



# California Regional Water Quality Control Board

## Central Valley Region



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### RESPONSES TO COMMENTS REGARDING RENEWAL OF IRRIGATED LANDS CONDITIONAL WAIVERS

On 5 October 2005, staff of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) provided tentative renewal documents for the Irrigated Lands Conditional Waiver Program (Tentative Renewal Documents) for a 30-day public comment period. During October, staff conducted four public informational workshops on the Tentative Renewal Documents, including one held during the Central Valley Water Board's 20 October meeting, to present a summary of them, receive comments and feedback, and answer questions. On 31 October, staff also met with representatives from Coalition Groups, California Farm Bureau, and Department of Food and Agriculture to review comments received, staff's proposed revisions to address the comments, and hear any additional comments on the Tentative Renewal Documents.

During the 30-day comment period, staff received 115 form letters (each form letter had the same comments) and 30 letters from various stakeholders. Attached is a summary of the written comment letters (Written Comment Summary) with a reference to the responses numbered below. The following list provides a brief summary of all comments received from the written letters, the four workshops, and the 31 October meeting, and Central Valley Water Board staff responses to those comments.

#### 1. Comments on Tentative Orders and Waivers

A majority of the comments received regarding the Tentative Orders and Waivers pertained to the proposed requirements of direct enrollment and a Farm Water Quality Plan (Farm Plan). Comments specific to direct enrollment and the Farm Plan are listed out separately following the general comments on the tentative Orders and Waivers.

Comments regarding the Tentative Orders and Waivers included concerns that staff had previously indicated there would be minor changes, yet a majority of people commenting believed the changes to be drastic. People expressed concerns about basing the Central Valley Region's Program on other Regions' Programs. It was suggested that staff needs to forewarn the public of considered changes prior to documents being provided for comments so that the renewal can be a collaborative process. Some indicated that more time was needed to evaluate the proposed changes and that the Central Valley Water Board should extend the existing waiver to allow more time to evaluate the Program and the proposed changes. Others expressed concerns about the changes when the Program is described as "interim" and that the enrollees have only collected one year of data and not been given the time to work through the requirements in the 2003 Conditional Waivers. Furthermore, the timeline provided to review and provide comments was said to be too aggressive and bypasses the process of discussing technical issues with the Technical Issues Committee (TIC). Some considered the Tentative Orders and Waivers an impediment to the Program.

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In contrast to the above comments, there were comments that a five-year waiver is not “interim,” the proposed changes are merely a small step towards protecting water quality, the timelines are too long, there are no goals, nothing in the Tentative Renewal Documents assures water quality improvements, there is no accountability because the Central Valley Water Board does not know who is in the Program, and there is less monitoring required.

Some comments included suggestions of how to modify the Program. There was the suggestion to modify the Monitoring and Reporting Program instead of the existing Conditional Waivers. Others suggested having a General Order prepared for the Program. It was suggested to have the expiration dates of the Orders sooner and correspond with the Environmental Impact Report proposed completion date.

Other general comments on the Tentative Orders and Waivers regarded:

- Concerns about not allowing enough time for the existing Conditional Waiver to be fully implemented or a chance to show success;
- Concerns about refiling the Notice of Intent and other documents already submitted if the existing Conditional Waivers are “rescinded;”
- Requirement for a Management Plan with full public participation; and
- The finding in the Order that does not allow new discharges.

*Staff Responses to Comments on Tentative Orders and Waivers*

*During the late August and early September workshops, staff considered the changes as minor because the changes were mostly based on restructuring the Order and Waiver so that they read better, they address revisions to Water Code Section 13269 since 2003, and they include additional CEQA findings. During the evaluation of the Irrigated Lands Programs in other Regions 3, staff determined that some of the approaches used in those Regions would address some concerns raised regarding the Region 5’s Program, such as the direct enrollment and the Farm Water Quality Plans. These changes were proposed after the September workshops. Staff evaluated other Regions’ Programs based on some comments received referring to the other Programs and on a desire for consistency throughout the State. Based on the timing and desire for a 30-day public review period, staff did not have time to schedule additional workshops after deciding to include the direct enrollment and Farm Water Quality Plan requirements.*

*During this process, staff has followed standard Central Valley Water Board processes and procedures for adopting orders, including the public comment period. Although staff concurs that the TIC is a good forum for technical discussions, it is not a Central Valley Water Board requirement that all issues related to proposed orders must first be discussed in this forum. Staff believes the four workshops and the 31 October meeting provided sufficient opportunity to provide comments and discuss the proposed orders. Based on the detail of comments received, it appears that the public workshops did provide sufficient opportunity for the public to respond and that the 30-day comment period was sufficient.*

*Based on review of data provided in the Annual Monitoring Reports and from UC Davis, staff determined that the 2003 Conditional Waivers did not require the collection of enough information to*

*provide a sufficient baseline upon which to base the permanent Program. However, staff does not believe that a General Order for Waste Discharge Requirements is necessary to collect the information needed for a sufficient baseline or to implement a permanent Program.*

*Many commentors proposed extending the 2003 Conditional Waivers without modifications. Due to revisions to Water Code Section 13269 since adoption of the 2003 Conditional Waivers, the Central Valley Water Board may not merely extend the existing Conditional Waivers. Additional findings and other changes are required to comply with the revised Water Code Section 13269. Revisions to Water Code Section 13269 require that any waiver be consistent with applicable water quality control plans, be in the public interest, and include monitoring, unless monitoring is waived in compliance with Water Code Section 13269. The Proposed Orders include conditions to address those revisions, including the requirement to comply with receiving water limitations based on water quality objectives and the requirement to implement Water Quality Plans if exceedances of receiving water limitations are discovered.*

*At the time of adoption in 2003, Water Code Section 13269 did not specifically require monitoring, but the 2003 Conditional Waivers did require monitoring. Since monitoring and reporting programs are already adopted, and due to extensive comments, staff has removed the MRPs from the renewal package and has edited tentative Table 1 in Attachment A to allow more time for technical discussions. With removing these items and modifying the requirements for the Farm Water Quality Plan and direct enrollment, staff believes the major concerns have been addressed and it is appropriate to bring the documents to the November Board meeting for consideration. Although staff continues to consider the Program “interim”, since work continues on the EIR, these changes are necessary to make the Program credible, accountable and defensible for the collection and reporting of monitoring results to evaluate the discharges of waste from agricultural activities.*

*In regards to expiration dates of the Orders and only modifying the MRPs, staff believes the proposed expiration dates are appropriate for evaluating the Program and only modifying the MRPs would not revise the conditions necessary for a conditional waiver.*

*If the 2003 Conditional Waivers were to expire without adoption of a new waiver, the individual Dischargers would be subject to the requirement in Water Code section 13260 to submit a report of waste discharge to the Central Valley Water Board, and if they failed to do so, would be subject to enforcement by the Water Board. The Coalition Groups would no longer be subject to the Conditional Waivers, but they could continue to take action voluntarily.*

*In regards to environmental interests, staff believes that the proposed changes are a step in the right direction, not a re-direction, and are sufficient to continue to characterize the effects of agricultural discharges on waters of the State. The Proposed Orders include mechanisms to gauge milestones and goals, such as the Management Plan and Water Quality Plan requirements and provisions in the existing MRPs.*

*Although staff has explained that “rescinding” previous orders when a new order is adopted is standard procedure for the Central Valley Water Board and does not rescind the Program, many commenters still expressed apprehension over the term. Therefore, staff now proposes not to rescind the Conditional*

*Waivers and simply allow them to expire on 31 December 2005. The proposed Coalition Group and Individual Discharger Orders are now proposed to become effective beginning on 1 January 2006.*

*Staff does not propose any changes to the Management Plan Condition, which is the same as in the 2003 Conditional Waivers. The Executive Officer has the authority pursuant to Water Code Section 13267 to require such reports based merely upon the suspicion of a discharge and has chosen for purposes of the Conditional Waivers to limit the request for such reports only to certain circumstances, in particular when there is an exceedance of a receiving water limitation. The submittal of the Management Plan is subject to Condition B.10 of the Proposed Orders Attachment B, which pertains to public inspection of materials submitted and requires the Water Board to protect trade secrets from public disclosure.*

*Staff also does not propose any changes to the “no new discharges” condition. The portion of the condition that refers to not allowing the discharge of waste not specifically regulated by the Coalition Group Conditional Waiver is broad enough that it does not prevent growers from changing crops or practices. The condition describes waste specifically regulated by the Coalition Group Conditional Waiver, which also broadens what is covered by the condition.*

## **2. Comments on Direct Enrollment and Membership Lists**

Based on the recent correspondence and meetings regarding the Central Valley Water Board’s Executive Officer’s 26 August 2005 letter requesting Coalition Groups to provide their membership lists, there were many comments regarding the requirement for direct enrollment with the Central Valley Water Board. The following is a list of the comments expressed on this topic:

- Not all Coalition Groups are set up the same way, so the direct enrollment requirement could impede progress of some groups;
- Direct enrollment will take away the Coalition Group leadership role;
- It is a legal issue;
- Staff needs to stop wasting time on enrollment issues and start focusing on water quality;
- Program should focus on water quality concerns, not getting people enrolled;
- If the purpose of the Program is still to gather information, then the Central Valley Water Board should not need the name of each individual grower;
- Growers should enroll in 60 days, not two years;
- Central Valley Water Board will have same problems with enrollment as the Coalition Groups have;
- Program cannot be effective if it is not known who is enrolled in it;
- Will require Coalition Groups to be water cops;
- Staff should put in a finding that membership lists must be submitted by a set date;
- Membership issue is not as big of a concern to growers as it is to Coalition Groups; and
- There is confusion of numbers enrollment because of the confusion of who is a discharger.

*Staff Responses to Comments on Direct Enrollment and Membership Lists*

*Staff has modified the Coalition Group Order and Conditional Waiver to require each Coalition Group to maintain, revise, and submit its Membership List annually by 15 July and when requested by the Executive Officer. As staff has discussed in the workshops and other meetings, the Central Valley Water Board must know who is engaged with the Program because: 1) Water Code Section 13269 requires the Water Board to require compliance with the conditions of the Waivers; 2) the Central Valley Water Board cannot enforce the conditions of the Orders and Waivers on the Coalition Group; 3) the Central Valley Water Board cannot delegate authority under the Water Code to enforce the Orders and Waivers to Coalition Groups; 4) the Water Code allows the Water Boards to waive the requirements to submit reports of waste discharge and to obtain waste discharge requirements with respect to persons (individuals, corporations, etc.), but not with respect to Coalition Groups; 5) the Water Board cannot know who has complied with the Water Code through a waiver if it does not know who is a member of a Coalition Group; and 6) the only way the Program can be credible, accountable and defensible is to know who is enrolled.*

*The request for Membership Lists is not intended to impede progress, waste time, take away the Coalition Group leadership role, or make the Coalition Group “water cops”, but it is intended to comply with the Water Code, which in turn makes the Program credible, accountable and defensible.*

### **3. Comments on Farm Water Quality Plan**

The concerns generally expressed about the Farm Water Quality Plan requirement are that it will 1) raise administrative costs; 2) focus funds on issues that will not improve water quality; 3) result in on-farm regulation; and 4) require a class that may not accommodate the number of growers in the Central Valley Region. Others noted that the requirement of a Farm Water Quality Plan is a legal issue that directly affects Coalition Groups and that comprehensive plans are already completed by growers that include protection of water quality. The Farm Water Quality Plan could be difficult to write because it assumes a problem and would need to be revised when crops and practices change by the season. It was also commented that it is not reasonable for the Central Valley Water Board to request a Farm Water Quality Plan that will cost each grower a potentially significant amount of money to identify solutions to a problem that the grower may never have. Furthermore, it was noted that some growers have multiple parcels and it would be too costly for the grower to produce and maintain a Farm Water Quality Plan for each parcel.

Others, however, commented that the Farm Water Quality Plan does not reach past the Coalition Group to farm level and assumes someone will eventually review it, which may not be the case. As proposed, it is too vague because it does not require specific information.

Others questioned the purpose of a Farm Water Quality Plan that is not submitted for review, how the Farm Water Quality Plan meets the Water Code for improvement and protection of water quality, and who is responsible for the submittal of the Farm Water Quality Plan. There were concerns about property owners leasing to growers and that growers and property owners would need Farm Water Quality Plans.

It was suggested to have the Farm Water Quality Plan for watersheds instead of for each crop, orchard, or farm, and to submit the Farm Water Quality Plan for review, which will make it feasible for staff review.

*Staff Responses to Comments on Farm Plan*

*Based on the comments received, staff proposes modifications to the Farm Water Quality Plan. In the proposed Coalition Group Order, staff proposes that Coalition Groups develop, maintain, and implement Water Quality Plan(s) for water bodies and/or areas of water quality concern. The Water Quality Plan as proposed will identify the management practices that may be implemented to achieve compliance with receiving water limits and will provide a schedule to implement those management practices. The Coalition Groups will have flexibility to determine how to develop the Water Quality Plan, such as basing it on regional/watershed areas, crop or commodity, or specific to a geographical/hydrological area due to physical parameters. Coalition Groups would be required to submit a list of water bodies and areas of water quality concern within their boundary based on 303(d) listed water bodies and where sampling data show constituents causing toxicity or exceeding receiving water limits. After staff concurrence with the list, the Coalition Groups will have 160 days to prepare the Water Quality Plan(s). This modification is consistent with the watershed approach intended for the Program and addresses the issues of classes and cost for farmers, preparing plans only for areas of known concern, and the concern of on-farm regulation.*

**4. Comments on Attachment A, Tentative Table 1 Receiving Water Limitations**

Comments received regarding the tentative Table 1 in Attachment A of the Tentative Renewal Documents pertained to the process by which the numbers were determined. The comments ranged from concerns that the table was not appropriate to the table must go through the Basin Planning process to concerns that it is not legal to include the table in the Tentative Renewal Documents. Some expressed concerns that the limits would become policy and set precedence even though the table does not include the relevancy of the numbers, staff did not do a case-by-case evaluation, and staff reference anti-pesticide groups as a basis for the limits. It was suggested that staff discuss the table at a TIC meeting. Other general comments were: 1) staff needs to evaluate Department of Pesticide Regulation limits; 2) not all of the limits listed in the table are in the Basin Plan; 3) more time is needed to comment on the table; 4) the limits are so low that there will be exceedances in every sample; 4) the Central Valley Water Board includes these numbers in many adopted orders; and 5) the limits listed are only a small step towards improving water quality.

*Staff Responses to Comments on Attachment A, Tentative Table 1 Receiving Water Limitations*

*Although staff considers the limits listed in the table as legitimate interpretations of Basin Plans' narrative objectives and does not concur with the comments that the table bypasses any Central Valley Water Board processes, staff has removed from the table the limits that interpret Basin Plan narrative objectives. The numeric interpretations of the narrative water quality objectives will be discussed with the TIC. Attachment A now lists the water quality objectives in the Basin Plans as receiving water limitations and does not include numeric interpretations of narrative objectives.*

*The proposed Coalition Group and Individual Discharger Orders implement the receiving water limitations in the same manner as the 2003 Waiver with the addition of the Water Quality Plans. The Proposed Orders and the 2003 Conditional Waivers set forth an iterative process to comply with the*

*Water Code when a receiving water limitation has been exceeded. The Coalition Groups must submit Water Quality Plan(s) for certain water bodies, exceedance reports, and, in certain circumstances, Management Plans upon request of the Executive Officer.*

## **5. Comments on the Monitoring and Reporting Programs (MRPs)**

Comments on the MRPs were mostly regarding the impression that staff does not understand the monitoring requested and that there is no technical rationale for proposed monitoring. There were comments provided specifically on the Long Term Monitoring Strategy requirement. It was noted that it would be difficult to provide a plan that predicts future areas with exceedances. There were questions about the proposal for two upstream samples following an exceedance, since the growers should be finding the data gaps and evaluating the exceedance before resampling. It was suggested to allow the Coalition Groups time to work with the Agricultural Commissioners to determine source of exceedances prior to resampling. Others were concerned about a minor exceedance of a naturally-occurring constituent that then had to be sampled for two additional years based on that one exceedance. It was suggested that there needed to be discretion in the requirements of the Long Term Monitoring Strategy.

Other comments regarded concerns that there would be no way to phase out of some of the monitoring requirements. Some questioned some of the monitoring requirements that are not related to irrigated lands, such as E. coli, or that are naturally-occurring. There were concerns about changes to the language regarding nutrients, and that the changes were not discussed with the TIC's Nutrient Focus Group. One comment pertained to Coalition Groups not following the existing MRP.

### *Staff Responses to Comments on the MRPs*

*Based on the comments received, staff concluded that there are some issues related to the MRPs for Coalition Groups, Individual Dischargers and Water Districts that are not easily resolved and that merit further consideration. The complexity of the issues associated with the MRPs warrants a greater opportunity for comment and more participation in the development of appropriate MRP language. The TIC will be utilized over the next few months to discuss the MRPs and to develop recommended language for the monitoring requirements for the Program. A schedule for discussion of the MRP topics will be determined at the 6 December 2005 TIC Meeting. Therefore, staff is no longer including the MRPs in the renewal package. Since the MRPs do not expire, the existing MRPs will remain in effect until rescinded or revised.*

## **6. Comments on Water Districts Enrolled as Individual Dischargers**

The Program allows for water districts to join a Coalition Group or file as Individual Dischargers. There are five water districts that have filed for coverage under the Program as Individual Dischargers. These five water districts commented on the Orders and Individual Discharger Waiver as it pertains specifically to water districts. The concerns expressed were that the water districts do not have the authority to regulate discharges from others because the growers are responsible for their discharges. Although the water districts may have agreements, those agreements are not intended to address water quality, and it would be a waste of time and money to have detailed agreements to address water quality with the

growers when the Central Valley Water Board has the authority to regulate discharges of wastes. It was noted that water districts convey, but do not discharge.

*Staff Responses to Comments on Water Districts Enrolled as Individual Dischargers*

*Based on comments received, which were primarily regarding the issues with monitoring requirements, staff has removed the MRPs from the renewal package so that these issues may be discussed in further detail.*

*The issue of whether a conveyor of water is a discharger of waste, or more specifically, whether a water district is responsible for discharges into its conveyance facilities, must be addressed based on the facts related to those discharges. To the extent a water district collects, conveys, and ultimately discharges waste to waters of the State, it is a discharger, not unlike a municipality that collects the discharges from its citizens and ultimately discharges via outfalls to a stream. To the extent a water district totally contains or recaptures the wastewater it manages, with no outfall or discharge to waters of the State, it is not a discharger and is not required to apply for either waste discharge requirements or a waiver. In either case, staff agrees that the individual discharger to the conveyance system (a conveyance system that does discharge to, or is itself, waters of the State) is the party responsible for its discharge, and must apply for either a waiver or waste discharge requirements. A water district in and of itself has no obligation to act as a Coalition Group for members of its district. However, such members then need to be so informed so that they may take the appropriate action to comply with the Water Code. This is another reason why members of Coalition Groups must be identified.*

## **7. General Comments**

The following are general comments provided:

- Water quality problems are sporadic and limited;
- Concerns about identification of source when this is a nonpoint source program;
- There is a communication problem between Board staff and the Coalition Groups;
- Staff needs to utilize the TIC for the Tentative Renewal Documents;
- Informal meetings with Board members would help maintain an open process;
- Workshops without documents for review are worthless;
- There are California Environmental Quality Act concerns regarding the Tentative Renewal Documents;
- Staff needs to consider the California Rice Commission proposed approach on how to make the Program work;
- Staff need to take a step back and work with Board members to improve water quality;
- Coalition Groups know how to resolve problems;
- The 2003 Conditional Waivers have been a failure;
- The 2003 Conditional Waivers are sun setting and the staff still does not know the extent of the pollution from irrigated lands;
- Meetings are not as open as staff claim;
- Use landowner and/or producer for terminology because of leases;
- Need something stronger regarding enforcement at the Coalition Group level;

- The requirements in this Program should apply to other Programs also, such as stormwater; and
- All the growers want is to keep costs down, fix problems, and stay in business.

### *Staff Responses to General Comments*

*Staff does not concur with the characterization that the detections of constituents of concern or results from toxicity testing are sporadic, limited, or very positive. There are a very few sampling sites in comparison to the total area of the Coalition Groups, so a detection or toxic result represents a large area. Furthermore, the sampling locations are downstream and the detections and toxic results may possibly be the result of a larger concern upstream that has been diluted. Based on this, it is imperative for the Program and baseline assessment of water quality to have monitoring move up the watershed. This is a nonpoint source Program, but the areas of known concern must be addressed and all growers informed to minimize the cumulative effects of the discharges.*

*Some have characterized the Irrigated Lands Program as a failure, that nothing more is known than when the Program started, and that the relationship between the Board and Coalition Groups is uncooperative or that there is a breakdown in communications. Staff does not concur with these characterizations. Based on the work completed to date, staff has a much better understanding of the agricultural issues regarding discharges to surface water and understanding of how to conduct public workshops than it did in 2002. Staff has had many workshops and meetings with good dialogue and communication. Just because there is not 100% agreement on all of the issues does not mean that the Program is a failure or that there is no cooperation or a lack of communication.*

*Although there is a desire to have Board members at open forum meetings, there are ex parte communication rules with which Board members must comply.*

*Staff appreciates the concerns of growers wanting to keep costs down, fix problems, and stay in business along with how other coalitions and programs work, and considered these concerns in the renewal process. However, the Program must follow all applicable laws, which includes some of the terminology used (i.e., Discharger) and provide a basis for a permanent Program.*

### **Closing Remarks**

*The Coalition Group approach does work and staff appreciates the efforts by all involved and the specific comments provided to further advance the Program. Staff appreciates the work of the TIC for the valuable input regarding technical issues. However, some issues, such as Water Code 13269 requirements, are not subject to review. Many of the proposed changes are based on the need to move more aggressively into Phase 2 monitoring and the need for additional chemical analyses with toxicity sampling to truly evaluate water quality. All the changes, including enrollment, and concurrent chemical and toxicity sampling, are based on gaps in the 2003 Conditional Waivers or are an effort to be consistent with State policies, other Region 5 Programs, and other Regions' Irrigated Lands Programs. The Program continues to evolve and the proposed Orders both recognize that evolution and are a continuation of the progress that has been achieved to date.*