

MEMORANDUM OF UNDERSTANDING FOR A PILOT PROGRAM AMONG THE STATE WATER RESOURCES CONTROL BOARD, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, THE AGRICULTURAL COMMISSIONERS OF BUTTE COUNTY AND GLENN COUNTY, AND THE CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION RELATED TO THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD'S CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

I. Introduction and Purpose of Memorandum of Understanding

This Memorandum of Understanding (MOU) is by and between the California Department of Pesticide Regulation (DPR), the Agricultural Commissioners of Butte County and Glenn County (Commissioners), the Central Valley Regional Water Quality Control Board (Regional Water Board), and the State Water Resources Control Board (State Water Board) (collectively referred to hereafter as the "Parties") and pertains solely to activities related to the Regional Water Board's *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* ("Irrigated Lands Program or ILP"), Resolution No. R5-2003-0105 (and supporting resolutions), adopted on July 11, 2003.

Under the Porter-Cologne Water Quality Control Act (Porter Cologne) and the federal Clean Water Act, the State and Regional Water Boards are the lead agencies with the authority to regulate water quality in California. The State and Regional Water Boards have been designated the principal state agencies with primary responsibility for the coordination and control of water quality in California. (Water Code § 13001.) Under the Food and Agricultural Code, DPR has the authority to regulate pesticides in California. The Regional Water Board shall be the entity charged with setting water quality priorities and providing general direction to the Commissioners for the purposes of activities performed in support of the ILP in accordance with this MOU.

The ILP was created based on an acknowledgment of the diversity of agricultural practices in the Central Valley and an understanding that the ILP's terms should be flexible in order to protect water quality from non-point sources of pollution. It acknowledged that management practices that are protective of water quality in one specific location for a particular type of crop or farming practice may not be protective under other circumstances. It is for this reason that proper implementation and management of the ILP will be enhanced with appropriate interaction between the Regional Water Board and the Commissioners as well as with growers on a local level.

The Commissioners are local, public officers, required in each county as provided by the California Food and Agricultural Code (FAC), section 2001. The powers and duties of the commissioners are set forth in the FAC, sections 2271-2287. These sections do not authorize direct enforcement of Porter Cologne. Each Commissioner is required to be certified by the state in accordance with FAC section 2123. Commissioners serve under the direction of the Secretary of the California Department of Food and Agriculture (CDFA) and the Director of

DPR in the implementation of state programs and are subject to state performance standards to retain their offices. (FAC §§2281, 2181-87.) The Commissioners are provided with regulatory funding from CDFA and DPR through contracts with tailored work performance objectives in each county.

The Commissioners and their staffs are located in the communities where field work activities will need to take place and have a working, institutional knowledge of local geographic, hydrologic, and agronomic conditions of the local watersheds and sub-watersheds and agricultural lands within their jurisdictions. These local conditions directly impact the effectiveness of management practices created to protect water quality and provide important background information for assessing how a ILP participant's particular practices will or can affect water quality.

The State and Regional Water Boards appreciate the existing local knowledge base of the Commissioners and their staffs and seek to efficiently expend resources for implementing and managing the ILP by using this existing resource. A close working relationship between the Regional Water Board and the Commissioners will afford all parties an opportunity to better understand how the skills and knowledge of each participant can best contribute towards the goals of the ILP.

The purpose of this MOU is to outline the particular responsibilities of the Parties related to the ILP, including the activities to be performed by the Commissioners, the compensation to be provided by the State Water Board for the performance of those activities, the interactive role of the State and Regional Water Boards with DPR and the Commissioners, and the identification of the process for fostering and enhancing this working relationship. As such, the MOU is consistent with the State Water Board's *Plan for California's Nonpoint Source Pollution Control Program*. This plan calls for collaborative efforts with other public agencies and non-governmental organizations to help implement and coordinate the use of their programs that contribute to controlling nonpoint sources of pollution.

This MOU applies to a pilot program in two counties in the Sacramento River Basin under the jurisdiction of the Regional Water Board, but the two counties may undertake activities related to this MOU throughout the Sacramento River Basin. The MOU may be expanded at a later date to include other counties in the Central Valley Region.

II. Terms

The Parties hereby acknowledge and further agree to the following:

A General Terms

This MOU is by and between the State Water Board, the Regional Water Board, the Commissioners, and DPR and is solely related to activities in support of the ILP.

2. Nothing herein shall be construed as in any way limiting the authority of the State or Regional Water Boards to carry out their legal responsibilities for management, regulation, coordination, and control of water quality.
3. Nothing herein shall be construed as in any way limiting the authority of DPR and the Commissioners to carry out their legal responsibilities related to the regulation of pesticides.
4. Nothing herein shall be construed as in any way limiting the authority of the State Water Board or the Regional Water Board to implement the *Plan for California's Non-point Source Pollution Control Program*.
5. Nothing herein shall be construed as in any way limiting Regional Water Board field activities in the Sacramento River Basin.
6. The Regional Water Board will retain complete regulatory oversight and enforcement authority over the ILP, while contracting with the Commissioners for the accomplishment of various activities as outlined herein.
7. By this MOU the Parties do not seek to expand the existing enforcement or regulatory authority of DPR and the Commissioners, but merely seek to compensate the Commissioners for those activities that the Commissioners and their staffs will be engaged in to support the ILP.
8. The Commissioners will not bring enforcement actions against any ILP participant for activities that may affect water quality but that are outside of the Commissioners' existing authority to regulate and enforce on pesticide related issues. Commissioners shall forward, in a timely manner, any information related to activities that may affect water quality to the Regional Water Board staff for enforcement. DPR and the appropriate Coalition groups shall also be notified.

B. Process

1. This MOU concerns a pilot program for two counties, Butte and Glenn, in the Northern California/Sacramento Valley region under the jurisdiction of the Regional Water Board. These counties may subcontract with other agricultural commissioners in the Sacramento River Basin for the performance of specific tasks consistent with the ILP and this MOU.
2. The revenue to fund 1 PY per year, divided equally between Butte and Glenn counties, shall be authorized by the State Water Board and paid to the two counties for activities actually performed and invoiced as provided in this Agreement below. In no case shall the combined work performed by the Commissioners be compensated beyond the amount of funds allocated for 1 total PY per year, nor shall the Commissioners be requested or required to engage in activities beyond those for which they are compensated under this Agreement.

3. The positions in Butte and Glenn counties will be created and structured as follows in support of the ILP:
 - a. Glenn County – Funds sufficient to pay for 0.5 PYs a year shall be paid by the State Water Board on an annual basis to Glenn County for a County Environmental Biologist position who will be designated by contract language as a “Liaison staff” to engage in the activities outlined below. The “Liaison staff” shall be state certified to carry out pesticide regulatory activities.
 - b. Butte County – Funds sufficient to pay for 0.5 PYs a year shall be paid by the State Board on an annual basis to Butte County for a County Agricultural Biologist position who will be designated by contract language as a “Liaison staff” to engage in the activities outlined below. The “Liaison staff” shall be state certified to carry out pesticide regulatory activities.
 - c. Any candidate hired/designated as a “Liaison staff” must meet the same hiring criteria, including education and experience requirements, and undergo the same training and certification as any other staff person employed to engage in those activities. The “Liaison staff” position shall be licensed by DPR/CDFA to carry out pesticide regulatory activities.
 - d. The Regional Water Board shall contract directly with the Butte and Glenn county Commissioners for the performance and payment of the activities outlined in this Agreement.

C. Funded Activities

- 1 The Liaison staff will engage in a variety of activities including, but not limited to, field work. The January 2005 *draft Irrigated Lands Conditional Waiver Program Workplan* prepared by the Regional Water Board’s staff sets forth a list of field work activities to be engaged in to ensure compliance with Waiver terms. (*draft Workplan*, attached hereto as Exhibit A.) These are the types of activities that the Liaison staffs will be engaging in to support the ILP. These *draft Workplan* tasks include observation and communication activities such as: inspections of watershed monitoring locations, inspections of monitoring locations where data indicate that water quality objectives have been exceeded, and assisting in identification of sources of water quality violations.
2. The Liaison staffs will engage in other related activities as directed by the Commissioners in accordance with their contract with the Regional Water Board. These activities will include such things as public education, public outreach, and reporting to the Commissioners and Regional Water Board on the results of their activities along with recommendations for alternative approaches and strategies.

- 3. The Liaison staffs will perform oversight oriented tasks only, and will not engage in enforcement activities unless they are already authorized under DPR's existing authority to regulate and enforce on pesticide issues. The Commissioners shall refer appropriate matters to the Coalition Groups, DPR, and the Regional Water Board in a timely manner.**
- 4. The Regional Water Board shall set priorities for all activities related to the ILP to be undertaken in conformance with this Agreement with input from the Commissioners.**
- 5. The Liaison staffs will perform the following specific field work activities as part of their efforts in support of the ILP:**
 - a. extra pesticide application inspections based on water quality issues and/or objectives;**
 - b. additional field site assessments that identify practices that protect water quality to allow for targeted outreach efforts such as:**
 - 1) documenting buffer zones, cover crops, or other mitigation measures and noting areas where these are absent, and**
 - 2) increasing inspections in areas with the potential for pesticide run-off concerns;**
 - c. inspections of monitoring locations where data indicate that water quality objectives have been exceeded for constituents of concern;**
 - d. assisting Regional Water Board staff in identifying sources of water quality violations;**
 - e. inspections to help determine effectiveness of management practices to protect water quality;**
 - f. taking part with other agencies/groups in the development of site specific management practices that protect water quality;**
 - g. engaging in grower outreach to assist ILP participants in complying with management practices that protect water quality;**
 - h. providing information gathered from the field work activities to the Regional Water Board on a quarterly basis.**
- 6. The Regional Water Board will designate a staff person to act as a liaison to coordinate with the Commissioners on issues related to the performance of this MOU. The Regional Water Board liaison is expected to work closely with the**

Commissioners, including participating in field activities and working in the Commissioners' offices periodically.

7. The Liaison staffs will report in writing quarterly to the Commissioners, the Regional Water Board, the State Water Board, and DPR on their activities and any recommendations to improve the MOU.

D. MAA

Any activities performed under this agreement shall be separate and apart from those activities already identified and performed under DPR and the State Water Board's Management Agency Agreement and Implementation Plan (attached hereto as Exhibit B).

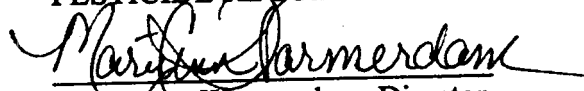
E. Modification/Termination of the MOU

1. This MOU may be amended at any time for any reason by the unanimous written consent of the Parties to this Agreement.
2. This MOU shall be reviewed by all parties in 24 months for the purpose of assessing its effectiveness in addressing water quality impacts as described in the ILP. Upon completion of this review, the MOU may be renewed, revised, or terminated.
3. This MOU shall become effective upon the date of the final signatures and shall remain in effect until terminated by any party, after consultation with the other parties and a 30-day advance written notice to the other parties. Any work performed by the Commissioners and their staffs up until the date of termination of this agreement shall be compensated in accordance with the terms of this agreement.

WHEREFORE THE PARTIES HEREBY ACKNOWLEDGE THE TERMS OF THIS MOU AND AGREE TO BE BOUND BY IT IN ITS ENTIRETY


Date: 29 June 2005

CALIFORNIA DEPARTMENT OF
PESTICIDE REGULATION


Mary-Ann Warmerdam, Director

Date: June 29, 05

STATE WATER RESOURCES CONTROL
BOARD


Celeste Cantu, Executive Director

Date: June 29, 05

CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD

Thomas R. Pinkos
Thomas Pinkos, Executive Officer

Date: June 29, 05

BUTTE COUNTY AGRICULTURAL
COMMISSIONER

Richard B. Price
Richard Price, Agricultural Commissioner

Date: June 29, 2005

GLENN COUNTY AGRICULTURAL
COMMISSIONER

Mark Black
Mark Black, Agricultural Commissioner