

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

RESOLUTION NO. R5-2011-_____

**APPROVING FRAMEWORK
FOR
ESTABLISHMENT OF A
LONG TERM IRRIGATED LANDS REGULATORY PROGRAM
FOR
THE CENTRAL VALLEY REGION
AND
ASSOCIATED FINDINGS AND MITIGATION MONITORING AND REPORTING PROGRAM**

WHEREAS:

1. On June 22, 2006, the Central Valley Water Board approved two conditional waivers applicable to discharges from irrigated agriculture to surface waters. Resolution R5-2006-0053 approved a conditional waiver applicable to Coalition Groups (Coalition Group Waiver). Resolution R5-2006-0054 approved a conditional waiver applicable to discharges from individual operators of irrigated lands (Individual Waiver). The conditional waivers replaced a single irrigated lands conditional waiver adopted by the Central Valley Water Board in 2003 (Resolution R5-2003-0105). The 2006 conditional waivers are set to expire on June 30, 2011.
2. Operators of irrigated lands are currently required to comply with the Water Code by enrolling under the Coalition Group Waiver, enrolling under the Individual Waiver, applying for individual waste discharge requirements, or by not discharging. Among these options, the vast majority of operators have chosen to enroll under the Coalition Group Waiver.
3. The Coalition Group Waiver allows operators to be represented by coalition groups. Conditions that must be met by coalition groups and operators include the identification of coalition group members, monitoring to determine whether irrigated land discharges are affecting surface waters, and developing and implementing measures to address identified water quality problems.
4. In total, eight coalition groups have formed, representing approximately 25,000 growers that are enrolled under the Coalition Group Waiver. The enrollment represents five million of the approximately seven million acres of irrigated lands in the Central Valley Region.
5. The Board intended the 2006 conditional waivers to serve as an interim regulatory program until a long-term program was developed. When the Board approved the 2006 conditional waivers, it directed staff to begin developing a long-term irrigated lands regulatory program (ILRP) to protect water quality in accordance with the state law. The Board also directed staff, in developing the ILRP, to continue preparation of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) that would evaluate alternatives for the ILRP.

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6. The 2006 conditional waivers regulate discharges of waste from irrigated lands to surface waters. The conditional waivers do not regulate discharges to groundwater. When the Board directed staff to begin developing the long-term ILRP, it directed staff to consider the impacts of irrigated lands on waters of the State, which includes groundwater.

THE FRAMEWORK

7. In fall 2008, the Central Valley Water Board convened the Long-Term ILRP Stakeholder Advisory Workgroup. The Workgroup included a range of stakeholder interests representing local, State, and federal government, industry, agricultural, and environmental / environmental justice groups throughout the Central Valley. In August 2009 the Workgroup approved long-term ILRP goals and objectives and a range of alternatives to be considered in the EIR.
8. In July 2010, the Central Valley Water Board released for public review the *Draft Irrigated Lands Regulatory Program Program Environmental Impact Report* (Draft Program EIR) and *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program* (Economics Report). In these reports, the five alternatives developed by the Workgroup were evaluated considering environmental and economic impacts, and consistency with applicable State policies and law. These documents also included a sixth alternative constructed from components of the original range of alternatives approved by the Workgroup. The sixth alternative was developed by staff in order to fulfill program goals and objectives, and meet applicable State policy and law, while minimizing potential environmental impacts and economic effects.
9. Central Valley Water Board staff provided a 60-day period for submitting written comments on the Draft Program EIR, which included the six program alternatives. In September 2010, staff held public workshops in Chico, Modesto, Rancho Cordova, and Tulare to receive input. The Central Valley Water Board also received informal feedback on the program alternatives within the Draft Program EIR at a Board meeting on September 22, 2010.
10. Central Valley Water Board staff provided substantive responses to all written comments received on the Draft Program EIR, except for comments concerning the Economic Analysis. In consideration of those comments, staff developed a *Recommended Irrigated Lands Regulatory Program Framework Staff Report* (ILRP Framework Report), *March 2011*. Included as an attachment to the ILRP Framework Report is a Recommended Long-Term ILRP Framework (the Framework). The Framework is based upon the sixth alternative, and is composed of elements from the range of alternatives evaluated in the Draft Program EIR. Board staff has proposed that the Board approve the Framework, which is included in this Resolution as Attachment A, to guide the establishment of a long-term ILRP.
11. The recommended approach in the Framework consists of developing one or more general waste discharge requirements (WDRs) and/or conditional waivers of WDRs to regulate the discharge of waste to ground and surface waters of the state from irrigated

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agricultural operations. The orders and regulatory actions would include, but are not limited to, the following elements: regulation of surface water and groundwater; a three-tier approach to ensure regulatory requirements are appropriately tailored to the water quality conditions in an area; conditional authorization of third-party groups to represent growers and proxy with Central Valley Water Board staff; requirements for regional surface and groundwater management plans; requirements for regional surface and groundwater monitoring; individual farm evaluations; and individual certified nutrient management plans in ground water basins impacted by nitrates. Individual dischargers not represented by third-party groups will be governed by general waste discharge requirements. Individual dischargers are ultimately responsible for compliance with any applicable Orders.

12. The proposed timeframe for establishment of the program calls for the Central Valley Water Board's adoption of ten to twelve geographic/ commodity specific WDRs and conditional waivers of WDRs in total within 12-months.
13. The Framework is not a regulation and does not establish a policy or regulation, but will provide direction to staff for development of the several orders to be brought back to the Central Valley Water Board for approval. Recognizing that circumstances and priorities may change and that the WDRs, conditional waivers of WDRs and/or Basin Plan prohibitions contemplated by the Framework must be independently approved by the Board following separate quasi-adjudicative or quasi-legislative proceedings, the Board does not limit the staff's discretion to propose regulatory actions that differ from those described in the Recommended Framework, when justified by the facts of those proceedings. In other words, staff is not precluded from considering or proposing other activities or modified activities to implement the Framework, nor is the Board limited in its discretion to approve such alternatives. The Board makes no findings of fact at this time with respect to any future order or Basin Plan amendment.
14. Once the orders or regulatory programs are proposed, the Board will evaluate the appropriateness of the proposed actions. Approval of the Framework does not constitute approval of any particular project, order, Basin Plan amendment or other activity that staff has recommended.

CEQA

15. The Central Valley Water Board has certified a Final Program EIR for a Waste Discharge Regulatory Program for Irrigated Lands within the Central Valley Region (Final Program EIR) {Insert Applicable Resolution #}. The Final Program EIR lists potential environmental impacts associated with implementation of a long-term irrigated lands regulatory program.
16. The approach in the Framework to mitigate significant environmental impacts is consistent with the mitigation measures for the significant environmental impacts identified in the Final Program EIR. A listing of those significant environmental impacts, the written findings regarding those impacts consistent with § 15091 of the CEQA

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Guidelines, and the explanation for each finding are contained in a separate Findings of Fact and Statement of Overriding Considerations document (Attachment B), which is incorporated by reference in this resolution and made a part of this record.

17. The Final Program EIR identifies significant unavoidable impacts to agriculture resources. It also identifies cumulatively considerable impacts to climate change, vegetation and wildlife, and agriculture resources. Consistent with § 15093 of the CEQA Guidelines the Central Valley Water Board has prepared a Statement of Overriding Considerations, which balances the specific economic, legal, social, technological, or other benefits of the General Order against the unavoidable environmental risks. The Statement of Overriding Considerations is contained in Attachment B, which is incorporated by reference in this resolution and made a part of this record.
18. In the Final Program EIR, the Central Valley Water Board has identified mitigation measures that reduce potentially significant effects of the program to a less than significant level. CEQA Guidelines § 15097 requires the lead agency to prepare a Mitigation Monitoring and Reporting Program (MMRP). A program-level Mitigation Monitoring and Reporting Program (MMRP) has been incorporated into this Resolution as described in Attachment C. Pursuant to the program-level MMRP, project-level MMRPs consistent with the Program EIR will be incorporated into each order and other regulatory action taken to implement the Framework.
19. Because the Board's direction in the Framework is non-binding and is not necessarily the approval of a "project" within the meaning of CEQA, findings pursuant to § 15091 and § 15093 of the Guidelines, certification of the Final Program EIR, and adoption of an MMRP may not be required with consideration of the Framework. Instead, those findings may be required prior to the establishment of each order and other regulatory action taken to implement the Framework. To avoid any uncertainty, the Board has, in this Resolution, made the above-referenced CEQA findings and incorporated a program-level MMRP. However, when the Board adopts orders and takes other regulatory actions taken to implement the Framework, the Board will make project-specific findings required by § 15091 and § 15093 of the Guidelines and will incorporate project-level MMRPs. To the extent those subsequent orders are consistent with the Framework, the Board may rely on the analysis and CEQA findings associated with the Framework.
20. Among other conclusions, the Final Program EIR stated that implementation of the long-term ILRP will not cause a significant adverse impact on water quality as compared with the baseline environmental setting described in the Final Existing Conditions Report. As documented in the Existing Conditions Report, many state waters have been degraded due in part to waste discharges from irrigated agriculture.

WATER QUALITY REQUIREMENTS UNDER STATE LAW

21. Despite the conclusion in the Final Program EIR that the program itself will not cause significant adverse impacts to water quality, state law requires the Central Valley Water Board to protect water quality as that quality may be impacted by agricultural activity. As

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such, the Framework contains measures needed to achieve and maintain water quality objectives and beneficial uses, reduce current pollutant loading rates, and prevent further degradation of water quality. As described in the ILRP Framework Report, the Framework is fully consistent with applicable State laws and policies.

22. For example, as noted in the Final Program EIR, the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) is tasked with addressing the increasing salt and nitrate concentrations that threaten the achievement of water quality objectives in Central Valley surface and groundwater. The Framework relies on CV-SALTS to identify the actions that need to be taken by irrigated agriculture and others to address these constituents.
23. While the CV-SALTS initiative is successfully addressing many of the causes of these increasing concentrations, it is imperative that the CV-SALTS initiative receive adequate support so that it may continue to address the causes of the accumulations and achieve reductions.
24. Resolution 68-16 (Anti-Degradation Policy) requires that implementation of the long-term ILRP result in use of best practicable treatment or control where irrigated agricultural waste discharges are permitted to cause water degradation of high quality waters.
25. Where waters are already degraded for certain constituents such that they do not constitute "high quality" waters for those constituents within the meaning of the Anti-Degradation Policy, implementation of the long-term ILRP must result in the pollutant reductions to those waters that reflect the discharger's "best efforts," and are otherwise considered adequate management practices under the State Water Resources Control Board's (State Water Board) NPS Policy.
26. Waste discharges from irrigated agricultural operations are considered nonpoint source discharges. The State Water Board's NPS Policy includes five key elements that must be included in any nonpoint source implementation program adopted by the Regional Water Boards. These elements include: 1) the purpose of the program ; 2) the management practices to be implemented and procedures for evaluation of practice effectiveness; 3) time schedule for achieving water quality requirements; 4) feedback mechanisms to determine whether the program is achieving its purpose; and 5) the consequences of failure to achieve the stated purpose. As described in the ILRP Framework Report, the Framework addresses each of these elements.

RELATIONSHIP TO OTHER ONGOING WATER QUALITY EFFORTS

27. Other water quality efforts conducted pursuant to state and federal law directly or indirectly serve to reduce waste discharges from irrigated lands to waters of the state. Those efforts should continue, and in no way are to be impaired or constrained by implementation of the Framework. In fact, two program objectives stated in the Final Program EIR are to coordinate with other Central Valley Water Board programs, and to promote coordination with other water quality efforts associated with agricultural

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operations. The Framework is designed to coordinate and promote coordination with these efforts. Examples of such efforts include, but are not limited to, those described below.

28. CV-SALTS has the goal of developing sustainable solutions to the increasing salt and nitrate concentrations that threaten the achievement of water quality objectives in Central Valley surface and groundwater. The Framework relies on CV-SALTS to identify the actions that need to be taken by irrigated agriculture and others to address these constituents.
29. Total Maximum Daily Loads (TMDLs) are set for surface waters that have been placed on the State Water Board's 303(d) list of Water Quality Limited Segments for failure to meet applicable water quality standards. A TMDL, which may be adopted by the Central Valley Water Board as Basin Plan Amendments, is the sum of allowable loads of a single pollutant from all contributing point sources and nonpoint sources. The Central Valley is currently developing a pesticide TMDL and organochlorine pesticide TMDL, among others in development. The Framework is designed to be flexible enough to implement these and other future TMDLs.
30. Local agencies are authorized to adopt and implement groundwater management plans that are recognized under part 2.75 of Division 6 of the Water Code (commencing with section 10750). The legislation provides recommended components to the plans such as control of saline water intrusion, regulation of the migration of contaminated water, monitoring of groundwater levels and storage, and the development of relationships with regulatory agencies. There are areas throughout the Central Valley not covered by local agency groundwater management plans because participation in these plans is voluntary.
31. The California Department of Pesticide Regulation (DPR) has developed a Groundwater Protection Program under the authority of the Pesticide Contamination Prevention Act (PCPA) (commencing with Food and Agriculture Code section 13142). The program is intended to prevent contamination of groundwater from the legal application of pesticides. In addition to activities mandated by the PCPA, DPR's program has incorporated approaches to identify areas vulnerable to pesticide movement, develop mitigation measures to prevent pesticide contamination, and monitor domestic drinking water wells located in groundwater protection areas.

CALIFORNIA WATER CODE SECTION 13141

32. California Water Code Section 13141 states that "prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan." Section 13141 concerns approvals or revisions to a water quality control plan and does not necessarily apply in a context where an agricultural water quality control program is being developed through waivers and waste discharge requirements rather than basin planning. Nevertheless, staff has conducted a full analysis of economic impacts of the Long-Term ILRP alternatives, including costs and

potential sources of financing, as laid out in the Economics Report, which is part of the record of this action.

33. In addition, the ILRP Framework Report describes the estimated total cost, and the potential sources of financing associated with implementation of the Framework. The estimated costs largely depend on how successfully regulated dischargers address water quality issues within a third-party context (similar to the interim surface-water only ILRP). Higher costs are associated with direct regulation of individual dischargers by the Central Valley Water Board (similar to the Dairy Program). The estimated total cost ranges from \$216 million to \$1,321 million annually or an average annualized cost of approximately \$29 / acre to \$176 / acre. The ILRP Framework Report lists potential sources of funding, and indicates that the estimated total cost and potential sources of financing will be incorporated into the Basin Plans after approval of the Framework.

THEREFORE BE IT RESOLVED, that:

1. The Central Valley Water Board directs staff to begin implementation of the **Recommended Long-Term ILRP Framework (Framework)**, included as Attachment A, by developing proposed orders and other regulatory actions for the Board's consideration according to the timeframe found in the Framework. Any WDRs or conditional waivers of WDRs ultimately adopted by the Board will be done through quasi-adjudicative proceedings. When justified by the facts of those proceedings, staff may propose and the Board may take regulatory actions that differ from those described in the Framework.
2. In directing staff to develop proposed orders and other regulatory actions contemplated in the Framework, the Central Valley Water Board is not precluding staff from considering or proposing other regulatory actions or modified regulatory actions to implement the Framework. Moreover, the Board is not binding itself to adopt only those orders or other regulatory actions consistent with the Framework.
3. In developing the orders and other regulatory actions, staff is directed to incorporate mitigation measures and to prepare accompanying project-level MMRPs. The mitigation measures and project-level MMRPs will be consistent with the Final Program EIR.
4. The Central Valley Water Board directs staff and regulated dischargers, to the extent feasible, to coordinate its implementation activities with other related programs to take maximum advantage of any existing planning and information collection efforts. The Central Valley Water Board also directs staff to work with any agencies providing funding for irrigated agricultural management practices to prioritize funding of projects associated with implementing the ILRP Framework.
5. The Central Valley Water Board directs staff to prepare and bring to the Board amendments to the Sacramento and San Joaquin Rivers and Tulare Lake Basin Plans

to incorporate into those Basin Plans information regarding the estimated total cost, and the potential sources of financing associated with implementation of the Framework.

6. The Central Valley Water Board will continue its efforts to ensure that the CV-SALTS initiative receives adequate support to continue its important work on salt and nitrate accumulations.

CERTIFICATION

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region on X April 2011.

PAMELA C. CREEDON, Executive Officer