from interested and designated parties regarding the proposed Tentative Waiver of Reports of Waste Discharge and Waste Discharge Requirements for Specific Types of Discharge within the Central Valley Region (Tentative General Waiver). The Tentative General Waiver contains the conditions under which certain discharges will be exempt from the obligation to submit a report of waste discharge and/or receive coverage under waste discharge requirements. The Board is proposing to adopt the Tentative General Waiver by approving a resolution that will renew Resolution R5-2008-0182, which approved a previous version of the Tentative General Waiver (2008 General Waiver). The 2008 General Waiver will expire on 4 December 2013.

The Tentative General Waiver was circulated for 40 days for public comment, and this comment period ended on 4 November 2013. Written comments were received from:

- A. Kretzmann, Hollin – Center for Biological Diversity, 25 October 2013
- B. Kretzmann, Hollin – Center for Biological Diversity, 4 November 2013
- C. Knox, Blair & Ortiz, Nick – California Independent Petroleum Association & Western States Petroleum Association, 28 October 2013
- D. Fisher, Kari E. – California Farm Bureau Federation, 28 October 2013
- E. Neenan, Rob – California League of Food Processors, 28 October 2013

The written comments on the Tentative General Waiver are summarized below, followed by Central Valley Water Board staff responses.

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Comment Letter A: Kretzmann, Hollin – Center for Biological Diversity, 25 October 2013

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**Comment A.1: Comment Period Deadline**

The commenter questions whether the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) provided adequate public notice and requests that the deadline for written comments be extended.

**Response A.1:** In response to this comment, the Board extended the comment period from 28 October 2013 until 4 November 2013 to allow the Center for Biological Diversity and other commenters additional time to weigh in on the Tentative General Waiver. In addition, the commenter was sent an electronic copy of entire file for the Tentative

General Waiver on 31 October 2013. The Board notes that all of its files are open to the public and are available upon request.

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Comment Letter B: Kretzmann, Hollin – Center for Biological Diversity, 4 November 2013

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**Comment B.1: Designated and Interested Parties**

The Center for Biological Diversity requests that it be considered a designated party. The commenter also requests that the following organizations and their members be considered interested parties: Greenaction for Health and Environmental Justice; Sierra Club; the Center on Race, Poverty, and the Environment; the Association of Irrigated Residents; the Central California Environmental Justice Network; the San Joaquin Valley Latino Environmental Advancement and Policy Project; Earthworks; Physicians for Social Responsibility – Los Angeles; and Communities for a Better Environment.

**Response B.1:** Designated party status has been granted to the Center for Biological Diversity. The Board acknowledges as interested parties: Greenaction for Health and Environmental Justice; Sierra Club; the Center on Race, Poverty, and the Environment; the Association of Irrigated Residents; the Central California Environmental Justice Network; the San Joaquin Valley Latino Environmental Advancement and Policy Project; Earthworks; Physicians for Social Responsibility – Los Angeles; and Communities for a Better Environment.

**Comment B.2: Potential Health and Environmental Risks**

The commenter cites literature that indicates that drilling muds and boring wastes generated by oil and gas development may contain chemicals that pose a significant threat to human health, and comments that regulating these materials under the Tentative General Waiver could adversely impact water quality. The commenter notes that many of these materials pose cross-media health risks, and can contaminate air, soil, and water through evaporation, solubility, and miscibility, and that not all of these materials are known to the public. These materials may also contain hazardous concentrations of heavy metals and/or radioactive material from drill cuttings.

**Response B.2:** While Board staff do not necessarily concur that regulating these materials under a General Waiver would adversely impact water quality, the potential environmental impacts from regulating these materials in this manner has not been studied since 1981. Therefore, Board staff is proposing to remove drilling muds and boring wastes associated with oil and gas development from coverage under the Tentative General Waiver. Board staff is committed to investigating whether regulating these discharges should be done through a waiver or through another regulatory mechanism. In the meantime, these wastes may receive regulatory coverage under State Water Board Order 2003-0003-DWQ.

**Comment B.3: Water Code, Section 13269**

The commenter contends that, due to the risk of exposure to harmful chemicals, regulating the discharge of drilling muds and boring wastes generated by oil and gas development under a general waiver is not in the public interest, and the Board is therefore prohibited from issuing the waiver under Water Code section 13269.

**Response B.3:** If the conditions imposed by a General Waiver do, in fact, ensure that discharges will be consistent with the Board's Basin Plans, and if the Board finds that waiving the requirement for a discharger to submit a report of waste discharge and obtain waste discharge requirements is in the public interest, then the Board may adopt a waiver for those discharges, even though the discharges involve potentially harmful chemicals (the key is whether the waiver conditions would prevent any impacts from occurring). This may be the case for the land disposal of drilling muds and boring wastes associated with oil and gas development, but Board staff is nonetheless proposing to study this issue more before proposing a regulatory approach for these materials, as conditions may have changed since the Board conducted its environmental review in 1981.

Board staff is nonetheless proposing to continue to waive the requirement to submit a report of waste discharge and the requirement to obtain waste discharge requirements for drilling muds and boring wastes associated with *fresh water* well development, as drilling techniques for fresh water supply wells have not changed since 1981, and because the Board has yet to discover a situation where these materials have caused water quality impacts. With the exception of bentonite or bentonite benefited with an inert polymer, chemical additives are rarely (if ever) used in drilling muds for fresh waters supply wells, as the wells are much shallower than oil and gas wells and typically only need a thin mud to keep the borehole open.

**Comment B.4: Drilling Technologies and Increased Volume of Drilling Mud and Boring Waste Discharges**

The Central Valley Water Board has not adequately assessed how new oil and gas extraction techniques will affect the composition or volume of drilling muds or whether they would increase the potential threat to water quality and/or human health.

**Response B.4:** See Responses B.2 & B.3.

**Comment B. 5: CEQA**

The commenter cites evidence suggests that the adoption of a waiver for drilling muds and boring wastes associated with oil and gas development may have a significant effect on the environment; preparation of an environmental impact report is required. Considering the nature of the current drilling technologies utilized by the oil and gas industry, it is inappropriate for the Central Valley Water Board to rely on the Negative Declaration from 1981 for this project.

**Response B.5:** Regulating drilling muds and boring wastes associated with oil and gas development under a General Waiver may not result in any adverse environmental impacts. However, because the Board has not studied these impacts since 1981, the Board may need to conduct a new assessment of any potential impacts.

**Comment B.6: Waiver Renewal Process**

The requirement to renew a waiver every five years was passed by the legislature as an amendment to the Porter-Cologne Water Quality Control Act in direct response to abuse of waiver approvals by various regional water boards. Given the legislative intent, it is contrary to the Water Code to renew a waiver without re-examining the environmental impact of activities covered under the waiver.

**Response B.6:** The commenter is correct that this was one rationale used to justify the amendments to Water Code section 13269. However, prior environmental analyses may be used to justify future waivers, except in cases where conditions have changed since the initial environmental analysis was conducted. While the Board does not believe that it is required to conduct a new environmental analysis in connection with every waiver renewal, a new analysis may be required here, since the prior environmental analysis dates back to 1981.

**Comment B.7: State Board's General Waivers Are Outdated and Unreliable**

The commenter states that State Water Board Order 2003-0003-DWQ has expired and should not be relied upon. The Tentative General Waiver uses this Order as justification to continue the existing waiver, and this is inappropriate.

**Response B.7:** The commenter mischaracterizes State Water Board Order 2003-0003-DWQ; the State Water Board's Order is a *General Order* issued under Water Code section 13263, not a *General Waiver* issued under Water Code section 13269. General Orders issued under Water Code section 13263 do not need to be renewed every 5 years, so the State Water Board's General Order is still in effect. The Board's intent in citing to the State Water Board's General Order was to provide regulatory context for the Central Valley Water Board's waiver, because drilling muds and boring wastes associated with oil and gas development may still receive regulatory coverage under Order 2003-0003-DWQ.

**Comment B.8: Four Existing Conditions of Discharge**

The commenter cites to evidence that suggests that the four existing waiver conditions, as they pertain to drilling muds and boring wastes associated with oil and gas development, cannot be met or do not adequately protect water quality. The commenter also states that Central Valley Water Board did not demonstrate that the conditions set for sump operation and closure were protective of water quality, human health, and wildlife. The commenter argues that the language regarding the quality and quantity of discharge is too vague, and that additional clarification is necessary.

**Response B.8:** It may be the case that the four proposed waiver conditions are sufficient to ensure that the discharge of drilling mud and boring wastes from oil and gas development will be in compliance with the Board's Basin Plans, but this evaluation will be conducted in conjunction with a separate regulatory action. Board staff is recommending renewal of the waiver for fresh water well drilling muds for the reasons stated in Response B.3; Board staff contends that the four existing waiver conditions will ensure that fresh water drilling muds will not cause any adverse environmental impacts.

**Comment B.9: Attachment A Additional Conditions**

The commenter states that the four new additional conditions do not protect water quality or human health from impacts due to the discharge of drilling muds and boring wastes associated with oil and gas development, which has expanded in this region. These additional conditions do not adequately protect against spills and leaks, stormwater runoff, or other methods of release. The Basin Plan amendment condition would allow dischargers to attain coverage under the Waiver and to discharge even if the proposed Basin Plan amendment is inappropriate. Permitting de-designation of a beneficial uses due to poor water quality that was caused by these discharges is circular logic that defeats the protection of water quality.

**Response B.9:** Board staff is proposing to remove drilling muds and boring wastes associated with oil and gas development from coverage under the Tentative General Waiver. Whether or not these conditions are sufficient to prevent any potential adverse environmental impacts is a question that will be answered in conjunction with a separate regulatory action

**Comment B.10: Monitoring and Reporting**

The waiver does not include sufficient monitoring and reporting requirements to determine if discharges of drilling muds and boring wastes associated with oil and gas development meets the conditions of the waiver and is protective of water quality. The limited monitoring and reporting would likely result in unreported violations. The threat to water quality posed by these discharges limits the discretion of the Central Valley Water Board to waive monitoring requirements. The Tentative General Waiver provides no guidance as to what information is considered sufficient to support a determination that a waiver should apply to the discharge.

**Response B.10:** Board staff is proposing to remove drilling muds and boring wastes associated with oil and gas development from coverage under the Tentative General Waiver. If, in a separate regulatory action, the Board determines that these wastes do not pose a significant threat to water quality, then the Board may determine that a monitoring program is not needed.

**Comment B.11: Water Quality Objectives**

The waiver is inconsistent with the Central Valley Water Board's Basin Plan objectives to protect water quality in terms of toxicity, bacterial content, turbidity, and many other criteria.

**Response B.11:** See Responses B.2, B.3, and B.8.

**Comment B.12: Reliance on DOGGR Inspections**

The Central Valley Water Board's reliance on "routine inspections" by the California Division of Oil, Gas, and Geothermal Resources (DOGGR) to support its argument that renewal of the drilling muds waiver is inappropriate as DOGGR routinely relies on the Central Valley Water Boards oversight for issues related to water quality. In reality, neither agency has regulations in place that will adequately protect water quality or human health.

**Response B.12:** The Central Valley Water Board conducts its own field inspections and does not solely rely on inspections conducted by the DOGGR. Each agency makes a concerted effort to keep other apprised of problems identified during field inspections (routine, emergency, complaint, etc.) that might be significant to the other.

**Comment B.13: Violation of Civil Rights and Anti-Discrimination Laws**

The waiver would disproportionately impact low income communities and communities of color because many of these communities are located in the same areas in which oil and gas activities are taking place. Spanish is the language spoken by many residents in communities where fracking is occurring. The Central Valley Water Board would violate civil rights laws if it approves the proposed action without adequate translation of key documents and provide meaningful opportunities for public participation.

**Response B.13:** Board staff is proposing to remove oil and gas drilling muds from coverage under the Tentative General Waiver, and notes that all Central Valley Water Board agendas are translated into Spanish. The Board is committed to providing all affected communities with the ability to meaningfully participate in decisionmaking processes that may affect them, and will carefully evaluate all requests for translated documents and oral interpretation services.

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Comment Letter C: Knox, Blair & Ortiz, Nick – California Independent Petroleum Association & Western States Petroleum Association, 28 October 2013

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**Comment C.1: Adequacy of the Existing 2008 General Waiver**

The commenter contends that the current 2008 General Waiver meets or exceeds the standards established in Water Code section 13263. The additional conditions included in the Waiver are not justified, and add additional costs and increase regulatory burdens without providing any benefit. The 2008 General Waiver should be renewed without the additional conditions pertaining to drilling muds and boring wastes that are contained in the Waiver. However, the proposed language in the Tentative General Waiver is a reasonable compromise, and while the added regulatory costs and burdens are significant, they are workable.

**Response C.1:** Board staff is proposing to remove drilling muds and boring wastes associated with oil and gas development from coverage under the Tentative General Waiver because the potential environmental impacts from these activities have not been

studied by the Board since 1981. As stated above, it may be the case that the conditions initially proposed in the Tentative General Waiver will ensure discharges will be consistent with the Board's Basin Plans, and the Board may still find that waiving the requirement for a discharger to submit a report of waste discharge and/or obtain waste discharge requirements is in the public interest. However, Board staff propose to address these issues in a separate regulatory action. In the interim, the discharge of drilling muds and boring wastes generated by oil and gas development may receive regulatory coverage under State Water Board Order 2003-0003-DWQ

**Comment C.2: Sump Requirements**

Additional requirements pertaining to the operation of sumps have been imposed since the Central Valley Water Board adopted the 2008 General Waiver. These new regulations should be taken into account by the Central Valley Water Board as part of the determination on whether the new conditions in the Waiver are in fact needed.

**Response C.2:** See Response C.1.

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Comment Letter D: Fisher, Kari E. – California Farm Bureau Federation, 28 October 2013

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**Comment D.1: Adequacy of the Waiver**

The commenter states that, as drafted, the Tentative General Waiver appropriately addresses discharges that pose a low-threat to water quality, especially agricultural commodity wastes. Agricultural commodity wastes have little or no effect on the quality and beneficial uses of the waters of the State and do not represent a significant source of surface water or groundwater degradation or potential nuisance. Adequate support exists for the adoption of the Tentative General Waiver to renew Resolution R5-2008-0182, and the renewal is in the best interest of Central Valley agriculture and is in the public interest.

**Response D.1:** Comment noted.

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Comment Letter E: Neenan, Rob – California League of Food Processors, 28 October 2013

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**Comment E.1: Adequacy of the Waiver**

The commenter expressed its strong support for the Tentative General Waiver, as it provides a means to effectively regulate discharges that, properly managed, pose the lowest level of threat to water quality. The California League of Food Processors is specifically interested in the provisions regarding disposal of residual wastes to land as a soil amendment. This would include food processing solid, or semi-solid, by-products.

**Response E.1:** Comment noted.