

State Water Resources Control Board

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Contact: Frances McChesney

(916) 341-5174

SUPERIOR COURT UPHOLDS WATER BOARDS' AGRICULTURAL DISCHARGE PROGRAM

Challenge to State Water Board's adoption of water right fees denied

SACRAMENTO - California's first-in-the-nation regulatory program to reduce water quality pollution from agricultural runoff was upheld in a final order by the Sacramento Superior Court on May 9, 2005, as "an important and crucial first step in embarking on a regulatory framework for agricultural discharges."

In 2003, the Central Valley Regional Water Board required farmers throughout the Central Valley to monitor discharges to waterways and to change farming practices to prevent water pollution. In 2004, the State Water Board upheld the program.

Known as a Conditional Waiver of Waste Discharge Requirements, the regulatory program is a change from prior practices in California and the rest of the nation, which left agricultural discharges to water largely unregulated.

Environmentalists and the California Farm Bureau Federation challenged the conditional waiver arguing that the conditional waiver was not strict enough or too onerous. Sacramento County Superior Court Judge Judy Holzer Hersher upheld the Conditional Waiver, with minor revisions.

"The Court understood the significant challenge we face: To protect water quality throughout the state, and to develop a practical way to regulate thousands of farmers. We are grateful we can now proceed with a program that will clean up the waters while being sensitive to the farmers' livelihood," said Arthur G. Baggett, Jr. Chair of the State Water Board.

The California Water Code allows the Water Boards to issue conditional waivers in lieu of permits known as "waste discharge requirements." The agricultural discharge conditional waiver, which applies to all discharges of wastewater from irrigated lands within the Central Valley, has many conditions and requirements. Farmers may comply by forming a coalition or as individuals. The conditional waiver requires the use of farming practices that comply with water quality standards, monitoring and reporting on the effectiveness of those practices.

Judge Hersher issued a 40-page opinion that recognized the difficulty of regulating more than 7 million acres of agricultural land and more than 25,000 dischargers, and ruled that the Water Boards properly exercised their discretion to issue the conditional waiver. The Court ordered the Water Boards to clarify provisions regarding inspections by regulators and the protection of potential trade secrets in reports, and to clarify the applicability of water quality standards in agricultural drains.

"The Regional Board is very pleased with the Court's decision. There are no winners or losers here. Rather, the Court's ruling allows the Regional Board to get on with its job of ensuring protection of our waterways to the benefit of all users," said Robert Schneider, chair of the Central Valley Regional Board.

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