

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

**ORDER R7-2013-0002**

**CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR  
AGRICULTURAL WASTEWATER DISCHARGES AND  
DISCHARGES OF WASTE FROM DRAIN OPERATION AND MAINTENANCE ACTIVITIES  
ORIGINATING WITHIN THE BARD UNIT OF THE RESERVATION DIVISION  
Imperial County**

The California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board) finds that:

***Background and Purpose of this Order***

1. Pursuant to California Water Code (CWC) section 13369, the State Water Resources Control Board (State Water Board) adopted the Nonpoint Source Implementation and Enforcement Policy (NPS Policy) on May 20, 2004, subsequently approved by OAL on August 26, 2004. The NPS Policy requires all nine regional water boards to regulate all nonpoint sources of pollution using the administrative permitting authorities in the CWC, including, but not limited to: (1) Basin Plan prohibitions, (2) conditional Waivers of waste discharge requirements (WDRs), or (3) WDRs.
2. On January 10, 2012, the State Water Board adopted Resolution 2012-0004 disapproving the Regional Water Board's proposed amendment to its water quality control plan for the Colorado River Basin Region (Basin Plan) that would have established a conditional prohibition for agricultural wastewater discharges originating in the Palo Verde Valley and Mesa. In its disapproval decision, the State Water Board made clear that Basin Plan prohibitions, which are not statutorily authorized to impose fees for agricultural wastewater discharges or any other type of discharge, are no longer acceptable pollution control programs for agriculture. The State Water Board is presently revising the NPS Policy to reflect that position. The Regional Water Board has implemented the State Water Board's directive in its disapproval decision by adopting at a public meeting held on September 20, 2012, Order R7-2012-0047, a conditional waiver of WDRs for the Palo Verde agricultural wastewater discharges.
3. The purpose of this Order is to establish a Conditional Waiver of WDRs to effectively regulate: (a) the quality of agricultural wastewater discharges from irrigated agricultural lands in the Bard Unit of the Reservation Division of the United States Bureau of Reclamation's (USBR) Yuma Project (hereinafter, Bard Unit) into waters of the State; and (b) the potential water quality impacts from operation and maintenance (O&M) of Bard Unit drains to ensure that such discharges and O&M practices are not causing or contributing to exceedances of Basin Plan numeric or narrative water quality standards of the Bard Unit Drains which are tributary to the Colorado River.

***Definitions, Responsible Parties, and Applicability***

4. CWC section 13050(d) defines “waste” as including sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with the human habitation, or of human or animal origin, or from producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.
5. CWC section 13050(d) defines “waters of the state” as any surface water or groundwater, including saline waters, within the boundaries of the state.
6. As used in this Order, “agricultural wastewater” is a waste and is defined as including: 1) storm water runoff from irrigated lands, and 2) irrigation return water, which includes surface discharges (also known as "tailwater"), and subsurface discharges (known as "tile water" in tiled areas, or "seepage" in areas not tiled). This waste can contain constituents at concentrations that may adversely impact water quality and the beneficial uses of the waters of the state described in Finding 3, above.
7. “Agricultural Discharger” means the owner, renter/lessee, and operator/grower of irrigated agricultural land in the Bard Unit who discharges, has the potential to discharge, or proposes to discharge waste, which could directly or indirectly affect the quality of waters of the state.
8. “Drain Maintenance Discharger” means any individual or entity that conducts drain operation and maintenance activities in the Bard Unit that discharges, or has the potential to discharge, wastes that could directly or indirectly affect the quality of waters of the state.
9. “Responsible Parties” are Agricultural and Drain Maintenance Dischargers, as described in Findings 7 and 8 above, and are responsible for complying with this Conditional Waiver.
10. “Coalition Group” means any group of dischargers and/or organizations that is developed to comply with this Conditional Waiver. Coalition Groups can be, but are not limited to, organizations developed on a geographical or other basis, such as growing similar types of crops.
11. “Compliance Program” means a nonpoint source pollution control program, as defined in the State Water Board’s “State Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program,” which specifies Management Practices and monitoring and reporting requirements to ensure compliance with this Conditional Waiver. A Compliance Program may be a Coalition Group Compliance Program or an Individual Compliance Program. A Coalition Group Compliance Program is one that has been formed by Responsible Parties who have developed their own compliance group for self-management or who have joined a compliance group to be organized and managed by a third-party representative, organization, or government agency. An Individual Compliance Program is one that has been formed by an individual Responsible Party who chooses not to join a Coalition Group.
12. Unless otherwise specified, all terms used in this Conditional Waiver shall have the same definitions as those set forth in Division 7 of the CWC.

13. This Conditional Waiver does not apply to discharges from irrigated lands equal to or less than five (5) acres that are used for gardens, vineyards, orchards, pastures or greenhouses to produce crops and/or animals for personal consumption. This exemption, but without any acreage limitation, includes irrigated lands used as golf courses or polo fields. Owners and operators of irrigated lands meeting these criteria are not required to apply for coverage under this Conditional Waiver, provided that the owner/operator (a) does not hold a current Operator Identification Number/Permit Number for pesticide use reporting and/or (b) does not use the federal Department of Treasury Internal Revenue Service Form 1040 Schedule F Profit or Loss from Farming to file federal taxes.
14. This Conditional Waiver does not apply to discharges from irrigated lands that originate on Tribal lands as described in Findings 21 and 22 below.

***Basin Plan and Beneficial Uses to be Protected***

15. The Basin Plan, as amended to date, designates the beneficial uses of ground and surface waters in this Region.
16. The Basin Plan specifies the following beneficial uses for the Bard Unit Drains:
  - a. Water Contact Recreation (REC I)
  - b. Water Non-Contact Recreation (REC II)
  - c. Warm Freshwater Habitat (WARM)
  - d. Wildlife Habitat (WILD)
17. The Basin Plan specifies the following beneficial uses for the Colorado River:
  - a. Municipal and Domestic Supply (MUN)
  - b. Agriculture Supply (AGR)
  - c. Aquaculture (AQUA)
  - d. Industrial Service Supply (IND)
  - e. Ground Water Recharge (GWR)
  - f. Water Contact Recreation (REC I)
  - g. Non-Contact Water Recreation (REC II)
  - h. Warm Freshwater Habitat (WARM)
  - i. Cold Freshwater Habitat (COLD)
  - j. Wildlife Habitat (WILD)
  - k. Hydropower Generation (POW)
  - l. Preservation of Rare, Threatened, or Endangered Species (RARE)
18. The Bard Unit is part of the Yuma Hydrologic Unit. The Basin Plan establishes the following beneficial uses for groundwater in the Yuma Hydrologic Unit:
  - a. Municipal Supply
  - b. Agricultural Supply

19. This Conditional Waiver is consistent with and implements the Basin Plan. It requires Responsible Parties to comply with the Basin Plan water quality standards established for the waters identified in Findings 15 through 18, above.

### ***Bard Unit Irrigation and Drainage Systems***

20. The Bard Unit is located in the southwestern portion of Imperial County and is part of the United States Bureau of Reclamation's (USBR) Yuma Project. The Yuma Project is divided into two divisions: the Valley Division, which is located in Arizona, and the Reservation Division, which consists of 14,676 acres (roughly 23 square miles) in California. The Reservation Division is further subdivided into the 7,120 acre Bard Unit, and the 7,556 acre Indian Unit.
21. The land in the Indian Unit is part of the Fort Yuma Indian Reservation, which is held in trust by the federal government for the Quechan Indian Tribe. The Quechan Indian Tribe is recognized by the federal government and is acknowledged to have the immunities and privileges available to other federally-acknowledged Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.
22. Federally recognized tribes possess certain inherent rights of self-government (i.e. tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. Tribal sovereignty protects tribes against encroachment by sovereigns, such as states, and ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent. Because California state laws have no jurisdiction over tribal property or citizens, discharges that originate on tribal lands will not be regulated by this Conditional Waiver
23. Irrigated lands in the Bard Unit were deeded to settlers in 1910 and the Bard Water District (BWD) was organized in 1927 to represent the private land owners in the Bard Unit. This Conditional Waiver will only regulate parcels of irrigated agriculture that are privately owned and located in the Bard Unit.
24. Water for irrigation of the Bard Unit is diverted from the All-American Canal into the Siphon Drop Power Plant, Reservation Main, Titsink, and Yaqui Turnouts. Some Reservation Division lands are served directly from turnouts on the All-American Canal above the Siphon Drop Power Plant. The BWD operates a 68-mile network of irrigation canals and laterals that service farmland in the Reservation District. Approximately 37 miles of the distribution system are located in the Bard Unit.
25. Farmers in the Bard Unit divert water from a canal through a gate operated by BWD onto fields for mostly gravity flood irrigation. When uniform germination is desired, sprinkler irrigation is widely used. Drip irrigation is used for date trees and other orchard crops and some field crops in the Bard Unit.
26. The BWD operates a system of open drains that collect runoff and/or seepage from irrigated land, seepage from the All-American Canal, canal operational spills, and first-encountered groundwater to facilitate crop growth throughout the Bard Unit. Nearly one-half of the Reservation Division drainage system was installed to intercept seepage from

the All-American Canal. The drain system consists of about 15 miles of open drains that ultimately discharge into the Colorado River. Approximately 12.3 miles of drain are located in the Bard Unit of the Reservation Division. This Conditional Waiver will only regulate drains that are located within the Bard Unit.

27. Because water from the Colorado River contains soluble salts, the amount of water applied to fields must be sufficient to flush salts accumulating in the root zone, in addition to that required for crop growth. This additional water is called the 'leaching requirement.' Water needed to flush salts varies with soil type and the crop's stage of growth, but generally averages 15% of the amount required for crop evapotranspiration. Leaching salts from the root zone is necessary to maintain soils for cultivation. The excess irrigation water (i.e., 'leaching requirement') carries the soluble salts to groundwater, which eventually flows into the drains and/or the Colorado River.
28. Although there are some private drains maintained by landowners, BWD operates and maintains the vast majority of drains in the Bard Unit. BWD uses draglines and long-reach excavators to remove mud and place the excavated material on drain banks as the equipment moves downstream. In areas where the long-reach excavators are ineffective, a dragline is used to open the flow area. Weeds on the inside slope of drains are crushed and large trees are removed. Weeds and plants within the drains are also removed to restore flow. The cleaning of channels is done on an as-needed basis. BWD's drain maintenance activities are authorized via the "Lower Colorado River Multi-Species Conservation Program" (LCR MSCP) of 2005 and its related environmental documents.

### ***Hydrogeological Conditions***

29. Data from the California Department of Water Resources (DWR) indicate that the Yuma Valley Groundwater Basin underlies a southeast trending valley in southeast Imperial County. Elevation of the valley floor ranges from about 100 feet above sea level at the Colorado River near Winterhaven to about 600 feet along the northwest and southwest margins. The basin is bounded by nonwater-bearing rocks of the Cargo Muchacho Mountains on the west and by the Chocolate and Picacho Mountains on the north and northeast. Low-lying alluvial drainage divides form boundaries on the northwest and southwest, and the Colorado River bounds the basin on the south and east. Elevation in the mountains range from about 1,300 feet in the Cargo Muchacho Mountains and about 2,000 feet in the Picacho Mountains.
30. The water-bearing material within the basin is alluvium, which includes the unconsolidated younger Quaternary alluvial deposits and the underlying unconsolidated to semi-consolidated older Tertiary to Quaternary alluvial deposits. Maximum depth of the valley fill is at least 200 feet. There are no known barriers to the movement of groundwater except localized clay layers, which may obstruct the downward percolation of surface water.
31. Natural recharge to the basin is derived mainly from subsurface inflow from the Ogilby Groundwater Basin on the west and infiltration of surface runoff through alluvial deposits at the base of the bordering mountains. Additional recharge comes from seepage loss from the All-American Canal and other unlined canals and from the percolation of irrigation return flows. In the eastern portion of the basin along the Colorado River, high

groundwater levels and fluctuations in the elevation of the water table are in direct response to various stages of the river. In general, groundwater moves southeast and is discharged to the Colorado River.

32. Records of historical groundwater levels in the basin intermittently span the period from about 1962 through 2002. In general, the records of 49 wells show that water levels have remained largely unchanged in those areas within the Colorado River floodplain south and east of the All-American Canal. Depth to water remains shallow and ranges from about 5 to 20 feet below the surface. In the few wells that exist north or west of the canal, records show water levels have also remained mostly unchanged or have increased slightly over the period of record. Depth to water in these areas varies greatly, but generally ranges from about 40 to 240 feet below the surface.
33. Groundwater character varies within the basin, but in general, the predominant cation is sodium, and the predominant anion is either chloride or sulfate. In general, the groundwater is marginal for domestic and irrigation uses because of elevated levels of TDS, chloride, sulfate, and percent sodium. TDS levels range from about 600 to as much as 14,700 mg/L.
34. Annual average precipitation ranges from about 1 to 3 inches. Surface drainage is southeast towards the Colorado River.
35. Considering the depth to the groundwater of the Basin described in Finding 29 above, and farming practices in the area, this Conditional Waiver establishes conditions that focus on preventing and addressing water quality impacts on first-encountered groundwater and on the surface waters identified in Findings 15 through 17, above.

### ***Surface Water Impairments***

36. Section 303(d) of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) requires states, territories, and authorized tribes to develop a list of impaired water bodies or segments (referred to as the “303(d) List”). The waters on the 303(d) List do not meet water quality standards even after point sources of pollution have implemented the minimum required levels of pollution control technology. The Clean Water Act requires states to establish priority rankings for listed water bodies and to develop action plans to improve water quality.
37. The segment of the Colorado River from Imperial Dam to the international boundary with Mexico is included on the 303(d) List of impaired water bodies due to elevated concentrations of selenium detected in fish tissue. Because the listing criterion for selenium has been increased from 2 parts per million (ppm) to 7.4 ppm during the CWA section 303(d) listing cycle for 2012, and none of the historic data exceeds the new listing criterion, the Regional Water Board intends to request that the selenium impairment for this segment of the Colorado River be removed from the 303(d) List.

### ***Legal and Additional Regulatory Considerations***

38. The NPS Policy provides for Responsible Parties to comply with this Conditional Waiver by participating in the development and implementation of NPS Pollution Control

Programs (Compliance Programs), either individually or collectively as participants in discharger coalitions (a.k.a. "Coalition Groups"). Compliance Programs may also be developed by the Regional Water Board or a discharger coalition in cooperation with a third-party representative, organization, or government agency. Regardless of who develops the program, the NPS Policy identifies five (5) key elements required for all Compliance Programs:

- a. Statement of Goals/Purpose
- b. Identification of Management Practices (MPs)
- c. Time Schedule for Compliance
- d. Surveillance Program
- e. Consequences for Failure

This Conditional Waiver is consistent with the requirements of the NPS Policy.

39. CWC section 13260(a)(1) requires that any person discharging waste or proposing to discharge waste within the Regional Water Board's jurisdiction, in a manner that could affect the quality of waters of the state, shall file a Report of Waste Discharge (ROWD) with the Regional Water Board. The Regional Water Board may, in its discretion, issue WDRs pursuant to Water Code section 13263(a).
40. CWC section 13269 allows the Regional Water Boards to waive submission of Reports of Waste Discharge (ROWDs) and/or issuance of WDRs if it is in the public interest to do so.
41. On October 10, 1999, Senate Bill 390 amended CWC 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.
42. As amended, CWC section 13269 authorizes the Regional Water 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 Water 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 Water Board can renew a Waiver after holding a public hearing. The Regional Water Board may terminate a Waiver at any time.
43. Prior to January 15, 2003, the Regional Water Board had a region-wide Waiver for specific discharges of wastes in the Region, which also waived WDRs for agricultural return flows (i.e., agricultural wastewater discharges). On January 15, 2003, the Regional Water Board allowed the Waiver for agricultural wastewater discharges in the Region to expire.
44. 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 Water 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 so they implement management practices to prevent and address water quality impacts. These entities include various Resource Conservation Districts and the University of California Cooperative Extension.

45. The agricultural wastewater discharges and dredging activities in the Bard Unit are not currently regulated by any government agency. This Conditional Waiver requires implementation of management practices (MPs) to minimize water quality impacts. Reasonable MPs exist and are being implemented in Bard Unit that would enable Responsible Parties to comply with this Waiver. These MPs reduce the amount of wastes discharged, minimize runoff, and are more feasible and more effective than treatment methods. Attachment A, made a part of this Conditional Waiver by reference, lists and describes available MPs. This list is neither all inclusive nor prescriptive. Responsible Parties may select from the list or choose a combination of MPs for their farm operations, regardless of whether the MP is listed.
46. The adoption of this 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 establishes a comprehensive control program for protection of water quality in the Bard Unit; (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 Water Board resources; (4) it provides flexibility for the Responsible Parties 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; (5) requires Responsible Parties to comply with the Basin Plan; and (6) promotes statewide consistency in dealing with agricultural runoff.
47. CWC section 13269(a)(4)(A) authorizes the Regional Water Board to include as a condition of a Waiver the payment of an annual fee established by the State Water Board. The State Water Board has adopted regulations in Title 23, Division 3, Chapter 9, Article 1 (commencing with Section 2200), which establish a fee schedule for agricultural Waivers. This Conditional Waiver requires each Agricultural Discharger who participates in a Coalition Group, or the Coalition Group itself on behalf of its participants, to pay an annual fee to the State Water Board in accordance with the fee schedule specified in Title 23, Section 2200.6. Annual fees are also required to be paid by each Agricultural Discharger who chooses to comply with this Conditional Waiver on an individual basis by not joining a Coalition Group.
48. Technical reports are necessary to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver and to assure protection of waters of the state.



49. To obtain coverage under this Conditional Waiver, Responsible Parties must choose one of the two following options: (1) submit a Notice of Intent (NOI) to comply with this Conditional Waiver; or (2) participate in a Coalition Group that submits a letter of intent to develop and implement a Compliance Program to comply with this Conditional Waiver. Under option 1, a Responsible Party must also: (a) prepare a Water Quality Management Plan (WQMP) and, if applicable, a Drain Water Quality Improvement Plan (DWQIP) for review and approval by the Regional Water Board; (b) conduct periodic water quality monitoring of the discharge and its receiving water(s); (c) prepare a Quality Assurance Project Plan for the proposed monitoring; and (d) submit annual monitoring reports to the Regional Water Board. Under option 2, a Responsible Party must join a Coalition Group and provide information the Coalition Group manager requests. The Group manager will then forward that information to the Regional Water Board on behalf of all of the Group's participants.
50. State Water Board Resolution 68-16, *Policy with Respect to Maintaining High Quality Waters of the State* (Resolution 68-16), requires a regional water board, when regulating a discharge of waste, to maintain high quality waters of the state (i.e., background water quality) until it is demonstrated that a change in quality is consistent with:
- a. The maximum benefit to the people of the state;
  - b. Will not unreasonably affect present and anticipated beneficial uses of state waters; and
  - c. Will not result in water quality less than that prescribed in policies (e.g., violation of any Water Quality Objective (WQO)).
51. This Conditional Waiver requires Responsible Parties to implement management practices that achieve compliance with WQOs, and therefore protect beneficial uses for the Bard Unit Drains. As such, the Regional Water Board finds the Conditional Waiver consistent with Resolution 68-16 in that any change in water quality is consistent with paragraphs a. – c. set forth in Finding 50, above.

### ***California Environmental Quality Act and Public Participation***

52. For purposes of adoption of this Conditional Waiver, the Regional Water Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The action to adopt this Conditional Waiver is intended to protect and improve water quality. Accordingly, the Conditional Waiver sets forth conditions that will require Responsible Parties to implement management practices to protect water quality and to conduct monitoring to ensure that such practices are effective and are protecting and improving water quality. Because the Regional Water Board has not regulated the discharges subject to this Conditional Waiver to this extent in the past, it expects that adoption of the Conditional Waiver will result in the protection, maintenance, and improvement of water quality.
53. Regional Water Board staff held a CEQA scoping meeting on September 25, 2012, to receive comments on the drafting of the Conditional Waiver and to identify significant issues that should be considered and addressed during the CEQA review. Regional Water Board staff then prepared an Initial Study dated November 2012, in support of a proposed Negative Declaration for this Conditional Waiver.

54. On November 30, 2012, the Regional Water Board notified affected stakeholders and Responsible Agencies of its Intent to Adopt a Negative Declaration for this Conditional Waiver, and provided them with an opportunity to submit comments during a 30-day comment period that ended December 31, 2012, regarding the proposed Negative Declaration and Initial Study. The Regional Water Board, in a public hearing, considered all comments received during the public comment period and at the hearing regarding the proposed Negative Declaration and Initial Study.
55. On November 30, 2012, the Regional Water Board staff notified affected stakeholders and Responsible Agencies of a Public Workshop to be held on December 11, 2012, regarding this proposed Conditional Waiver. The purpose of the Workshop was to provide affected stakeholders and Responsible Agencies with an additional opportunity to comment on the proposed Conditional Waiver. The Workshop was conducted as scheduled, and comments were provided at the Workshop to Board staff for their consideration.
56. On January 17, 2013, the Regional Water Board adopted the proposed Negative Declaration in Resolution R7-2013-0003 after finding on the basis of the whole record before it (including the Initial Study and all comments received) that there was no substantial evidence that the Conditional Waiver will have a significant effect on the environment and that the Negative Declaration reflects its independent judgment and analysis.
57. The Regional Water Board has notified the Responsible Parties and all known interested agencies and persons of its intent to draft this Conditional Waiver of WDRs for this discharge, and has provided them with an opportunity for a public meeting and an opportunity to submit comments.
58. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Conditional Waiver.

***IT IS HEREBY ORDERED*** that, pursuant to CWC sections 13263, 13267, and 13269, Agricultural Dischargers and Drain Maintenance Dischargers (collectively, Responsible Parties), who file for coverage under this Conditional Waiver in order to meet the provisions contained in Division 7 of the CWC and regulations and plans and policies adopted thereunder, and who request a Waiver of WDRs, shall comply with the following terms and conditions:

**A. Eligibility**

1. Existing and future Agricultural Dischargers and Drain Maintenance Dischargers are potentially eligible for coverage under this Conditional Waiver.
2. Agricultural Dischargers and Drain Maintenance Dischargers seeking coverage under this Order shall submit to the Regional Water Board a Notice of Intent (NOI) as specified below.
3. Agricultural Dischargers and Drain Maintenance Dischargers eligible under this Order bear the responsibility of complying with this Conditional Waiver.

4. Agricultural Dischargers and Drain Maintenance Dischargers seeking coverage as a member of a Coalition Group Compliance Program shall be in good standing with the membership requirements of the program as approved by the Regional Water Board.

## **B. General Waiver Conditions**

1. The Regional Water Board waives the submittal of a Report of Waste Discharge (ROWD) and WDRs for Agricultural Dischargers and Drain Maintenance Dischargers in the Bard Unit if these dischargers of wastes comply with the conditions established by this Conditional Waiver.
2. Agricultural Dischargers and Drain Maintenance Dischargers shall take action to comply with this Conditional Waiver and to protect the quality of the waters of the state.
3. Agricultural Dischargers, both those seeking coverage and those who obtain coverage under this Conditional Waiver, are responsible for paying to the State Water Board the applicable fee(s) it has established under Title 23, California Code of Regulations (CCR), Division 3, Chapter 9 for Waivers of WDRs for irrigated lands.
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 to waive the issuance of WDRs 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 Water Board from taking enforcement actions (including civil liability) pursuant to the CWC.
6. This Conditional Waiver becomes effective upon adoption by the Regional Water Board and expires on **January 17, 2018**.
7. Technical and monitoring reports specified in this Order, including Compliance Programs, Water Quality Management Plans, and Drain Water Quality Plans, are requested pursuant to CWC section 13267 and shall comply with Attachment B ("*Contents of Technical and Monitoring Reports*"), which is attached hereto and made part of this Order by reference; and shall be approved by the Executive Officer prior to implementation. Failure to furnish complete reports by the specified deadlines and falsification of any information in the reports are misdemeanors that may result in the assessment of civil liability against the Responsible Party.
8. Based on monitoring results, the Executive Officer may modify monitoring and reporting programs as appropriate, pursuant to CWC section 13267.
9. All documents and reports requested herein shall be signed and dated by a duly authorized representative and contain a statement regarding the accuracy of the documented/reported information and the following in the title: "Conditional Waiver for Bard Unit Ag Dischargers."

10. The discharge of any wastes not specifically regulated by this Conditional Waiver is prohibited unless the Responsible Party complies with CWC section 13260(a) and the Regional Water Board issues either WDRs 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.
11. The discharges of wastes authorized by this Conditional Waiver shall not cause a condition of pollution or nuisance as defined in CWC sections 13050(l) and (m).
12. The Regional Water Board may review this Conditional Waiver at any time and may modify or terminate the Conditional Waiver in its entirety. The Executive Officer may terminate applicability of the Conditional Waiver with respect to a Coalition Group, an individual Responsible Party who is a participant in a Coalition Group, or an individual Responsible Party who has filed a NOI to comply with the Waiver on an individual basis upon notice to the Coalition Group or Responsible Party, or both, as applicable.

### **C. Waiver Conditions for Individual Compliance Programs**

Any Responsible Party who elects to develop an Individual Compliance Program shall comply with the following:

1. **By February 28, 2014**, file with the Regional Water Board a complete NOI using Attachment C, attached hereto and a part of this Order by reference.

Following review of the NOI, if the Executive Officer determines that coverage under this Conditional Waiver is appropriate for the Responsible Party, the Executive Officer shall issue a Notice of Applicability (NOA) to the Responsible Party. If coverage is not appropriate, the Executive Officer shall inform the Responsible Party in writing that coverage is not appropriate and request instead that the Responsible Party file a ROWD for the proposed or actual discharge of waste.

2. **By May 30, 2014**, submit to the Regional Water Board the proposed:
  - a. Individual Water Quality Management Plan (WQMP) and Monitoring and Reporting Program (MRP). In this case, the MRP shall also include proposed monitoring to determine the quality and quantity of the wastes discharged; and, if applicable—
  - b. Individual Drain Water Quality Plan (DWQP) and Drain Monitoring and Reporting Program (DMRP), if applicable.

Following approval, these documents shall become components of the Individual Compliance Program.

3. **Within 60 days** following approval of the Individual Compliance Program Plan(s), prepare and submit a Quality Assurance Project Plan (QAPP).
4. **Within 30 days** following QAPP approval, begin implementing the MRP and, if applicable, the DMRP.

5. **By March 1<sup>st</sup> of every year (beginning in year 2015)**, submit to the Regional Water Board an Annual Monitoring Report. The Annual Monitoring Report is for the previous calendar year (January 1 through December 31).

#### **D. Waiver Conditions for Coalition Groups**

Responsible Parties electing either to form and/or to join other Coalition Groups shall comply with the following:

1. **By February 28, 2014**, file with the Regional Water Board a complete NOI using Attachment D to obtain coverage under this Conditional Waiver for the Coalition Group's Agricultural and Drain Maintenance Dischargers.
2. **By May 30, 2014**, submit the proposed Coalition Group's Compliance Program. The Compliance program shall include:
  - a) The name of the Coalition Group Compliance Program;
  - b) The names and business addresses of the Coalition Group participants;
  - c) Names, addresses, and phone numbers of group's primary contact(s) or representative(s);
  - d) Suggested format(s) to prepare Individual WQMPs and DWQPs, including deadlines for submittal (if deadlines not prescribed by this Conditional Waiver);
  - e) A proposal to establish and maintain group membership requirements, including protocols to enlist;
  - f) Outreach and education activities;
  - g) Scheduled workshops to coordinate with technical assistance agencies; and
  - h) The Coalition Group's proposed MRP (including DMRP if applicable).


Once approved, these documents shall become components of the Coalition Group's Compliance Program.

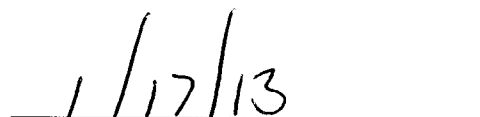
3. **Within 30 days** following approval of the Coalition Group's Compliance Program, begin implementing the approved Compliance Program and submit a letter to the Regional Water Board certifying that it began implementing the program.
4. **Within 60 days** following approval of the Compliance Program, prepare and submit to the Regional Water Board a QAPP to implement the approved MRP.
5. **Within 30 days** following approval of the QAPP, begin implementing the Coalition Group's MRP, and submit and submit all monitoring results to the Regional Water Board within fourteen (14) days of receipt from the laboratory.
6. **Within 180 days** following approval of the Compliance Program, submit to the Regional Board the Coalition Group's WQMP/DWQP in electronic and tabular format. The submittal shall also include copies of all Individual WQMPs/DWQPs.
7. **By March 1<sup>st</sup> of every year (beginning in year 2015)**, submit to the Regional Water Board, an Annual Monitoring Report. The Annual Monitoring Report is for the previous calendar year (January 1 through December 31).

**E. Enforcement**

1. The Executive Officer shall use any combination of the following actions, as the circumstances warrant, to address violations of this Conditional Waiver and to ensure water quality impacts identified by Compliance Programs or by the Regional Water Board are promptly and effectively corrected:
  - a) Terminate coverage under this Conditional Waiver to any Individual Responsible Party or Coalition Group. Coverage termination shall be in writing, specify the effective date of coverage termination, describe the reason(s) for the termination, and specify additional potential enforcement actions that the Regional Water Board may take once coverage termination becomes effective.
  - b) Require technical reports to correct violations or for additional water quality investigations pursuant to CWC section 13267.
  - c) Require submission of a ROWD pursuant to CWC section 13260, so that the Regional Water Board may consider prescribing WDRs, pursuant to CWC section 13263, to Responsible Parties failing to comply with the requirements of an Individual or Coalition Group Compliance Program.
  - d) Issue Administrative Civil Liability Complaints (ACLs), pursuant to CWC sections 13226, against violators of CWC sections 13261, 13264, and/or 13267; or violators of other Board directives.
  - e) Issue cleanup and abatement enforcement orders pursuant to CWC section 13304 to Responsible Parties who threaten or are causing water quality pollution or nuisance conditions.
  - f) Refer recalcitrant violators of this Order to the District Attorney or Attorney General for criminal prosecution or civil enforcement.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on January 17, 2013.

  
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ROBERT PERDUE  
Executive Officer

  
\_\_\_\_\_  
Date