CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 AEROVISTA PLACE, SUITE 101
SAN LUIS OBISPO, CALIFORNIA 93401

Order No. R3-2004-0117

Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands

The Central Coast Regional Water Quality Control Board finds:

1. The intent of this Conditional Waiver is to regulate discharges from irrigated lands to ensure that such discharges are not causing or contributing to exceedances of any Regional, State, or Federal numeric or narrative water quality standard. Irrigated lands are lands where water is applied for producing commercial crops and, for the purpose of this program, include, but are not limited to, land planted to row, vineyard, field and tree crops as well as commercial nurseries, nursery stock production and greenhouse operations with soil floors that are not currently operating under Waste Discharge Requirements (WDRs). Fully contained greenhouse operations (those that have no groundwater discharge due to impervious floors) are not covered under this Conditional Waiver and must either eliminate all surface water discharges of pollutants or apply for Waste Discharge Requirements. Lands that are planted to commercial crops that are not yet marketable, such as vineyards and tree crops, must also obtain coverage under this Conditional Waiver.

2. Discharges include surface discharges (also known as irrigation return flows or tailwater), subsurface drainage generated by installing drainage systems to lower the water table below irrigated lands (also known as tile drains), discharges to groundwater through percolation, and storm water runoff flowing from irrigated lands. These discharges can contain wastes that could affect the quality of waters of the state.

3. Discharger means the owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater.

4. The Central Coast Region has approximately 600,000 acres of cropland under irrigation and more than 2,500 operations that are or may be discharging waste that could affect the quality of waters of the state.

5. Waters of the state is defined in Section 13050 of the California Water Code to be any surface or groundwater within the boundaries of the state.

6. Whether an individual discharge of waste from irrigated lands may affect the quality of 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.

7. Waste discharges from some agricultural operations have and will continue to threaten the quality of the waters of the state, as shown by the number of water bodies on the Clean Water Act Section 303(d) list of impaired water bodies that identify agriculture as a potential source, particularly in the Central Coast Region.

8. Data collected through the Central Coast Ambient Monitoring Program and other monitoring identify water quality problems in areas of irrigated agriculture throughout the Region, including in groundwater.

9. California Water Code Section 13269 allows Regional Boards to waive submission of Reports of Waste Discharge (ROWDs) and/or issuance of Waste Discharge Requirements (WDRs) if it is in the public interest. On April 15, 1983, the Regional Board approved a policy allowing waivers of WDRs for 26 categories of discharges, including irrigation return flows and non-NPDES storm water runoff.

10. On October 10, 1999, Senate Bill 390 amended California Water Code Section 13269. The amendments extended all waivers in effect on January 1, 2000, for three years to January 1, 2003, unless terminated earlier, and required all existing waivers to expire on January 1, 2003, unless renewed.

11. As amended, CWC Section 13269 authorizes the Regional Board to waive WDRs for a specific discharge or specific types of discharges if the following conditions are met: 1) the waiver is in the public interest, 2) the waiver is conditional, 3) waiver conditions include performance of individual, group, or watershed-based monitoring, except for discharges that the Regional Board determines do not pose a significant threat to water quality, 4) compliance with waiver conditions is required, and 5) a public hearing has been held. The term of a waiver cannot exceed five years, but the Regional Board can renew a waiver after holding a public hearing. The Regional Board may terminate a waiver at any time.

12. The Regional Board, in compliance with amended CWC Section 13269, reviewed the previously issued categorical waivers for irrigation return flows and non-NPDES storm water runoff and determined that additional conditions are required to protect water quality.

13. Relevant factors in determining whether a waiver is in the public interest include the following: whether the discharge is already regulated by a local governmental entity which must continue to play a major role in regulating that type of discharge; whether the Discharger is observing reasonable practices to minimize the deleterious effects of the discharge; whether a feasible treatment method exists to control the pollutants in the discharge; and whether conditionally waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Regional Board to utilize more of its resources to conduct field oversight, public outreach and, where necessary, enforcement. Although local government entities do not regulate water quality impacts of agricultural operations, these operations are subject to pesticide regulation and reporting. In addition, various public and private entities provide education and field assistance to growers implementing best management practices. These entities include various Resource Conservation Districts, the Monterey Bay National Marine Sanctuary, the University of California Cooperative Extension, and the programs cited in Finding 17. The Regional Board has made supplemental environmental program funds available to farm-related activities such as a watershed coordinator and monitoring, and anticipates directing further grants toward these activities, as well as to on-farm management practice implementation. Compliance with the Conditional Waiver will include reasonable management practices to minimize water quality

impacts. Management practices that reduce the amount of waste produced or contain runoff are more feasible and more effective than treatment methods and will be strongly encouraged.

14. The adoption of the Conditional Waiver is also in the public interest because (1) it includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state, (2) it contains more specific and more stringent conditions for protection of water quality compared to existing regulatory programs, (3) given the number of persons who discharge waste from irrigated lands and the magnitude of acreage involved, it provides for an efficient and effective use of limited Regional Board resources, (4) it provides flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with monitoring requirements through participation in cooperative monitoring programs or individually, and (5) it builds on, rather than replaces, existing efforts within the Region.

15. The Conditional Waiver provides an alternative regulatory option to adoption of WDRs for all Dischargers. Dischargers may seek coverage under this program through a tiered waiver structure. Some operations may be immediately considered for WDRs because of a past history of violations or other problems of non-compliance; however, the vast majority of operations will be allowed time to meet requirements before being considered for WDRs. The conditions of the waiver require Dischargers to comply with applicable water quality control plans and water quality objectives.

16. It is not expected that Dischargers will achieve full compliance with all of the conditions immediately. In some areas, rising groundwater with nitrate levels exceeding the drinking water standard may influence surface water concentrations substantially, making water quality improvements difficult to achieve in the short term. In others, time will be required to find the most effective combination of practices to improve water quality. The cooperative water quality monitoring program is designed to focus attention on waterbodies where objectives are not being met and allow Dischargers time to adjust practices. Although time will be allowed, increased reporting and monitoring may be required in order to ensure that water quality is improving. Even if the Regional Board were to issue WDRs to Dischargers rather than adopting this waiver, compliance schedules under California Water Code Section 13263(c) would be appropriate in most cases.

17. The Central Coast Region has benefited from the proactive approach to protecting water quality taken by several segments of the agricultural industry. Notable examples include the Agricultural Water Quality Program of the Coalition of Central Coast County Farm Bureaus (Farm Bureau Coalition) and efforts to promote sustainable wine growing practices by the Central Coast Vineyard Team and the Central Coast Winegrowers Association. Efforts are also underway to promote sustainable practices by Spanish-speaking farmers through the Rural Development Center and the Agricultural Land-Based Training Association (ALBA) in Monterey County. A consideration in developing the new regulatory program was the impact such a program would have on existing water quality protection efforts by the agricultural industry. Continuing and building on such efforts is in the public interest. Staff has worked with the agricultural and environmental communities in the Region to find areas of agreement on the broad outline of an irrigated agriculture water quality program.

How does the Conditional Waiver give "credit" to growers who have been proactive in protecting water quality?

18. Under the Monterey Bay Sanctuary's Plan for Agriculture, the Farm Bureau Coalition is organizing growers into watershed working groups who attend Farm Water Quality Planning short courses as a group and develop farm plans. The Waiver's education and plan requirements are modeled on this, so growers who are participating in the Sanctuary effort will likely be in Tier 1 (see Part IIC, "Waiver Tiers") and have fewer reporting requirements and lower costs. Growers who have completed other qualifying water quality education classes and developed plans that meet the waiver requirements will also qualify for Tier 1. Vineyards operations that have completed Positive Point System evaluations will be able to use them as part of their farm plans. Regional Board staff also recommends that growers who meet the education and planning requirements and who have already implemented substantial management practices to protect water quality have reduced monitoring costs under the cooperative monitoring program, and be considered as a "low-threat" discharge (see below).

What is the management practice checklist?

19. The management practice checklist/self-assessment is a short questionnaire that allows the Discharger to identify management practices that are being implemented for water quality protection. The Regional Board will provide a template prior to the enrollment deadline. The template will include practices for irrigation management, nutrient management, pesticide management and erosion control. Dischargers will also be able to add practices if they are known or likely to have a water quality benefit. The template will be available on-line. Tier 1 dischargers will submit an updated checklist once during the waiver cycle (five years); Tier 2 dischargers will submit a checklist annually as part of their annual report. In areas where water quality monitoring identifies problems, checklists will be used to assess whether practices need to be adjusted or whether increased implementation is needed.

What is a "low-threat" discharge?

20. A low-threat discharge is a discharge that has very low potential to impact water quality because of management practices in place. For the purposes of this Conditional Waiver a low-threat discharge category could be defined in the cost allocation structure of the cooperative monitoring program and qualify for reduced monitoring costs.

If I have no discharge, do I have to apply for a Waiver?

21. If an operation does not discharge waste that could affect water quality, then there is no need to obtain coverage under the Conditional Waiver. "Waste" includes (among other things) any residual pesticide, herbicide, or fertilizer that is not taken up or beneficially used for its intended purpose. Any discharge of waste that could percolate to groundwater or run off in tail water or stormwater is a discharge for purposes of this waiver. Waste discharges also include sediment that runs off a field (erosion) due to land disturbance activities. It is very difficult to be certain that an operation has no discharge, particularly to groundwater or during storm events; however, Dischargers that qualify for Tier 1 have fewer reporting requirements and facilities that have implemented management practices may be considered for a low-threat discharge category in the cooperative monitoring program and could have reduced monitoring costs.

What if I lease land?

22. Under the terms of the Conditional Waiver, both owners and operators of irrigated land have responsibility for compliance with the conditions of the waiver. A farm map must be submitted along with the Notice of Intent (see Part II below). Farm water quality management plans must specify management practices for the operation identified in the map. Many management practices will be operational in nature and under the direct control of the operator, while structural practices which remain in place through changes in leaseholders will more likely be the responsibility of the landowner. In the event that the Regional Board undertakes enforcement action, it is likely that both the owner and the operator will be held accountable. Owners and operators may consider delineating these responsibilities in lease agreements; however, both the owner and operator will retain full legal responsibility for complying with all provisions of the applicable waiver.

How do I apply?

23. Dischargers seeking authorization to discharge under the Conditional Waiver shall submit a complete *Notice of Intent (NOI) to Comply with the Terms of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Land.* The Notice of Intent form will be available from the Regional Water Quality Control Board upon request and on the Regional Board's website.

24. Information that must be submitted as part of the NOI includes the location of the operation, identification of responsible parties (owners/operators), a map of the operation (should be the same as is submitted to the Agricultural Commission for pesticide use applications or equivalent), a management practice checklist/self-assessment on a template provided by the Regional Board, certification of completion of Regional Board-approved water quality education, a signed statement of farm water quality plan completion, if applicable, and which monitoring option is elected. Certificates of education and statement of plan completion will be used to evaluate which category of waiver is appropriate.

When do I apply?

25. The deadline for submitting a Notice of Intent is **January 1, 2005**. All task and milestone due dates are listed in Part IV (Provisions) of this Order. All Dischargers must apply for coverage under the conditional waiver by **January 1, 2005.**

Is a fee required?

26. Not at this time. Recently passed Senate Bill 923 authorizes the payment of fees for conditional waivers. A fee schedule may be set by the State Board based on a number of factors, including acreage, and monitoring and compliance costs. The Regional Board cannot charge fees until after the State Board adopts a fee schedule for waivers.

Is monitoring required?

27. California Water Code Section 13269 requires conditional waivers to include a monitoring program that verifies the adequacy and effectiveness of the waiver's conditions. Monitoring programs can be individual, group (cooperative), or watershed-based. As long as a Discharger

complies with all of the provisions and requirements of the waiver, if group monitoring adequately verifies that the waiver conditions adequately protect water quality, a cooperative monitoring approach satisfies Section 13269.

28. Monitoring requirements and options are described in Monitoring and Reporting Program (MRP) R3-2004-0117. All Dischargers will be required to elect a monitoring option. Dischargers may elect to perform individual monitoring or participate in cooperative monitoring. Cooperative monitoring in general offers a much less costly alternative to individual monitoring. A Discharger may change the monitoring option election at any time by submitted a revised NOI. The revised NOI must include a proposed monitoring and reporting plan (to elect individual monitoring) or a demonstration that the Discharger is participating in a cooperative monitoring program (for cooperative monitoring).

How will the cooperative monitoring program work?

29. The cooperative monitoring program, which was developed by Regional Board monitoring program staff, with input from the Agricultural Advisory Panel and researchers within the Region, will focus on currently applied agricultural constituents. The program calls for monitoring at sites located on the main stems and tributaries of rivers in the agricultural areas of the region. Monthly sampling will be conducted to analyze nutrients (nitrate, ammonia, orthophosphate) and some general parameters such as temperature, dissolved oxygen, total dissolved solids, pH, turbidity, and flow. Monthly monitoring of these constituents in a set of fixed locations will improve the Regional Board's ability to determine whether water quality is improving over time. It takes much longer to detect change, statistically speaking, with less frequent monitoring, and change detection is important for determining whether the waiver is effective. Monitoring of these conventional pollutants is less expensive than other program components, such as toxicity, and thus is a comparatively inexpensive way to increase the ability to detect improvements in water quality resulting from management practices. Data from the Regional Board's Central Coast Ambient Monitoring Program (CCAMP) shows that exceedances of these general water quality parameters are often associated with toxicity in waters affected by agricultural runoff. The cooperative monitoring program will make provision for follow-up monitoring with a certain fixed proportion of its budget, as another means of maintaining costs at a reasonable level.

30. Monitoring for individual pesticides can be expensive and does not assess additive or synergistic effects or impacts to beneficial uses. The cooperative monitoring program proposes instead to look first at in-stream effects, by performing toxicity testing at the same set of sites four times per year, twice during the irrigation season and twice during the storm season. The program will also characterize in-stream health by examination of insects and other invertebrates that live in the streams. In combination with toxicity sampling, this approach will enable the Regional Board to assess the overall impact of the discharges to beneficial uses, such as aquatic life and habitat.

31. Cooperative monitoring will allow growers to pool resources to meet monitoring requirements at a lower cost than individual monitoring. The monitoring sites will be located primarily in agricultural areas with previously identified water quality problems, but will also incorporate other monitoring efforts to provide coverage throughout the agricultural areas of the region. Regional Board staff is directed to work with the agricultural industry to assist the industry to establish or identify an existing nonprofit entity. This entity will be responsible for establishing a dues schedule, collecting funds and conducting the monitoring program adopted by the Regional Board. The Central Coast Ambient Monitoring Program will provide additional monitoring as part of its five-year rotation scheme, and monitoring data from other agencies will be

incorporated wherever possible. The nonprofit entity will also have the ability to receive grant funds and other sources of revenue to reduce costs to growers. The Regional Board strongly encourages the industry to seek available grant funds to reduce monitoring costs for participating Dischargers, either through a cooperative monitoring entity or through other eligible entities.

What will cooperative monitoring cost?

32. The total annual cost of the cooperative monitoring program is estimated to be between $900,000 and $1.0 million. The contribution of each discharger participating in the cooperative monitoring program will be based on a cost schedule developed by the agricultural industry and the nonprofit entity, as described in paragraph 31. Regional Board staff will work with the cooperative monitoring program to develop a reasonable cost to individuals based on a number of factors, including type of discharge and threat to water quality. Settlement funds and grant funds may be used to supplement resources and reduce overall costs.

33. The Regional Board encourages the cooperative monitoring program to develop reduced monitoring charges for low-threat discharges.

What are some considerations in establishing a monitoring program?

34. The monitoring program must verify the adequacy and effectiveness of the waiver's conditions. In establishing a monitoring program, the Regional Board may consider the volume, duration, frequency, and constituents of the discharge, and the extent and type of existing monitoring activities. The monitoring program can rely on other agencies' or organizations' water quality monitoring programs in lieu of establishing a separate monitoring program as long as those programs provide sufficient data of adequate quality; if other program data are of adequate quality but incomplete, the Board can still rely on the other data and limit the additional monitoring requirements to what is needed to fill data gaps.

35. There are a number of surface water quality monitoring programs in the Central Coast Region. However, few on-going programs assess impacts to beneficial uses from agricultural chemicals through chemical testing, toxicity testing or benthic invertebrate monitoring. The Regional Board's Central Coast Ambient Monitoring Program conducts relatively detailed monitoring on a five-year rotational cycle. Data from this program and others can be used to supplement the monitoring program, but will not provide sufficient data to verify the adequacy and effectiveness of the waiver, nor to detect improvements in water quality due to changes in management practices within the time frame of the waiver.

    The Regional Board recognizes that a certain amount of time will be required to put a cooperative monitoring program in place, but an unreasonable delay in monitoring will violate CWC Section 13269, which requires monitoring to verify the adequacy of the waiver's conditions. Staff will assist the agricultural industry to identify a suitable entity to manage the cooperative monitoring program. The entity must demonstrate to the Executive Officer's satisfaction that it is technically able to carry out the monitoring and reporting program (either directly or by hiring a consultant or other acceptable organization to perform monitoring and reporting) and that it has or will have adequate financial resources to do so. Demonstration of financial capability should include development of a budget which may incorporate funding from outside sources, such as grants. A dues schedule should be developed in consideration of input from the agricultural industry. The entity, working with Regional Board staff, shall advise Dischargers on the availability of the cooperative monitoring program. Each Discharger covered by the waiver is ultimately responsible for compliance and must perform individual monitoring if the cooperative monitoring

is not established. The entity will notify the Regional Board of any enrolled dischargers who cease to comply with dues schedules or other enrollment requirements; such dischargers will be considered out of compliance with the conditions of the waiver unless they begin individual monitoring immediately. Staff will provide to the agricultural industry's "monitoring subcommittee," data as part of an inventory and review of existing data and monitoring efforts. The "monitoring subcommittee" may develop an alternative monitoring protocol for consideration by the Regional Board. The Board shall hold a public hearing and consider the agricultural industry's "monitoring subcommittee's" alternative monitoring protocol. Monitoring and Reporting Program R3-2004-0117 will be implemented as proposed, beginning in the lower Salinas/Elkhorn and Santa Maria areas, and shall be implemented by January 1, 2005. Full regionwide monitoring, in accordance with MRP R3-2004-0117 or an alternative monitoring protocol approved by the Regional Board at a public hearing, shall be implemented by January 1, 2006.

36. All requirements for technical and monitoring reports are pursuant to California Water Code section 13267. These reports are necessary to evaluate each Discharger's compliance with the terms and conditions of the Conditional Waiver, to verify the adequacy and effectiveness of the waiver's conditions and to evaluate whether additional regulatory programs or enforcement actions are warranted. Failure to submit reports in accordance with schedules established by this Order, Monitoring and Reporting Program R3-2004-0117, or an individual or cooperative monitoring plan, or failure to submit a report of sufficient technical quality to be acceptable to the Executive Officer, may subject the Discharger to enforcement action pursuant to Section 13268 of the California Water Code.

Why is agriculture being required to do more monitoring than other land uses?

37. California Water Code Section 13267 requires the cost of monitoring to be reasonable in light of the information to be obtained. Identified water quality problems in agricultural areas, in conjunction with the large number of Clean Water Act 303(d) listings that identify agriculture as a potential source justify greater monitoring than is necessary for other land uses, such as urban stormwater, which is not known to be causing as high a level of regional impact. However, when water quality monitoring indicates sources other than agriculture may be contributing to a problem, the other sources will be required to provide monitoring and other information to the Regional Board.

Is groundwater monitoring required?

38. No. Existing groundwater monitoring efforts around the region will be used in lieu of any agricultural groundwater monitoring requirements.

What if groundwater already violates standards?

39. Groundwater in many agricultural areas of the region shows nitrate levels exceeding drinking water standards. Growers will not be held liable for historical conditions. Since high nitrate groundwater in agricultural areas is often used for irrigation, farm plans need to include nutrient management practices to ensure that current discharges to groundwater do not further degrade groundwater. Plans also should account for specific nitrate concentrations in irrigation water in determining agronomic nitrogen application rates.

Am I expected to contain all stormwater on my property?

40. Although there is no requirement to contain all stormwater on site, all farm plans must identify practices to reduce discharges during storm events. Operations should choose the best combination of practices to reduce and/or detain runoff, reduce erosion and reduce the discharge of sediment, nutrients and pesticides during storms. Conservation practices that could pose a threat to public safety, for example, sediment detention basins that include earthen embankments, should conform to relevant local ordinances and engineering standards. Other management practices such as cover crops, filter strips, or furrow alignment, should aim to reduce runoff quantity and velocity, hold fine particles (silt and clay) in place, and increase infiltration to minimize impacts to stormwater quality. The goal of these combined practices should be to minimize stormwater runoff for the first half inch of rain during each storm, and to reduce runoff for the first one and one-half inches of rain during each storm. There is no requirement to contain or manage waste in stormwater runoff that enters the farm from off site, but the occurrence of such runoff does not change the goal of managing waste generated on site.

What happens if a Tier 2 discharger fails to meet requirements for Tier 1 within the three year time limit?

41. Dischargers who fail to meet Tier 1 requirements within three years will be issued Waste Discharge Requirements if they have made no progress toward meeting Tier 1 requirements. Progress includes completion of five hours of water quality training each year and progress toward completion of a farm water quality plan. Prior to issuance of Waste Discharge Requirements, the Discharger may ask the Regional Board to consider extenuating circumstances, such as lack of available training and financial hardship.

Regulatory Considerations

42. Basin Plan – The Regional Board adopted the Water Quality Control Plan, Central Coast Basin (Basin Plan) on September 8, 1994. The Basin Plan incorporates State Board plans and policies by reference and contains a strategy for protecting beneficial uses of surface and ground waters throughout the Region. This conditional waiver requires Dischargers to comply with all applicable provisions of the Basin Plan.

43. Beneficial Uses – Existing and potential beneficial uses of surface and groundwaters within the Central Coast Region include municipal and domestic supply; agricultural supply; industrial process and service supply; recreation; warm and cold freshwater habitat; wildlife habitat; migration; spawning; areas of special biological significance (now called State Water Quality Protection Areas or SWQPAs); rare, threatened or endangered species; freshwater replenishment; and groundwater recharge. Beneficial uses that apply to all waterbodies, unless otherwise identified in the Basin Plan, include municipal and domestic supply, recreation, and aquatic life (either warm or cold freshwater habitat, as applicable).

44. California Environmental Quality Act – For purposes of adoption of this Waiver Order, the Regional Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21100 et. seq.). The action to adopt a conditional waiver is intended to protect and improve water quality. The waiver order sets forth conditions that will require Dischargers to implement management practices to protect water quality and to monitor to ensure that such practices are effective and are improving water quality. The Regional Board

has not regulated the discharges subject to this waiver Order to this extent in the past. Such regulation will result in protection, maintenance and improvement of water quality. The Regional Board adopted a Negative Declaration in Resolution R3-2004-0118.

45. Anti-Degradation – This Order is consistent with the Provisions of State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Regional boards, in regulating the discharge of waste, must 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 board's policies. This conditional waiver Order will result in improved water quality throughout the region. Dischargers must comply with all applicable provisions of the Basin Plan, including water quality objectives, and implement best management practices to prevent pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State. The conditions of this waiver will protect high quality waters and restore waters that have already experienced some degradation.

46. The goal of this Order and Conditional Waiver is to improve and protect water quality by providing a program to manage discharges from irrigated lands that cause or contribute to conditions of pollution or nuisance as defined in Section 13050 of the California Water Code or that cause or contribute to exceedances of any Regional or State Board numeric or narrative water quality standard by reducing discharges of waste.

47. Interested parties were notified of the intent to adopt a conditional waiver of waste discharge requirements for discharges from irrigated lands, including irrigation wastewater and/or stormwater, to surface waters and groundwater as described in this Waiver Order and were provided an opportunity for a public hearing and an opportunity to submit written comments.

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

IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13263, 13267 and 13269, Dischargers of irrigation wastewater and/or stormwater from irrigated lands to waters of the state, who file for coverage under this Waiver Order in order to meet the provisions contained in California Water Code Division 7 and regulations and plans and policies adopted thereunder, and who request waiver of waste discharge requirements, shall comply with the following terms and conditions:

PART I. WAIVER

1. The discharge of any wastes not specifically regulated by the waiver described herein is prohibited unless the Discharger complies with CWC Section 13260(a) and the Regional Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or the time frames specified in CWC Section 13264(a) have elapsed.

2. The Regional Board waives the submittal of a ROWD and WDRs for discharges from irrigated land if the Discharger complies with the conditional waiver described in this Order and Monitoring and Reporting Program R3-2004-0117.

3. Dischargers shall take action to comply with the terms and conditions of the waiver adopted by this Order and improve and protect waters of the state.

4. This waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263.

5. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from taking enforcement actions (including civil liability) pursuant to the CWC.

PART II. WAIVER PROGRAM

A. Definitions

1. Irrigated lands – lands where water is applied for the purpose of producing commercial crops. For the purpose of this Conditional Waiver, irrigated lands include, but are not limited to, land planted to row, vineyard, field and tree crops, commercial nurseries, nursery stock production, and greenhouse operations with soil floors.

2. Irrigation return flow – surface and subsurface water which leaves the field following application of irrigation water.

3. Tailwater – the runoff of irrigation water from the lower end of an irrigated field.

4. Stormwater runoff – the runoff of precipitation from the lower end of an irrigated field.

5. Subsurface drainage – water generated by installing drainage systems to lower the water table below irrigated lands. The drainage can be generated by subsurface drainage systems, deep open drainage ditches or drainage wells.

6. Discharge - a release of a waste to waters of the State, either directly to surface waters or through percolation to groundwater. Wastes from irrigated agriculture include earthen materials (soil, silt, sand, clay, rock), inorganic materials (metals, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.), and organic materials such as pesticides.

7. Discharger - the owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater.

8. Requirement of applicable water quality control plans- a water quality objective, prohibition, Total Maximum Daily Load (TMDL) implementation plan, or other requirement contained in water quality control plans adopted by the Regional Board and approved according to applicable law.

9. Monitoring - refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions, including but 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, inspections of operations, management practice implementation and effectiveness monitoring, maintenance of on-site records and management practice reporting.

10. Farm Water Quality Management Plan (Farm Plan) - a document that contains, at a minimum, identification of practices that are currently being or will be implemented to address irrigation management, pesticide management, nutrient management and erosion control to protect water quality. Plans will contain a schedule for implementation of practices. Lists of water quality protection practices are available from several sources, including the University of California farm plan template available from the University of California and on-line at http://anrcatalogue.ucdavis.edu/merchant.ihtml?pid=5604&step=4.

11. All other terms shall have the same definitions as prescribed by California Water Code Division 7, unless specified otherwise.

B. Enrollment Process

All applicants must submit the following information as part of their Notice of Intent (NOI) to enroll:

- Completed application form, including location of the operation and identification of responsible parties (owners/operators)
- Copy of map of operation (map should be the same as the one submitted to the County Agricultural Commissioner for Pesticide Use Reporting, or equivalent)
- Completed management practice checklist/self assessment form
- Certificates of attendance at Regional Board-approved farm water quality education courses, if applicable
- Statement of farm water quality plan completion, if applicable
- Election for cooperative or individual monitoring

C. Waiver Tiers

Tier 1 Qualifications and Reporting Requirements

Tier 1 conditional waivers will be five years in length. To qualify for a Tier 1 conditional waiver, Dischargers must do the following:

a. complete 15 hours of Regional Board-approved farm water quality education by the enrollment deadline
b. complete a Farm Plan by the enrollment deadline
c. provide a biennial practice implementation checklist to the Regional Board demonstrating that the Discharger is implementing the Farm Plan, or that the Discharger has made and is implementing appropriate changes to the Farm Plan
d. perform individual water quality monitoring or participate in cooperative water quality monitoring

Tier 2 Qualifications and Reporting Requirements

Tier 2 conditional waivers will be one year in length, renewable up to three years. To qualify for a Tier 2 conditional waiver, operations must do the following:

a. complete at least 5 hours of Regional Board-approved water quality education per year, up to a total of at least 15 hours (the first 5 hours may be completed after enrollment)
b. complete a Farm Plan within three years of the enrollment deadline

c. provide annual practice implementation checklists identifying currently implemented and planned management practices and progress reports on completion of requirements to the Regional Board
d. perform individual water quality monitoring or participate in cooperative water quality monitoring

D. General Conditions for All Waiver Holders

1. The Discharger shall not cause or contribute to conditions of pollution or nuisance as defined in CWC Section 13050.

2. The Discharger must comply with all requirements of applicable water quality control plans.

3. The Discharger shall not cause or contribute to exceedances of any Regional, State, or Federal numeric or narrative water quality standard.

4. Wastewaters percolated into groundwater shall be of such quality at the point where they enter the ground so as to assure the protection of all actual or designated beneficial uses of all groundwaters of the basin.

5. Wastes discharged to groundwater shall be free of toxic substances in excess of maximum contaminant levels (MCLs) for primary and secondary drinking water standards established by the United States Environmental Protection Agency or California Department of Health Services, whichever is more stringent; taste, odor, or color producing substances; and nitrogenous compounds in quantities which could result in a groundwater nitrate concentration (as NO_3) above 45 mg/l.

6. The Discharger shall comply with each applicable Total Maximum Daily Load (TMDL), including any plan of implementation for the TMDL, commencing with the effective date or other date for compliance stated in the TMDL. If an applicable TMDL does not contain an effective date or compliance date, the Discharger shall commence compliance with the TMDL's implementation plan no later than twelve months after USEPA approves the TMDL.

7. The Discharger shall comply with applicable time schedules.

8. This Conditional Waiver does not authorize the discharge of any waste not specifically regulated under this Order. Waste specifically regulated under this Order includes: earthen materials, including soil, silt, sand, clay, rock; inorganic materials including metals, salts, boron, selenium, potassium, nitrogen, phosphorus, etc.; and organic materials such as pesticides that enter or threaten to enter into waters of the state. Examples of waste not specifically regulated under this Order include hazardous materials, and human wastes.

9. Objectionable odors due to the storage of wastewater and/or stormwater shall not be perceivable beyond the limits of the property owned or operated by the Discharger.

PART III. RECOMMENDATIONS

1. Controlling pollutants at the source should be the primary approach to water quality protection.

2. Irrigation efficiency improvement should be used to minimize wastewater generation.

3. Crop nutrient requirements should be evaluated to minimize fertilizer applications.

4. Irrigation water nitrate and soil nitrate content should be incorporated in fertilization decisions.

5. Erosion control should be considered as part of storm water management and irrigation water management.

6. Integrated pest management techniques, such as pest population monitoring, should be incorporated into pest control decision-making to minimize use of pesticides.

PART IV. PROVISIONS

1. The Discharger shall comply with an individual or cooperative Monitoring and Reporting Program approved by the Regional Board Executive Officer.

2. A copy of the Conditional Waiver and farm water quality plan shall be kept at the operation for reference by operating personnel. Key operating and site management personnel shall be familiar with its contents.

3. In the event of any change in control or ownership of an operation presently owned or controlled by the Discharger, the Discharger shall notify the succeeding owner or operator of the existence of this conditional waiver order by letter, a copy of which shall be immediately forwarded to the Regional Board Executive Officer. The new Discharger shall submit a NOI within 30 days.

4. The Discharger shall take all reasonable steps to prevent any discharge in violation of this conditional waiver.

5. The Discharger shall furnish the Regional Board, within a reasonable time, any information that the Board may request to determine compliance with this conditional waiver Order.

6. The Discharger shall allow Regional Board staff reasonable access onto the subject property (the source of runoff and percolating water) whenever requested by Regional Board staff for the purpose of performing inspections and conducting monitoring, including sample collection, measuring, and photographing to determine compliance with conditions of the waiver.

7. Pursuant to CWC section 13267, the following information/reports shall be submitted to the Regional Board according to the following time schedule to ensure compliance with the terms and conditions of this Conditional Waiver, unless the Regional Board has granted a time extension[1]:

[1] The Regional Board recognizes that the cooperative monitoring entity is not a discharger subject to regulation under the Porter-Cologne Water Quality Control Act. However, the cooperative monitoring entity must satisfy the milestones applicable to it before any individual discharger may rely on cooperative monitoring to satisfy the discharger's monitoring requirements.

Reporting Tasks/Milestones	Responsible Party	Due Date
Notice of Intent	All Dischargers	January 1, 2005
Annual Report	Tier 2 Dischargers	January 1, 2006 and annually thereafter
Management Practice Checklist Update	Tier 1 Dischargers	January 1, 2007

Monitoring Tasks/Milestones	Responsible Party	Due Date
Establish an Agricultural Committee*	Cooperative Monitoring Program	September 1, 2004
Establish a Cost Allocation Subcommittee*	Cooperative Monitoring Program	November 1, 2004
Establish a Agricultural Monitoring Subcommittee* (not required)	Cooperative Monitoring Program	As early as possible
Establish a Cooperative Monitoring Entity*	Cooperative Monitoring Program	January 1, 2005
Approved Quality Assurance Project Plan and Sampling Plan	Cooperative Monitoring Program/Individual Dischargers	January 1, 2005
Start Date Salinas and Santa Maria Area Monitoring	Cooperative Monitoring Program	January 1, 2005
Start Date for Individual Monitoring	Individual Dischargers	October 1, 2005
Submit List of Participants in Cooperative Monitoring Program	Cooperative Monitoring Program	January 1, 2006
Submit Cost Allocation Formula	Cooperative Monitoring Program	January 1, 2006
Start Date for Regionwide Cooperative Monitoring	Cooperative Monitoring Program	January 1, 2006
Electronic Monitoring Data Submittal	Cooperative Monitoring Program/Individual Dischargers	Three months after start of monitoring and quarterly thereafter
Hard Copy Monitoring Report Submittal	Cooperative Monitoring Program/Individual Dischargers	January, 2007 and annually thereafter

* The Agricultural Committee will have the sole authority to determine the membership of the Agricultural Monitoring Committee and Cost Allocation Committee. The Agricultural Committee is not required to open committee membership to the general public

8. All reports, NOI, or other documents required by this conditional waiver Order, and other information requested by the Regional Board shall be signed by the owner and/or operator of an irrigated operation.

9. Any person signing a NOI, monitoring report, or technical report makes the following certification, whether written or implied:

"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 submitting false information, including the possibility of fine and imprisonment for knowing violations."

10. Violations of this conditional waiver may result in enforcement actions as authorized under the CWC.

11. Conditional waivers may be issued for five years and may only be reissued after a public hearing. The conditional waiver will be reviewed at a public hearing on or before May 13, 2009. At that time, additional conditions may be imposed.

12. A waiver of WDRs for a type of discharge may be superseded by the adoption by the State Board or Regional Board of specific waste discharge requirements or general waste discharge requirements for specific discharges.

13. The Regional Board may review this Order and Conditional Waiver at any time and may modify or terminate the waiver in its entirety or for individual Dischargers as appropriate.

14. The Regional Board directs the Executive Officer to provide regular updates to the Regional Board regarding the effectiveness of the conditional waiver to regulate these types of discharges. These updates may include: Executive Officer Reports, memoranda, staff reports, workshops, and agenda items.

15. This Order and Conditional Waiver shall become effective **July 9, 2004** and expire **July 9, 2009** unless rescinded, renewed or extended by the Regional Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on July 9, 2004.

Bradley E. Hagman
FOR Roger W. Briggs
Executive Officer