

DRAFT
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
RESOLUTION NO. R3-2011-0021

Certification, Pursuant to the California Environmental Quality Act, of the Final Subsequent Environmental Impact Report and CEQA, Findings, and Statement of Overriding Considerations for the Adoption of a Renewal of a Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands in the Central Coast Region (Order No. R3-2011-0006)

1. The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) is the lead agency under the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) in connection with its adoption of a waiver of waste discharge requirements for discharges of waste from irrigated lands (Order No. R3-2011-0006) (2011 Agricultural Order).
2. On July 9, 2004, the Central Coast Water Board adopted Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, waiving waste discharge requirements for discharges of waste from irrigated lands in the Central Coast Region (2004 Agricultural Order) and adopted a Negative Declaration under CEQA (2004 Negative Declaration). No person filed any legal challenge to the 2004 Agricultural Order or the 2004 Negative Declaration.
3. The Central Coast Water Board has engaged in a lengthy public process to consider renewal of the 2004 Agricultural Order. During most of 2009, the Water Board convened an Agricultural Advisory Group consisting of grower and environmental group representatives to work on updating the Order. On February 1, 2010, the Central Coast Water Board released for public review a Preliminary Staff Draft Conditional Waiver of Waste Discharge Requirements for Discharges of Waste from Irrigated Lands (February Preliminary Staff Draft Order) and received comments and alternative proposals to the Preliminary Staff Draft Order. On May 12, 2010 and July 8, 2010, the Central Coast Water Board held public workshops to provide an opportunity for public comments and recommendations on the renewal of the 2004 Ag Order. Between February 1, 2010 and February 18, 2010, Central Coast Water Board staff held meetings with persons interested in the renewal of the 2004 Agricultural Order, including individuals and representatives of farming groups, environmental groups, and public health groups. On August 16, 2010, the Central Coast Water Board staff held a scoping meeting pursuant to CEQA to receive information about the scope of the proposal and potential environmental effects of a renewal of the 2004 Ag Order. The Central Coast Water Board also received written comments with respect to scoping and other aspects of the renewal of the 2004 Ag Order.
4. On October 14, 2010, the Central Coast Water Board sent to the Office of Planning and Research and each responsible and trustee agency a notice of preparation in compliance with CEQA Guidelines section 15082 (Cal. Code Regs., tit. 14, § 15082) stating that the Board intended to prepare a subsequent environmental impact report (SEIR) and provided those agencies with 30 days to provide comments prior to the release of the SEIR. The Central Coast Water Board received comments from California State Lands Commission (CSLC), the Native American Heritage Commission (NAHC), and the California Department of Transportation (Caltrans).
5. On October 25, 2010, the Central Coast Water Board provided public notice of the availability of a Draft SEIR and a notice of completion of the Draft SEIR to the Office of Planning and Research in compliance with CEQA Guidelines section 15087 (Cal. Code Regs., tit. 14, § 15087). The public notice was provided by noticing on the Board's website, by electronic mail to known interested

persons and agencies, and by publication in a newspaper of general circulation. The State Clearinghouse also distributed the Draft SEIR to state agencies for review. The Draft SEIR and associated documents, including the Staff Report and appendices and proposed Order No. R3-2011-0006, were made available at the time of notice of the availability of the Draft SEIR.

6. Agencies and interested persons were provided a minimum of 45 days for the submittal of comments on the Draft SEIR. The Central Coast Water Board received no comments from public agencies on the Draft SEIR. The Central Coast Water Board received 12 comment letters from interested persons commenting on the Draft SEIR and 116 comment letters from interested persons commenting on draft Order No. R3-2011-0006 and associated documents. These comments are available for public review on the Central Coast Water Board's website http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order.shtml.
7. On March 1, 2010, the Central Coast Water Board issued a Final SEIR for Order No. R3-2011-0006. The Final SEIR clarifies several issues, including clarification of mitigation measures, and makes minor clarifying edits in response to comments.
8. The Final SEIR consists of the Draft SEIR as revised, the Responses to Comments to the Draft SEIR, and documents referenced and incorporated into the Final SEIR.
9. The Final SEIR identifies no new significant impacts as compared to the Draft SEIR.
10. The Final SEIR identifies the potential significant environmental impacts of the project and, where appropriate, identifies feasible mitigation measures to reduce impacts to a less than a significant level.
11. The Final SEIR has been completed in compliance with CEQA.
12. The Final SEIR has been presented to the Central Coast Water Board and the Central Coast Water Board has reviewed and considered the information contained in the Final SEIR prior to adopting the 2011 Agricultural Order.
13. The Central Coast Water Board has reviewed and considered the information contained in the Final SEIR, and hereby adopts and certifies the Final SEIR.
14. The CEQA Guidelines specify that the lead agency shall not prepare a subsequent environmental impact report unless it determines on the basis of substantial evidence in the light of the whole record that there would be a substantial increase in the severity of previously identified significant effects. (Cal. Code. Regs, tit. 14 §15162(a)(1).) Members of the public and public agencies had suggested that there could be an increase in the severity of previously identified significant effects compared to the 2004 Agricultural Order, so the Central Coast Water Board staff prepared the Draft SEIR to evaluate the potential effects. After review of all the evidence and comments, the Final SEIR concludes that with respect to impacts on Agricultural Resources the adoption of the 2011 Agricultural Order will not result in significant environmental effects and with respect to Biological Resources concludes that reduction in surface water flows as the result of compliance with the 2011 Agricultural Order could result in potentially significant impacts on aquatic life, but that to the extent there is an impact it would likely be short term.
15. With respect to Agricultural Resources, the Final SEIR concludes that adoption of the proposed alternative could result in some economic or social changes but that there was insufficient evidence to conclude that the economic changes would result in significant adverse physical changes to the environment. Commenters speculated that the economic impacts would be so large as to result in large scale termination of agriculture and that land would be sold for other uses that would result in impacts on the environment. No significant information was provided to justify that concern. As described in the Section 2.4 of the Final SEIR, the proposed 2011 Agricultural Order would impose additional conditions on approximately 100 to 300 of the approximately 3000 owners or operators currently

enrolled in the 2004 Agricultural Order. CEQA states that economic or social effects of a project shall not be treated as significant effects on the environment. (Pub. Res. Code § 21083.) The Final SEIR concludes that due to some new conditions, particularly the requirement that some dischargers may implement vegetated buffer strips, could result in loss of land for agricultural production since the buffer strips would generally not produce crops and some land could be converted to other uses. This impact was found to be less than significant and that mitigation could reduce impacts further. The Central Coast Water Board may not generally specify the manner of compliance and therefore, dischargers may choose among many ways to comply with the requirement to control discharges of waste to waters of the state. Even if all dischargers who could be subject to the condition to use vegetated buffers or some other method to control discharges in the proposed 2011 Agricultural Order (Tier 3 dischargers) chose to use vegetated buffers or converted to other uses, the total acreage is quite small compared to the total amount of acreage used for farming and was, therefore, found to be less than significant. In addition, since the land would be used as a vegetated buffer to comply with the Order, this would result in beneficial impacts on the environment, not adverse impacts. Even if the effects could be more severe, they can be mitigated due to actions by dischargers.

16. With respect to Biological Resources, the Final SEIR concludes that wide scale water conservation to comply with the 2011 Agricultural Order could result in lower flows into surface water resulting in impacts on aquatic life. Because the Central Coast Water Board may not specify the manner of compliance and the Order would not direct persons to reduce flows, the Board has insufficient information, after reviewing the entire record, including information provided by resource agencies, to determine the extent to which dischargers would choose to use water conservation to comply and to evaluate potential physical changes to the environment that could result. Wildlife agencies suggested that reduction in toxic runoff would offset impacts due to reduced flows that could occur. In addition, reduction in water use could result in increased groundwater levels that would also result in more clean water recharging surface water. The potential exists for improved base flow conditions in the event that tailwater is allowed to percolate to groundwater, rather than being discharged to surface waterbodies where it is quickly transported downstream. The potential for improved base flow conditions also exists in the event that growers reduce groundwater pumping in an effort to reduce tailwater discharge to surface waterbodies. Consequently, reduced or elimination of tailwater does not necessarily equate to elimination of flow. Furthermore, what flow would be available will be of higher quality, and therefore have a higher potential of supporting desirable habitat, particularly native species.
17. Based on this information, the Final SEIR concludes that the environmental effects on Biological Resources associated with the 2011 Agricultural Order may actually not be significant but that due to the uncertainty associated with evaluating the available information, the Central Coast Water Board is making these written findings.
18. With respect to Biological Resources, there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels. Potential mitigation measures to prevent reduced flows or to reduce the impact of reduced flows include phasing in management practices that could result in reduced flows; reducing or eliminating conditions in the proposed draft 2011 Agricultural Order with respect to tile drain discharges; and use of riparian buffers that will effectively treat the water to remove pollutants, but not necessarily reduce flows. In some cases, other agencies have the ability to require or implement these mitigation measures and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the 2011 Agricultural Order, including the Department of Fish and Game, which regulates impacts on endangered species, and the United States Corps of Engineers, that regulates dredge and fill activities. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2). There are legal considerations that may make infeasible some of the mitigation measures that could be implemented. The Central Coast Water Board may not specify the manner of compliance with its orders and as a result implementation of potential mitigation measures are not under the control or discretion of the Central Coast Water Board. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(3).

- 19. CEQA requires a public agency that makes findings required under section 15091(a) to require mitigation monitoring or reporting. The 2011 Agricultural Order requires reports to evaluate the effectiveness of management practices, including monitoring groundwater and surface water.
- 20. Pursuant to CEQA Guidelines section 15093 (Cal. Code. Regs., tit. 14., § 15093), the Central Coast Water Board hereby finds that the project’s benefits override and outweigh its potential unavoidable significant adverse impacts, for the reasons more fully set forth in the Staff Report and appendices thereto. Specific economic, social, and environmental benefits justify the adoption of this project despite the project’s potential significant adverse environmental impacts. The Central Coast Water Board has the authority and responsibility to regulate discharges of waste associated with irrigated agriculture. Many of those discharges have caused significant widespread degradation and/or pollution of waters of the state as described in the 2011 Agricultural Order and Staff Report and associated reference materials. The 2011 Agricultural Order would result in actions to restore the quality of the waters of the state and protect the beneficial uses, including aquatic habitat. While some impacts could occur due to reduced flows from implementing actions to comply with the Order, the benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every unavoidable impact. Upon review of the environmental information generated for the 2011 Agricultural Order and in view of the entire record supporting the need for the 2011 Agricultural Order, the Central Coast Water Board determines that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.
- 21. The Final SEIR reflects the Central Coast Water Board’s independent judgment and analysis.

THEREFORE IT IS RESOLVED THAT:

The Central Coast Water Board certifies that the Final SEIR for the adoption of Order No. R3-2011-0006, the Conditional Waiver of Waste Discharge Requirements for Irrigated Agricultural Waste Discharges, complies with the requirements of CEQA (Pub. Resources Code § 21000 et seq.).

CERTIFICATION

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Central Coast Region, on March 17, 2011.

Roger W. Briggs
Executive Officer