

Irrigated Lands Regulatory Program Enforcement Information Item



Brett Stevens, Senior Scientist
Irrigated Lands Regulatory Program

Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

1

Good afternoon Chair Longley, members of the board.

Presenter: Brett Stevens, Senior Scientist w/ ILRP.

I'm here to provide you with an update on the ILRP's enforcement activities;

And to ask for your direction regarding board staff's plans for future enforcement. **NEXT**

Topics

- ILRP General Order Refresher
- Grower outreach process
- ILRP enforcement backlog
- Recommendations for reducing backlog

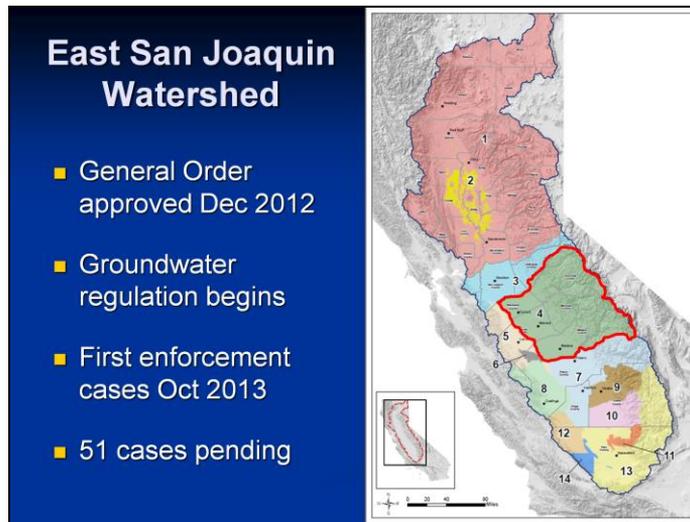


The topics I'll discuss include an overview of the Irrigated Lands Program General Orders, and how they have affected grower outreach and enforcement;

I'll also discuss board staff's grower outreach process;

and provide the Irrigated Lands Program's current enforcement backlog and an estimate of the future backlog;

I'll close with some recommendations for reducing this backlog. **NEXT**



The Irrigated Lands Program is in the midst of a large grower outreach effort brought on by Board approval of eight Irrigated Lands General Orders. The East San Joaquin General Order was the first approved by this board, with an approval date of December 2012.

The East San Joaquin Watershed is shown outlined in red on the figure. This figure also shows the boundaries of the 14 grower coalitions located within the Central Valley.

With the passage of the East San Joaquin and other General Orders, the Water Board began regulating waste discharges to groundwater.

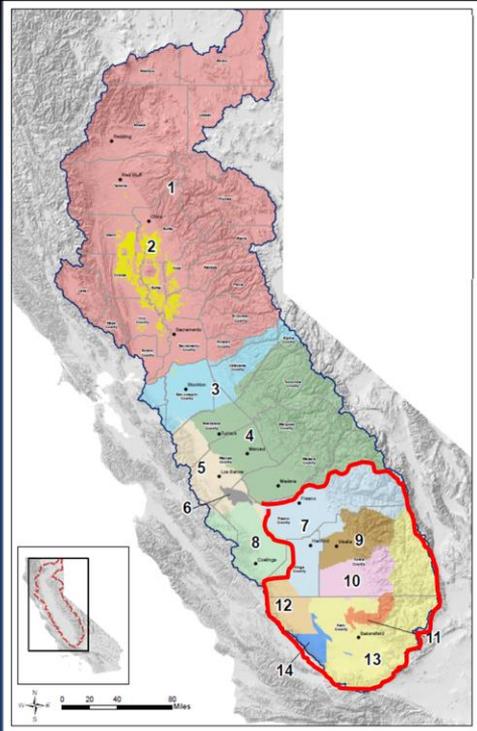
This created the need to outreach to a large number of growers who were previously exempted from the Irrigated Lands Program.

The first non-participant-related enforcement cases in the East San Joaquin Watershed began in October 2013.

Numerous East San Joaquin enforcement cases have already been resolved; however, the current enforcement case backlog in this area is 51. **NEXT**

Tulare Lake Basin Area

- General Order approved January 2013
- Seven coalitions in this area
- 29 enforcement cases pending



The General Order for the Tulare Lake Basin Area was approved in January 2013. This area is outlined in red on the figure.

Unlike the areas covered by other General Orders, the Tulare Lake Basin Area is divided into seven grower coalitions.

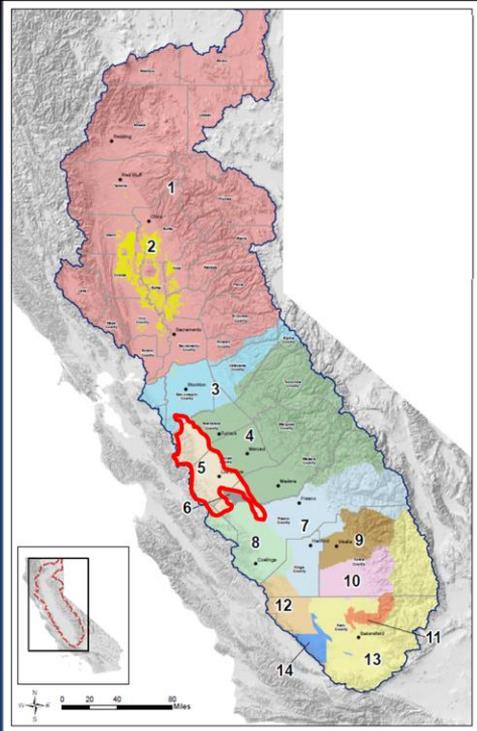
Staff enforcement is underway for growers in this area, with 29 enforcement cases pending.

The Tulare Lake Basin Area has much grower outreach remaining,

And it is expected to create a significant number of non-participant-related enforcement cases. **NEXT**

Western San Joaquin River Watershed

- General Order approved Jan 2014
- Relatively high grower compliance
- Three enforcement cases pending



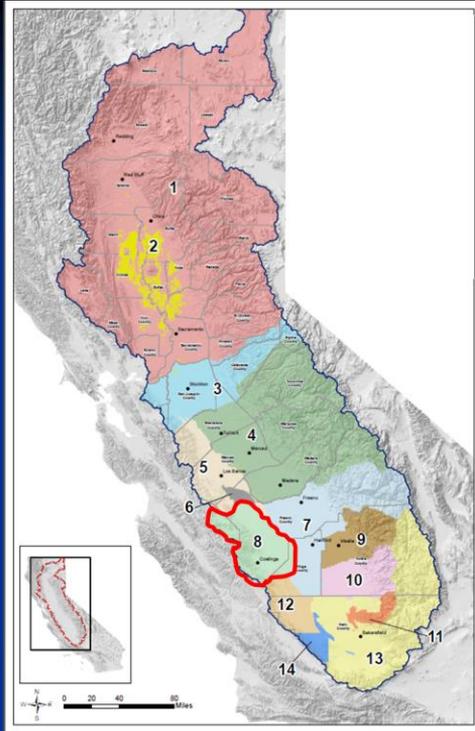
The General Order for the Western San Joaquin River Watershed was approved in January 2014.

This coalition area has a high level of grower compliance because the coalition is comprised of irrigation water districts that can require coalition membership as a condition of water delivery.

There are currently three enforcement cases pending in this coalition area. **NEXT**

Western Tulare Lake Basin Area

- General Order approved Jan 2014
- Relatively high grower compliance
- No enforcement cases pending



The general order for the Western Tulare Lake Basin Area was also approved in January 2014.

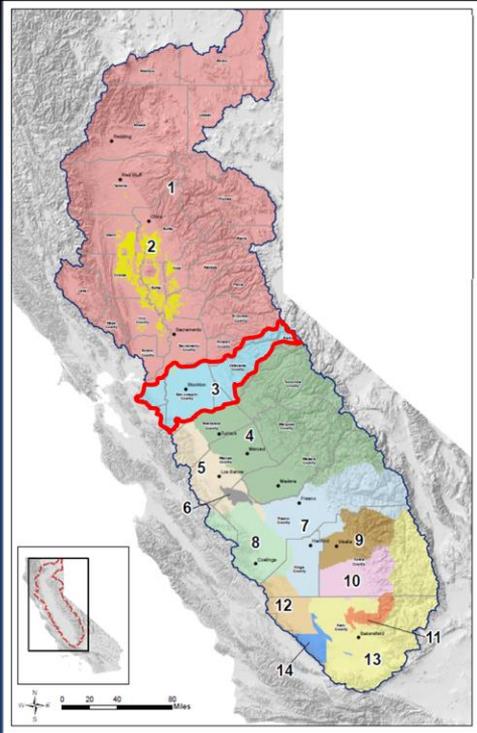
As with the Western San Joaquin River Watershed area, the Western Tulare area has high grower compliance because the coalition serving this area is also the regional water district.

No enforcement cases are pending for this coalition area.

NEXT

San Joaquin & Delta Coalition Area

- General Order approved March 2014
- First enforcement cases anticipated Sept 2015



The Delta General Order was approved in March 2014.

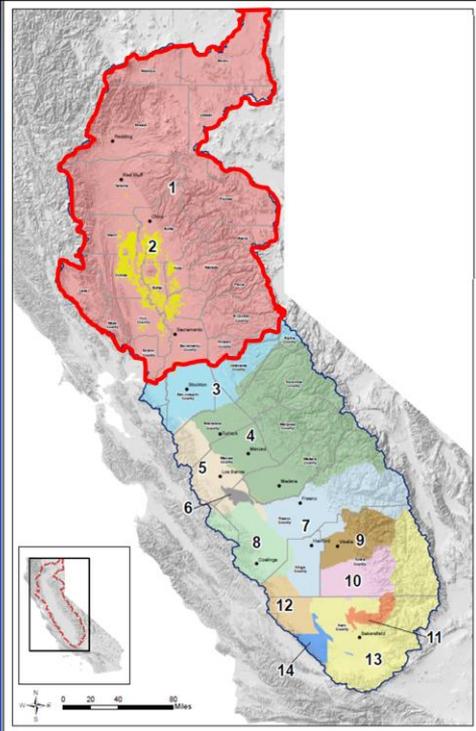
The first enforcement cases for this area are anticipated in September 2015.

There is still significant grower outreach to be done in the Delta coalition area;

and this area could potentially create a large number of enforcement cases. **NEXT**

Sacramento Valley Coalition Area

- General Order approved March 2014
- First enforcement cases anticipated Oct 2015

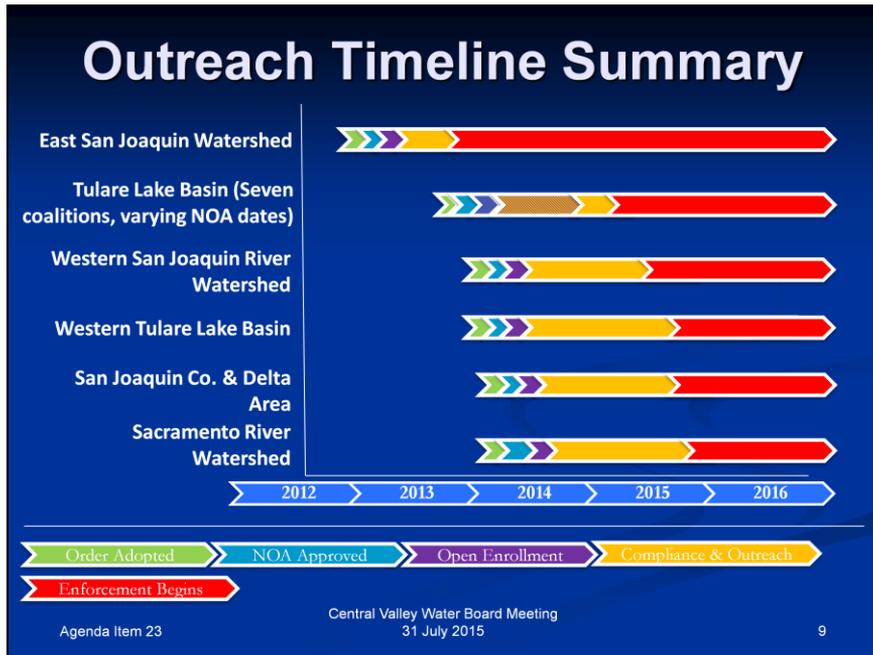


The General Order for the Sacramento Valley was approved in March 2014;

And the first enforcement cases for this area are anticipated in October 2015.

The Sacramento Valley is a large area with tens of thousands of acres of unpermitted irrigated lands.

This area is therefore expected to create a significant number of non-participant-related enforcement cases. **NEXT**



This figure shows the timelines for the general orders I've just reviewed.

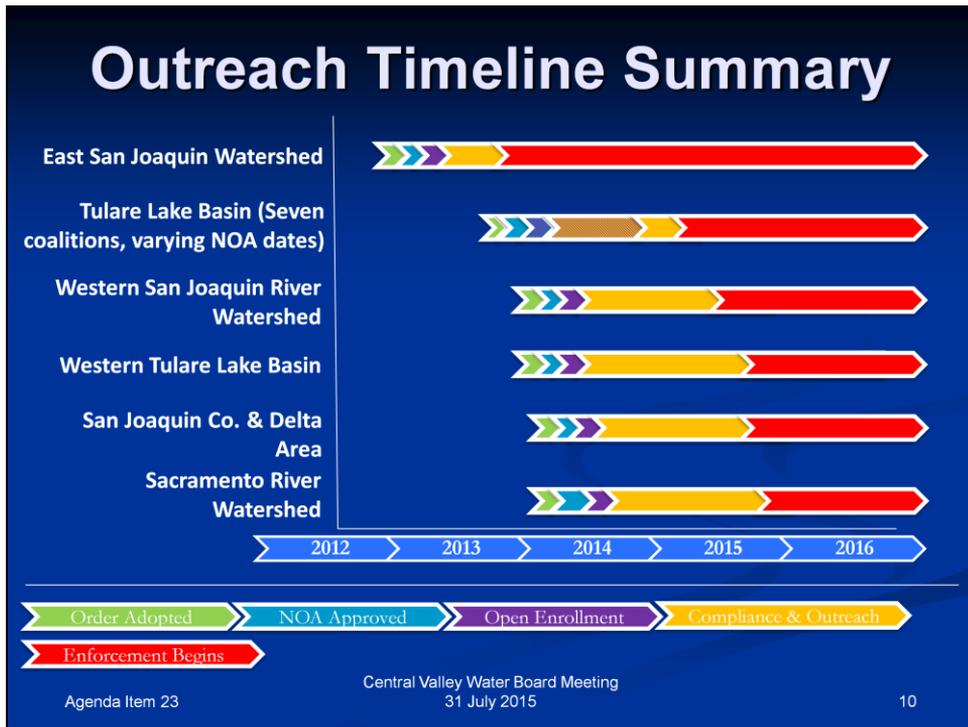
The green portion of the arrows shows when the Order was adopted;

The blue portion shows when the Notices of Applicability were issued;

The purple shows the open enrollment periods. This was a period of about three months for each Order when growers could enroll directly with the Coalition without submitting an application or fee to the Water Board.

The yellow portion of the arrow shows the compliance and outreach time leading up to formal enforcement.

And the red shows when enforcement began or will begin depending on the coalition area. **NEXT**



There are general orders that are not included in this figure.

Timelines for the Rice General Order, the Grasslands Drainage Area Order, and the General Order for growers who are not part of a coalition are not shown, as these Orders are not anticipated to create non-participant-related enforcement cases.

This figure shows how the timelines for the various coalition areas compare.

The earlier schedules for the East San Joaquin Watershed and Tulare Lake Basin Area are shown;

These earlier schedules explain why these two coalition areas already have significant enforcement caseloads. **NEXT**

Preparing for Outreach

- Public Data for GIS
 - Land Use – Farmland Mapping and Monitoring Program (FMMP)
 - County Assessor's lists
- Vetted w/
Water Board Data
 - Dairy-Permitted Lands
 - Coalition Participant Lists



I'm now going to briefly review staff's grower outreach process to explain the main origin of Irrigated Lands enforcement cases;

and to show that staff has tried to use enforcement as the means of last resort for obtaining grower compliance;

To identify likely owners of commercial irrigated lands, staff relies on the California Department of Conservation's Farmland Mapping and Monitoring Program. This agency produces a map of Central Valley agricultural lands that staff uses, along with county zoning records, to identify these landowners.

The landowners' parcels are then vetted to remove lands permitted by the Dairy General Order and lands already enrolled with a Coalition.

NEXT

Outreach Letter Mail Out

- Over 30,000 “new regulation” notification letters mailed
- Sent during open enrollment periods
- 40% to 60% new enrollment rate



After identifying likely owners of irrigated lands, staff next sent out “new regulation” notification letters to landowners. Over 30,000 of these letters were sent.

The letters explained that the Irrigated Lands Program now includes regulation of waste discharges to land, and that consequently all commercial irrigated lands in the Central Valley would require regulatory coverage.

The letters also invited the landowners to enroll their irrigated acreage during the open enrollment period, when regulatory requirements would be simpler and less expensive.

Of the landowners who received an outreach letter, 40 to 60 percent joined their local coalition depending on the General Order area.

Thus, the outreach letter mail out was a cost-effective means of enrolling a large number of growers in the Irrigated Lands Program. **NEXT**

Ag Parcel Inspections

- Confirm commercial irrigated lands
- Check for waste discharges
- Over 4,600 parcels inspected to date
- About $\frac{3}{4}$ of inspected parcels need coverage



After the outreach letters were mailed, staff began inspecting the parcels of landowners who did not respond to the letters.

Parcel inspections began in May 2013 and are ongoing throughout the Central Valley.

Most inspections are done in the field, but sometimes remote inspections are done using aerial images.

Irrigated Lands staff strives to conduct field inspections at least monthly, which gives staff a field presence and allows them to check local waterways for agriculture-related waste discharges.

The results of the inspections have been that about three quarters of parcels inspected are commercial irrigated lands that require regulatory coverage. **NEXT**

Water Code 13260 Directives

- For confirmed owners of commercial irrigated lands
- Recipients must get coverage or provide a valid exemption
- Non-responders receive NOV



Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

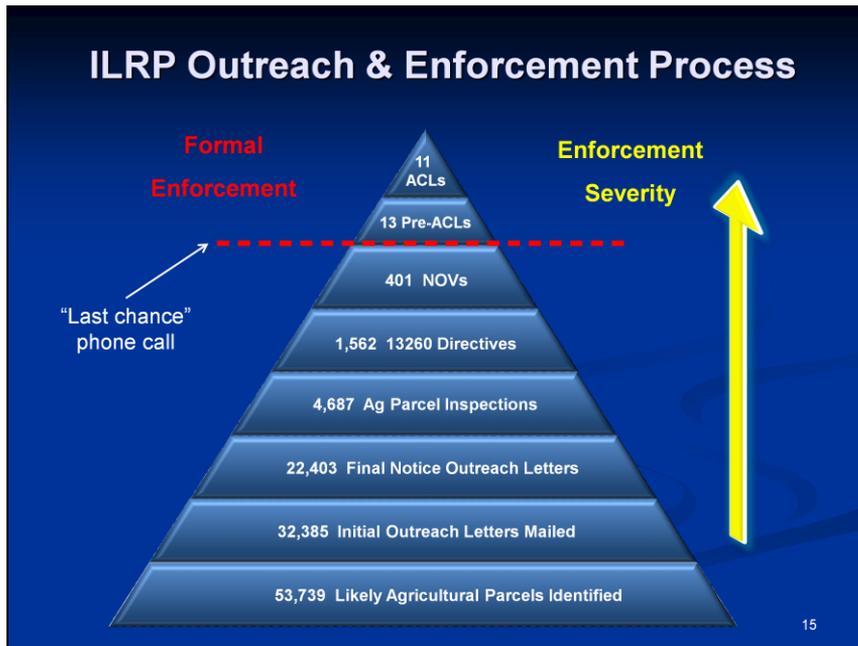
14

For those parcels with evidence of commercial irrigated land use, the Assistant Executive Officer issues Water Code section 13260 Directives, thus informing the landowner of the requirement to get regulatory coverage for their discharges.

Landowners are given 15 calendar days to respond to the directive by submitting a notice of intent to the board to get regulatory coverage.

Landowners who do not respond are issued a Notice of Violation and given 15 calendar days to respond to the NOV.

Landowners who do not respond to the NOV become eligible for formal enforcement. **NEXT**



This figure provides an Irrigated Lands outreach & enforcement summary; And it shows how the State Board enforcement policy applies to the Irrigated Lands Program.

In addition to the steps below the dotted red line, which I've just reviewed, this figure shows the formal enforcement steps of issuing pre-Administrative Civil Liability notification letters and ACL Complaints.

Before we pursue formal enforcement, we also try to reach the grower by phone, which is shown as the "last chance" phone call on the figure.

This is something that the Board has requested that staff do, so we've added it to our process.

The purpose of this figure is then to show the relationship between the various outreach and enforcement steps,

And to show that Irrigated Lands staff has attempted to comply with the State Board enforcement policy, and to give growers ample opportunities to comply with the Program. **NEXT**

Current & Projected Enforcement Case Backlog

- Rancho Cordova office backlog = 54
- Fresno office backlog = 29
- About 10% of directives need formal enforcement
- 90-100 additional cases per FY



Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

16

Now that the Irrigated Lands outreach & enforcement process has been reviewed, I'll discuss the enforcement backlog and staff recommendations for managing it.

The Water Board's Rancho Cordova office currently has 54 enforcement cases waiting to be resolved; and the Fresno office has an enforcement case backlog of 29.

The ratio of directives issued to current enforcement cases indicates that about 10 percent of directives will lead to enforcement cases.

The Irrigated Lands Program work plan for the current fiscal year calls for 900 to 1,000 directives to be mailed.

This rate of directive mail outs will yield an estimated 90 to 100 new enforcement cases per fiscal year for the foreseeable future.

A substantial amount of staff time will be needed to process current and future enforcement cases. **NEXT**

Order Compliance Inspections

- On-farm inspections of site conditions, farm evaluation, nitrogen management plan, and wellhead protection
- Progressive enforcement for growers who didn't submit farm evaluation



Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

17

In addition to enforcement related to non-participant outreach, enforcement cases may be created by General Order Compliance Inspections, and by coalition members' failure to submit farm evaluations to the coalitions.

The Order compliance inspections will be conducted at farm sites, with a focus on evidence of irrigation water or storm water waste discharges, erosion and sediment controls, the presence and adequacy of the farm evaluation and nitrogen management plan, and adequate wellhead protection for any irrigation supply wells onsite.

Board staff has allocated time to conduct Order compliance inspections this fiscal year.

As the workload associated with non-participant outreach and enforcement recedes, staff will direct more resources toward order compliance inspections.

NEXT

How to Increase Enforcement Case Processing?

- Recently resolved cases significant, but too few
- Resume use of pre-ACL notification letters
- Use special hearing panels



How to step off enforcement treadmill?

Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

18

Given that the Irrigated Lands enforcement backlog is significant and bound to grow, there is a need to increase enforcement case processing.

Staff has resolved several cases in the last two years, some through negotiation and some before this Board. The Board's decisions in these latter cases have provided staff insight and guidance for resolving future cases.

In Order to increase enforcement case processing, staff proposes that we resume the use of pre-Administrative Civil Liability notification letters;

And that we schedule special hearing panels dedicated to hearing large blocks of Irrigated Lands enforcement cases. **NEXT**

Pre-ACL Letters

- Opportunity to reach settlement before Complaint issuance
- Put on hold in July 2014
- Should resume based on enforcement cases decided by Board



Pre-ACL letters are an optional first step in the formal enforcement process that give growers the opportunity to negotiate a settlement before an ACL Complaint has been issued.

These letters have been used in the past for Irrigated Lands enforcement cases, but their use was put on hold in July 2014.

At that time, the Advisory Team to the Board raised concerns about two proposed settlements to enforcement cases, and requested that the settlements be considered at a Board hearing.

Since that time, four irrigated lands cases have been decided by the Board, and through these cases the Board has provided enough direction to staff for us to reach successful settlements with growers.

NEXT

Pre-ACL Letters

- Easy to prepare compared to ACL Complaints
- Oftentimes lead to settlement w/out going to hearing
- Growers can claim program exemption or inability to pay
- Growers who don't respond receive ACL Complaint



Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

20

Issuing pre-ACL letters provides several advantages to the enforcement process.

The letters are much easier to prepare than ACL Complaints; and if settlement is reached, the Settlement Order is also a simpler document to prepare than an ACL Complaint.

Pre-ACL letters also often lead to settlement without going to hearing, which reduces the burden on staff's time and the Board members' time.

These letters also provide growers with another opportunity to claim a program exemption; or that they would struggle to pay a proposed fine.

These types of claims are easier to investigate and resolve at the pre-ACL step, before an ACL Complaint has been issued.

Growers who don't respond to the pre-ACL letters, or who can't reach settlement with staff, receive an ACL Complaint. **NEXT**

Hearing Panels

- Allow for several cases to be heard at single hearing
- Unburdens regularly-scheduled hearings
- Helped with Dairy Program enforcement backlog

Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

21

Hearing panels may also help Irrigated Lands staff reduce the enforcement case backlog.

Staff's understanding is that these panels allow for several cases to be heard by two to three board members at a special hearing outside of regularly-scheduled hearings.

Decisions made by the hearing panel are then presented to a Board quorum for approval by the full Board.

Thus, the hearing panel should reduce the burden on regular hearings and increase the rate of enforcement case processing.

Irrigated Lands staff consulted with Dairy Program staff, who advised that the hearing panels were useful in their experience.

The main Irrigated Lands enforcement backlog is related to non-participants; but if we get a lot of enforcement cases related to failure to submit a farm evaluation plan, hearing panels could also be used in these cases. **NEXT**

Conclusions

- Planned outreach and Order compliance inspections will create large enforcement case backlog
- Need a plan to reduce backlog
- A slow response to enforcement will undermine coalitions & Program

Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

22

The main enforcement-related conclusions I'd like to leave you with are that:

Outreach to growers lacking regulatory coverage in the East San Joaquin River Watershed, the Delta, the Sacramento Valley, and the Tulare Lake Basin Area will create a large enforcement case backlog over the next few years.

General Order compliance inspections and grower failure to submit farm evaluations may also create a large number of enforcement cases.

The recent rate of processing enforcement cases has not been adequate to timely process the case backlog, so new procedures are needed to increase the rate of enforcement case processing.

And finally, it is in the Irrigated Lands Program's interest to timely process enforcement cases. Failure to do so will undermine the morale of current coalition members and potentially threaten the viability of the coalitions themselves. **NEXT**

Recommendations

- Resume Use of Pre-ACL Notification Letters
- Use special hearing panels

Agenda Item 23

Central Valley Water Board Meeting
31 July 2015

23

Based on these conclusions, staff's recommendations for managing the enforcement case backlog are to resume the use of pre-ACL notification letters,

And to schedule special hearing panels to resolve Irrigated Lands enforcement cases in large batches.

These are staff's recommendations and we welcome Board guidance and direction on our enforcement plans. **NEXT**

Questions/Comments?



This concludes my presentation.

Irrigated Lands staff will field any questions you have.

Recent Board Decisions

<u>Discharger</u>	<u>Acres</u>	<u>Crop</u>	<u>Penalty</u>
Davis Trust	1,000	Almonds	\$9,152
Slate	108	Almonds	\$32,032
Athwal Farms	>900	Almonds	\$56,628
Heritage Ranch	300	Almonds/ Grapes	\$51,480