

EXECUTIVE OFFICER SUMMARY REPORT

November 9, 2016

- ITEM: 9
- SUBJECT: General Waste Discharge Requirements for Commercial Agricultural Operations within the San Diego Region (Tentative Order Nos. R9-2016-0004 and R9-2016-0005 and Tentative Resolution No. R9-2016-0136). (*Barry Pulver*)
- PURPOSE: To receive public testimony and consider adoption of Tentative General Orders R9-2016-0004 and R9-2016-0005,¹ and Tentative Resolution No. R9-2016-0136.
- RECOMMENDATION: Adoption of the following is recommended:
1. Tentative Order No. R9-2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region* (Tentative Third-Party Group Order; **Supporting Document No. 1**).
 2. Tentative Order No. R9-2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Tentative Individual Order; **Supporting Document No. 2**).
 3. Tentative Resolution No. R9-2016-0136, *Adoption of a Negative Declaration and Initial Study for the General Waste Discharge Requirements for Discharges from Agricultural Operations in the San Diego Region* (Tentative Resolution; **Supporting Document Nos. 3, 4, 5**).²
- KEY ISSUES:
1. The Tentative General Orders continue the San Diego Water Board's regulation of discharges from Agricultural Operations that began in 1983.
 2. The Tentative General Orders provide regulatory coverage for Agricultural Operations - either as a Member of a Third-Party Group or as an Individual Discharger.
 3. The Tentative General Orders implement applicable load allocations for Agricultural Operations contained in the *Total*

¹ Tentative General Orders Nos. R9-2016-0004 and R9-2016-0005 are collectively referred to as Tentative General Orders.

² Supporting Document No. 3 is the Tentative Resolution. Supporting Document No. 4 is the Draft Negative Declaration (Draft Negative Declaration). Supporting Document No. 5 is the CEQA Initial Study and Environmental Checklist (CEQA Checklist).

Maximum Daily Load for Total Nitrogen and Total Phosphorus in Rainbow Creek Watershed (Rainbow Creek TMDL) and the Revised Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region Including Tecolote Creek (Bacteria TMDL).

4. The Tentative General Orders implement the State Water Board's *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (Nonpoint Source Policy).³

PRACTICAL VISION:

The Tentative General Orders include a monitoring and reporting program (MRP). In accordance with the *Framework for Monitoring and Assessment in the San Diego Region* (Framework),⁴ which is incorporated into the Monitoring and Assessment chapter of the Practical Vision, the MRP requires both core and regional monitoring. Core monitoring consists of the basic site-specific monitoring necessary to measure compliance with the requirements of the Tentative General Orders and impacts to receiving water quality from Agricultural Operations. Regional monitoring provides information necessary to make assessments over large areas and serves to evaluate cumulative effects of all anthropogenic inputs, including commercial agriculture, on the ecological health of water bodies in the San Diego Region. The MRP implements the Monitoring and Assessment chapter of the Practical Vision by requiring the collection of data and other information necessary for determining the status and trends of water quality conditions in the San Diego Region with respect to agricultural discharges; investigating the causes of unsatisfactory water quality conditions; measuring the adequacy and effectiveness of waste management practices, and; communicating key findings to the public, stakeholders, and decision-makers.

The Tentative General Orders also further the goals of the Recovery of Streams, Wetlands, and Riparian Areas chapter of the Practical Vision by requiring Agricultural Operations to reduce or eliminate discharges of wastes associated with agricultural activities to the waters of the State, thereby protecting and restoring streams located in agricultural areas.

³ The Nonpoint Source Policy is available at http://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf (as of October 20, 2016)

⁴ Resolution No. R9-2012-0069, *A Framework for Monitoring and Assessment in the San Diego Region*, was adopted by the San Diego Water Board on December 12, 2012, and is available at http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2012/R9-2012-0069.pdf (as of October 20, 2016).

DISCUSSION:

A map showing the location of agricultural activities in the San Diego Region is attached as **Supporting Document No. 6**. The June 22, 2016, Executive Officer Summary Report (EOSR) for Item 9, *Public Workshop*, which contains detailed information about the development and content of the Tentative General Orders and Tentative Resolution, is attached as **Supporting Document No. 7**.

The Draft Negative Declaration and Initial Study (**Supporting Document Nos. 4 and 5**) were distributed by the California State Clearinghouse and Planning Units (State Clearinghouse) to selected State agencies for review. The San Diego Water Board also released the Tentative Resolution, along with the Tentative General Orders, for a 45-day public review and comment period on June 13, 2016. The comment period closed on July 29, 2016. Comment letters were received from the following entities:

- Best Best & Krieger, LLC on behalf of Rancho Guejito Corporation (**Supporting Document No. 8**)
- City of San Diego (**Supporting Document No. 9**)
- County of San Diego (**Supporting Document No. 10**)
- Mr. Rami Mina (**Supporting Document No. 11**)
- San Diego Region Irrigated Lands Group (**Supporting Document No. 12**)

The State Clearinghouse reported that no State agencies submitted comments on the Draft Negative Declaration and Draft Initial Study by the close of the comment period on July 29, 2016 (**Supporting Document No. 13**).

A Response to Comments Report (RTC Report) containing the San Diego Water Board's responses to the comment letters is provided as **Supporting Document No. 14**. Revisions to the Tentative General Orders, the CEQA Initial Study and Environmental Checklist have been made as appropriate to address the comments and to correct minor errors. The modifications are shown in **Supporting Document Nos. 1, 2, and 5** in underline/strikeout format.

A summary of the most significant comments received and the responses to these comments is provided below:

1. Comment: *The Draft Initial Study and Draft Negative Declaration are inadequate because there is evidence in the record to support a fair argument that potentially significant environmental impacts may result from the Tentative General Orders and on that basis an environmental impact report must be prepared before the Regional Board can take action on the Tentative General Orders. Specifically, the commenter challenges the adequacy of the impact analyses for aesthetics, agricultural resources, air quality, biological resources, cultural resources, and greenhouse gas*

emissions.

Response: The San Diego Water Board's specific responses to comments regarding the Draft Initial Study and Draft Negative Declaration are located at Comment Nos. 7, 8, 9, 10, 11, 12, and 13 in the RTC Report.

In summary, the commenter speculates that the economic impact from the Tentative General Orders could put Agricultural Operations out of business and, by extension, worsen aesthetic vistas and air quality/greenhouse gas emissions. The commenter has provided no evidence to substantiate these claims. The commenter also argues that the Draft Initial Study and Draft Negative Declaration made improper assumptions and unsupported conclusions regarding the likely impacts to biological resources, cultural resources, air quality, and greenhouse gas emissions from installation of structural management practices.

The Draft Initial Study and Draft Negative Declaration focus on the reasonably foreseeable impacts associated with the installation of structural management practices. The Tentative General Orders do not prescribe specific management practices. Instead, the Tentative General Orders allow maximum flexibility for Dischargers in choosing the most appropriate and cost-effective combination of management practices. Although installation of some management practices may require limited trenching or digging, the resultant environmental impacts are expected to be within baseline conditions because these impacts would be similar to those from existing farm activities such as grading, sowing, and tilling for crop cultivation. San Diego Water Board inspections of agricultural facilities performed in 2013 found that the use of low flow irrigation methods such as drip and micro-spray irrigation are already standard practice in the San Diego Region due to the high price of water locally as well as the limited availability of groundwater. The San Diego Water Board also considered the potential direct and indirect environmental impacts of structural management practices that may be installed (e.g. buffer strips, sedimentation basins, etc.) by Dischargers to reduce or eliminate waste discharges in compliance with the requirements of the Tentative General Orders. In reviewing historical compliance methods, aerial photography of agricultural areas and crop reports for the San Diego Region, it is not anticipated that land intensive structural management practices are likely to be installed because there are alternative management practices that can achieve similar results using less land and at lower costs. Further, because agricultural discharges are most effectively addressed by management practices through control of pollution sources, new control measures would likely be located in areas of

existing crop production where soil has previously been disturbed and not result in significant impacts to the physical environment. For all of these reasons, the Draft Initial Study and Draft Negative Declaration meet the applicable requirements of CEQA and are adequate to support the adoption of the Tentative General Orders.

2. Comment: *Due to the costs associated with permit compliance, Agricultural Operations will go out of business, contributing to a loss of agricultural land in the San Diego Region.*

Response: The San Diego Water Board's specific responses to comments regarding the cost of compliance with the Tentative General Orders are located at Comment Nos. 7, 8, 39, 40, 41, 50, and 87 in the RTC Report.

The San Diego Water Board considered the costs of compliance and looked for opportunities to reduce the costs during the development of the Tentative General Orders. The projected costs associated with enrolling under and implementing the Tentative General Orders are contained in section I.G.7 of Attachment B (Fact Sheet) to the Tentative General Orders.

It's important to keep in mind that a host of factors, from climate change to labor costs, ultimately influence the viability of Agricultural Operations in the San Diego Region. Moreover, Agricultural Operations are already subject to increasing regulation as the impacts of agricultural discharges on water quality have been further studied and understood. Thus, while the San Diego Water Board is sensitive to the cost concerns of the agricultural community, no specific evidence was presented by the commenters to establish that a significant number of Agricultural Operations will be forced out of business by the adoption of the Tentative General Orders.

3. Comment: *The Water Quality Protection Plans, monitoring reports, and other technical submittals will require Dischargers to divulge confidential information.*

Response: The San Diego Water Board's specific responses to comments regarding confidentiality are located at Comment Nos. 48, 58, and 82 in the RTC Report.

Although the San Diego Water Board recognizes that the agricultural community has legitimate concerns with privacy and protection of proprietary information, the Water Quality Protection Plans are required to contain only generalized information and do not run counter to competitive advantage or trade secret concerns. Moreover, the existing exceptions to the Water Code and Public Records Act, which allow withholding of information deemed trade secrets and secret processes from public disclosure, are sufficient to protect the

most sensitive information submitted. As such, the Tentative General Orders have been revised to establish a process which will allow Dischargers to specify that certain information is exempt from public disclosure, subject to review by the San Diego Water Board.

Resource Considerations for Implementation of the Commercial Agriculture Regulatory Program

Key activities of the San Diego Water Board's Commercial Agriculture Regulatory Program include implementing the requirements of the Tentative General Orders to effectively address water quality impacts caused by agricultural discharges, ensuring agricultural community participation, monitoring and reporting to verify compliance with requirements of the Tentative General Orders, and enforcing the Tentative General Orders to assure compliance. The workload will fall within six main categories 1) Outreach; 2) Enrollment; 3) Monitoring Report Review and Data Assessment; 4) Inspections; 5) Enforcement; and 6) Program Management. Agricultural Operations are required to file Notices of Intent (NOIs) to enroll under the Tentative General Orders within 270 days of Board adoption. The San Diego Water Board will be focusing on outreach and enrollment activities during the first year of implementation to facilitate agricultural community participation in the enrollment process.

Table 1 shows a summary of the Program tasks and the estimated person years (PYs) needed to complete these tasks. The San Diego Water Board currently directs all of its Nonpoint Source Program resources under task code 281 (0.8 PY) and some of its Waste Discharge Requirements (WDR) resources under task code 126 (0.2 PY) to staff the Commercial Agriculture Regulatory Program. As demonstrated by Table 1, additional staff resources will be required to fully implement the Tentative General Orders as enrollment of Agricultural Operations progresses over the next five years.

Table 1. Estimated Average PYs Needed to Implement the Commercial Agriculture Regulatory Program for Years 1-5⁵

Task	Year				
	1	2	3	4	5
Outreach	1.0	0.5	0.1	0.1	0.1
Enrollment	6.0	4.5	1.4	0.4	0.1
Enforcement	0	0.5	2.0	0.5	0.3
Inspections	0	1.0	3.0	5.0	5.5

⁵ Table 1 Assumptions: a) 6,000 agricultural operations enrolled by end of year 5 with 75% enrollment by end of year 2. b) Increased outreach in years 1 and 2 to encourage enrollment. c) Enforcement begins in year 2 with focus on non-filers. d) Increased enforcement in year 3 to find non-filers. e) Enforcement in years 3, 4, and 5 includes both non-filers and violations of orders. f) Inspections begin in year 2 with an increasing number of inspections per year. g) Increased report review and data assessment in years 4 and 5 to provide additional oversight with bioassessment and site visits to observe bioassessment monitoring.

Report Review and Data Assessment	0.5	1.0	1.0	1.5	1.5
Program Management	0.5	0.5	0.5	0.5	0.5
Total	8	8	8	8	8
Existing Allocated PYs	1	1	1	1	1
Additional Required PYs	7	7	7	7	7

The San Diego Water Board will continue efforts to address the staff resources shortfall through redirection of available resources from other programs where possible and supporting State Water Board proposals to secure additional resources statewide through the State budget change proposal process. The San Diego Water Board will also continue using proactive solutions that leverage outside resources to support and facilitate implementation of the Tentative General Orders. This concept is exemplified by the reliance on third-party group representatives in the Tentative Third-Party Group Order for outreach and education of enrolled agricultural discharger members and for implementation of a number of the requirements of the regulatory program, including representative monitoring. The San Diego Water Board will also seek to benefit from collaborative partnerships with other governmental (federal, state or local) and non-governmental agencies that perform related functions to support program implementation, decision making, field presence and compliance efforts.

LEGAL CONCERNS:

None

SUPPORTING DOCUMENTS:

1. Revised Tentative Order No. R9-2016-0004 with Attachments
2. Revised Tentative Order No. R9-2016-0005 with Attachments
3. Tentative Resolution No. R9-2016-0136
4. Draft Negative Declaration
5. Revised CEQA Initial Study and Environmental Checklist
6. Location Map
7. June 22, 2016 Public Workshop Executive Officer Summary Report
8. Comments from Best Best & Krieger on behalf of Rancho Guejito Corporation, dated July 29, 2016
9. Comments from the City of San Diego, dated July 29, 2016
10. Comments from the County of San Diego, dated July 29, 2016
11. Comments from Mr. Rami Mina, dated June 27, 2016
12. Comments from the San Diego Region Irrigated Lands Group, dated July 29, 2016
13. California State Clearinghouse and Planning Unit letter dated

August 1, 2016

14. Response to Comments Report

PUBLIC NOTICE:

Notice of this item was provided to interested persons via the San Diego Water Board e-mail subscription list on October 10, 2016. Notice was also provided in the meeting notice and agenda for the November 9, 2016 Board meeting, which is posted on the San Diego Water Board's website.