

AGRICULTURAL WAIVER STATUS REPORT

Background/Discussion:

The California Water Code authorizes State and Regional Water Boards to conditionally waive waste discharge requirements (WDRs) if in the public interest. Over the years, the Regional Water Boards have issued waivers for over 40 categories of discharges. Senate Bill 390, signed into law on October 6, 1999, required the Regional Water Boards to review their existing waivers and to renew them or replace them with WDRs. To comply with SB 390, the Regional Water Boards adopted waivers to regulate most of the categorical discharges. The most controversial waivers were for discharges from timber harvesting and agricultural operations.

Discharges from agricultural lands include irrigation return flow, flows from tile drains, and storm water runoff. These discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Many surface water bodies are impaired because of pollutants from agricultural sources. Groundwater bodies have also suffered pesticide, nitrate and salt contamination. Statewide, approximately 9,493 miles of rivers/streams and some 513,130 acres of lakes/reservoirs are listed on the 303(d) list as being impaired by irrigated agriculture. Of these, approximately 2800 miles, or approximately 28%, have been identified as impaired by pesticides.

The Central Coast, Central Valley, and Los Angeles Water Boards have adopted conditional waivers for agricultural discharges. The agricultural waivers use different regulatory models, are conditional, and comply with SB 390. The Regional Water Boards are making extensive enrollment, education, and public outreach efforts in these regions. Regions 1, 2, 6, 7 and 8 have no immediate plans to adopt conditional waivers for agricultural discharges, but may do so eventually to implement TMDLs.

Senate Bill 923 authorizes the payment of fees for conditional waivers. The State Water Board adopted a fee schedule that included fees for conditional agricultural waivers on September 21, 2006.

Tasks State and Regional Water Board staffs are performing include the development of waivers, development of waiver fees, review of waiver applications, review of monitoring plans and reports, environmental and water quality assessment, inspection, coordination with other agencies, renewal of waivers, outreach, and information management. If needed, enforcement actions may be taken in the future.

Water Board staff and pertinent working groups will use monitoring data to develop farm water quality management plans and best management practices to protect waters of the state. Staff will track water quality improvements and identify successful management plans. To inform the farming community of conditional waiver requirements and water quality management, State and Regional Board staff will develop partnerships among key stakeholders. The goal is to provide an inventory of proven management plans to be used by the agricultural community.

Status of Regional Programs

Region 3 - Central Coast Water Board

The Central Coast Water Board adopted their conditional waiver, R3-2004-0117, on July 9, 2004. The enrollment deadline for the agricultural waiver was January 1, 2005. Approximately 1300 individual ranches have enrolled, representing about 236,000 acres throughout the region. This represents nearly 55% of the

estimated 434,000 irrigated acres (about 50% of the Regions 2500 growers) and is in line with staff's target of 50% initial enrollment. This figure does not include those who used the on-line filing system. Over 200 people enrolled using the on-line system, in spite of the delay in deployment. Regional Board Non-Point Source staff participated in numerous technical assistance and waiver enrollment workshops prior to the enrollment deadline.

Water Board staff responded to more than 600 waiver-related phone calls and emails, answering questions about waiver requirements, the enrollment process, and the on-line enrollment system. Staff also did a mass mailing of 2500 flyers to inform the agricultural community of the new requirements. The agricultural industry throughout the region did a tremendous amount of outreach, putting on more than thirty workshops to assist farmers in completing farm plans and enrollment forms. Several groups did large mailings to their members, providing information on the waiver, and, in some cases, enrollment forms.

More than 200 enrollees used the on-line system, which was in line with expectations, especially considering that the system did not become available until the second week in December. Although the usage represents only about 8% of potential enrollees, the system will provide a valuable tool for managing large amounts of data. All hard copy enrollment forms are being entered into the system. In the future, enrollees will be able to access and update their information, and submit annual reports and biannual checklists electronically. Enrollments are still being received and staff will continue with outreach efforts to meet the longer-term goal of 80% enrollment by the end of the first year. In the future, Regional Board staff will also begin pursuing enforcement actions against non-filers as necessary.

Region 4 - Los Angeles Water Board

The Los Angeles Water Board adopted their conditional waiver, R4-2005-0077, on November 3, 2005. Staff has developed a Conditional Waiver for Irrigated Lands, including a two monitoring and reporting programs – one for individuals one for groups, and an initial study and CEQA checklist. Additional documents to support the waiver have also been developed, including notices of intent, receiving water limits, and lists of receiving waters have also been prepared. The documents have been developed in collaboration with local agricultural and environmental stakeholders over an 8-month period. A series of five meetings were held in which stakeholders reviewed and commented on the working drafts of the waiver. These meetings have resulted in revisions to the conditional waiver to reflect the unique conditions of agriculture, regulatory framework, and environmental priorities in Region 4.

In addition to participating in the development of the waiver, stakeholders have participated by informing the grower community in Ventura County of the waiver. The waiver was presented to the agricultural community at a meeting sponsored by the Farm Bureau of Ventura County in December 2004 and subsequent meetings in 2005. Approximately 200 growers attended the meetings.

Below is some further background information on Agriculture in Region 4:

Ventura County is among top ten agricultural producers in California at \$1054 million for 2004 (6 other counties are in Region 5, and 1 other is in Region 3 and California total exceeds all other states). Average acreage per owner is comparable but smaller at 50 acres (Region 4 67 acres/grower, Region 5 is 93 acres/grower, Region 3 is 240 acres/grower). Total acreage is smaller at 263,000 acres, but return on investment per acre is higher than Region 5 (As per California Farm Bureau, annual gross per acreage is \$ 4000 in Region 4 and \$3800 in Region 5.). The number and turnover of crop types is large in Region 4 because of the large number of nurseries, truck farms and small acreage use.

Agriculture has developed a collaborative culture because of extensive utilization of land adjacent to urban centers. An example is that 1000 of acres of nurseries in Los Angeles County line on power line right of way.

The result is a community of growers with leadership and experience in successful remediation of water quality problems and the infrastructure to change practices when necessary. Examples are the Ventura County Farm Bureau-led program for white fly eradication and management practice modification for Malathion pesticide application.

State monies spent on Region 4 are likely to provide rapid explicit results and statewide leadership because:

(1) The assessment of water quality problems related to agriculture is extensively developed due to the physical proximity of agriculture and urban lands. Over 300 303(d) impairments attributed to agriculture are already being addressed by a consent decree driven TMDL process which requires rapid results. In contrast, Region 5 has only 60 impairments and fewer EPA driven time constraints.

(2) Region 4 hosts a higher number of crop types than Region 5 in conjunction with more proximity to other land use types ensuring that the range of management solutions will be larger.

Region 5 - Central Valley Water Board

The Central Valley Water Board adopted their conditional waivers R5-2006-0053 and R5-2006-0054, on June 22, 2006. The conditional waivers for discharges of irrigation tailwater and storm water runoff from irrigated lands. The Conditional Waivers cover discharges of waste from irrigated lands. Irrigated lands include irrigated pasture, regular cropland (including field and row crops, orchards, vineyards, and rice), commercial nurseries and nursery stock production, managed wetlands such as wildlife refuges and duck clubs, and greenhouse operations with permeable floors that are not regulated under other permits.

Both of these waive the requirement to submit a Report of Waste Discharge and filing fees and to obtain Waste Discharge Requirements for dischargers in this category. Both conditional waivers have a Monitoring and Reporting Program, as required by the Water Code, to measure compliance with the waivers' terms and conditions.

The Irrigated Lands Conditional Waiver Program is an interim program. Since the Board adopted the first Conditional Waiver in December 2002, staff has supported and maintained an involved, open public process throughout the evolution of this Program. There have been many workshops and meetings with stakeholders, such as the coalition groups, farm bureau, agricultural commissioners, Resource Conservation Districts, Water Districts, environmental interests such as Deltakeeper, and other interested stakeholders in the agricultural community. This is also evident with the Technical Issues Committee and Public Advisory Committee. Staff has worked diligently to review and evaluate data collected during the program from the coalition groups, individual dischargers, water districts, UC Davis Cooperative Extension, State Board Programs, and Regional Board Programs to further determine the needs of the program. The changes proposed to the conditional waivers are based on this combination of the public process, evaluation of the data, and requirements of the Water Code. The idea of this interim program is to gather sufficient data and information to develop and support a long-term regulatory program. An Environmental Impact Report is underway which will further the development of a long-term regulatory program.

Region 7 - Colorado River Basin Water Board

The Colorado River Water Board is using an innovative approach in addressing sediment impairment in Imperial Valley agricultural drains. As a control mechanism, Colorado River Water Board staff has developed a "conditional prohibition", as allowed by the basin plan. The conditional prohibition is implemented by the Colorado River Water Board's TMDL program. A recent review of the program indicates reduction in sediment loads.

State and Regional Water Board staff and the agricultural community recognize the importance of the irrigated agricultural waiver program and are committed to work together to assess and address environmental impacts that are identified as being caused by discharges from irrigated lands. For additional information on the Irrigated Agricultural Discharge Waiver Program, contact:

Mr. Johnny Gonzales of the State Water Board at 916-341-5510 jgonzales@waterboards.ca.gov

Mr. Daniel Merkley of the State Water Board at 916-341-5501
dmerkley@waterboards.ca.gov

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