

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2002 - 0128

FINDING A CONDITION OF EMERGENCY AND ADOPTING EMERGENCY
REGULATIONS FOR A PESTICIDE RESEARCH, IDENTIFICATION
OF SOURCE AND MITIGATION (PRISM) GRANT PROGRAM

WHEREAS:

1. Section 79117, Article 2, Chapter 7 of the Costa–Machado Water Act of 2000 (Bond Act) authorizes the State Water Resources Control Board (SWRCB) to distribute \$10,000,000 in grants to local public agencies and nonprofit agencies formed by landowners for pesticide research and mitigation projects that protect the quality of the State’s waters from pesticide pollution;
2. Pesticide pollution impairs water quality in many of California’s water bodies;
3. SWRCB finds that an emergency exists and that for the immediate preservation of the public peace, health and safety, or general welfare, it is necessary to make these funds available to eligible entities;
4. PRISM funds may be used to alleviate some of the increased monitoring and enforcement costs for eligible groups and agencies as they adjust to changes in the regulatory environment; and
5. Projects funded from the PRISM Grant Program are anticipated to yield water quality improvements, contribute to a greater understanding of pesticide pollution, and augment the existing methods for control of pesticide pollution of the State’s waters.

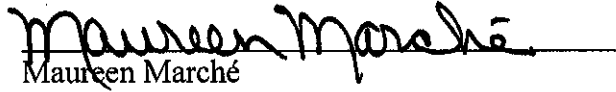
THEREFORE BE IT RESOLVED THAT:

1. For the reasons set forth in the attached Finding of Emergency (Attachment 1) prepared in connection with the proposed regulations (Attachment 2), a condition of emergency exists for the purposes of Government Code section 11346.1(b) justifying the immediate adoption of the proposed regulations in order to preserve the public peace, health and safety, and general welfare.
2. The proposed additions to Title 23, California Code of Regulations, Division 3, which comprise new Chapter 24, Article 1, Sections 3410 to 3410.5, are adopted on an emergency basis, and the Executive Director is authorized to transmit the additions to the Office of Administrative Law for filing with the Secretary of State.
3. If the Executive Director finds that there is a substantial risk that the provisions of Title 23, California Code of Regulations, Division 3, Chapter 24, Article 1, sections 3410 to 3410.5 will

expire before permanent regulations take effect, the Executive Director is authorized to readopt these provisions as emergency regulations, as appropriate, to provide authority for the SWRCB to implement PRISM. This delegation includes authorization to make a finding or findings of emergency, to readopt these emergency regulations with any revisions determined to be appropriate by the Executive Director, and to transmit any such emergency regulations adopted by the Executive Director to the Office of Administrative Law for filing with the Secretary of State.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 20, 2002.


Maureen Marché
Clerk to the Board

FINDING OF EMERGENCY

The State Water Resources Control Board (SWRCB) finds that an emergency exists and that the foregoing regulations are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need For Immediate Action

Pesticide use contributes to the health and safety, and general welfare of the state by boosting agricultural productivity, suppressing disease vectors, and exterminating structural pests. Pesticides are also toxins that impair water quality in many of California's water bodies. Recent judicial and legislative decisions have created an urgent need for increased monitoring, reporting, and permitting of pesticide discharges. The Pesticide Research and Identification of Source, and Mitigation (PRISM) grant program will enable the SWRCB to protect water quality in a manner that minimizes the impacts to agricultural and health and safety operations.

In a case referred to as the Talent Decision, the Ninth U.S. Circuit Court of Appeals recently decided that aquatic pesticide discharges must be regulated. In response, the SWRCB has issued a general National Pollutant Discharge Elimination System (NPDES) permit for protection of receiving waters. The agricultural industry operates under pesticide WDR waivers adopted by the regional water quality control boards. However, the legislature, in Water Code section 13269, has provided that these waivers will expire January 1, 2003. Agricultural interest groups maintain that a failure to extend the waivers will result in crop losses and depress the state economy, and Mosquito Abatement Districts claim that excessive regulation will hamper their efforts to control vectors that threaten the public health and safety. Environmental protection groups claim the waivers undermine the SWRCB ability to protect state waters from pesticides. Rescission of the waivers would result in sudden increased monitoring costs for the applicators and sudden increased enforcement costs for state and local regulating agencies.

The SWRCB is also under pressure from a U.S. Environmental Protection Agency (USEPA) mandate to establish and implement stringent new pesticide pollution controls as part of federal Total Maximum Daily Load (TMDL) requirements for impaired waters. The SWRCB is undergoing an extensive reorganization to address TMDL program issues and must provide funding and administrative support for local agency compliance with the TMDLs. The effect of the federal mandate is compounded by fiscal emergencies that have prompted the Department of Pesticide to reduce its funding for research on alternative methods of pest control and replacement pesticides. PRISM grant funds are anticipated as a funding source for local TMDL compliance costs and for pesticide research that cannot be completed under prior funding arrangements.

The SWRCB is authorized by Proposition 13, Costa Machado Water Bond Act to make \$10,000,000 in grant funds available to pesticide applicator groups and local agencies. These grant funds were specifically designated for research, source identification, and mitigation of pesticide pollution. In order to implement a practical monitoring and reporting program, mitigate existing or identified pesticide pollution, and support projects that research replacement pesticides and alternative pest control methods, it is necessary to add Chapter 24, Article 1, Sections 3410 through 3410.5 to Title 23, Division 3 of the California Code of Regulations (CCR). These regulations must be made effective as emergency regulations in order to ensure that the SWRCB response to any threat to the waters of the state from pesticides is not delayed.

Authority and Reference Citations

Authority: Section 79117, Water Code; Reference: Section 79117, Water Code

TEXT OF PROPOSED EMERGENCY REGULATIONS

**(Add to Title 23, California Code of Regulations (CCR),
Division 3, Chapter 24, Article 1)**

Chapter 24. Grant Programs

Article 1. Pesticide Research, Identification of Source, and Mitigation Grant Program

3410. Scope of Regulations

- (a) These regulations implement the PRISM Grant Program.
- (b) The goal of the PRISM Grant Program is to provide funding for projects that protect the waters of the state from the potential adverse effects of pesticides.
- (c) Two categories of competitive grants are available within the program:
 - (1)pesticide mitigation grants; and
 - (2)pesticide research and source identification grants.

NOTE: Authority cited: Section 79117, Water Code.

Reference: Section 79117, Water Code.

3410.1 Definitions

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in Chapter 7, Division 26, of the Water Code (commencing with section 79110) govern the interpretation of this Article. For purposes of this Article, the following definitions apply:

- (a) “Analytical laboratory that will perform chemical analyses or assays” means a laboratory on the current Environmental Laboratory Accreditation Program list of certified laboratories. The list is available from the California Department of Health Services and can be viewed on the internet at <http://www.dhs.ca.gov/ps/ls/elap/elapindex.htm>. An “analytical laboratory that will perform chemical analyses or assays” may also mean a California Department of Health Services reference laboratory.
- (b) “Applicant” means a local public agency or nonprofit organization formed by landowners to prepare and implement local nonpoint source plans.
- (c) “Beneficial uses” has the same meaning as defined in section 13050 of the Water Code.
- (d) “Capital cost match share” means the amount of the project's total capital costs which will be paid or contributed by the applicant pursuant to Water Code section 79114,

subdivision (d). The capital cost match share may be in kind or monetary. The capital cost match share must be part of the project, or any specific phase of the project funded by this PRISM grant.

- (e) "CEQA" means the California Environmental Quality Act.
- (f) "Citizen monitoring" means the monitoring of aquatic resources, aquatic habitat, and water quality by members of the community. Citizen monitors may be volunteers, educators, students, members of environmental groups, or interested citizens. Citizen monitors may assist professional scientists with sample and data collection.
- (g) "Cooperating agency" means an agency that may provide services, personnel, or other resources for a project. Cooperators shall have substantial involvement in project implementation. Cooperating agencies may be local public agencies, nonprofit organizations formed by landowners, federal and state agencies and departments and political subdivisions. A cooperating agency is also a partner to the project.
- (h) "Data" means all original and raw research data, notes, computer programs, writings, sound recordings, pictorial reproductions, drawing or other graphical representations, and works of similar nature produced in performance of the tasks funded by a PRISM grant.
- (i) "Land uses" means single-family residential; multi-family residential; apartment residential; irrigated agriculture by crop type; dryland agriculture by crop type; wetlands; vernal pools; forest; parks; golf courses; lakes; rivers and streams; reservoirs; groundwater; commercial; or industrial uses within the area impacted or targeted by the project.
- (j) "Local public agency" means a county, city, city and county, district, joint powers authority or other political subdivision of the state involved in water quality, water monitoring, pesticide use, pesticide management, and pesticide monitoring.
- (k) "Mitigation" means control practices, management practices, instruction, outreach, technologies, processes, siting criteria, operating methods, or other procedures implemented to moderate, prevent, reduce, or eliminate adverse water quality impacts due to pesticides.
- (l) "NEPA" means the National Environmental Protection Act.
- (m) "Nonprofit organization formed by landowners to prepare and implement local nonpoint source plans" means an organization with non-profit tax status, consistent with Section 501(c)(3) of the Internal Revenue Code, which is formed by landowners and which is formed, in whole or in part, for the purpose of preparing or implementing local nonpoint source pollution control plans.
- (n) "PTAC" means pesticide technical advisory committee.
- (o) "Pesticide technical advisory committee" means the committee formed by the SWRCB to review proposals and recommend funding. This committee shall be composed of the

SWRCB and Regional Board representatives, and may include representatives of pesticide user groups and environmental advocacy groups.

- (p) "PRISM Grant Program" means the Pesticide Research, Identification of Source, and Mitigation grant application, selection, award, and project implementation procedures created by the SWRCB under the authority specified by section 79117 of the Water Code.
- (q) "QAP" means a quality assurance plan that meets or exceeds the recommendations of EPA Guidance for Quality Assurance Project Plans (R-5) (February 1998, EPA/600/R-98/018).
- (r) "Research findings" means the numeric, analytic, or narrative results, conclusions, data, statistics, and all other information collected or produced in a research endeavor and includes but is not limited to empirical evidence, theoretical conjecture, databases, software, and equipment developed in a research endeavor.
- (s) "Sampling and analysis plan" means a scientifically and technically sound plan for collection, or collection and chemical analysis, of environmental samples. The sampling and analysis plan shall specify collection sites and parameters to be monitored, appropriate location, timing and frequency of sampling, and applicable quality control provisions.
- (t) "SWRCB" means the State Water Resources Control Board.
- (u) "TMDL" means total maximum daily load as specified under Section 303(d) of the Clean Water Act.
- (v) "USEPA" means the United States Environmental Protection Agency.

NOTE: Authority cited: Section 79117, Water Code. Reference: Sections 79111, 79114, 79117, Water Code.

3410.2. Applications

- (a) The SWRCB will award pesticide mitigation grants and pesticide research and source identification grants according to the process set forth in this article.
- (b) Applicants may apply for either or both types of grants. A separate application is required for each grant request and for each project.
- (c) The SWRCB will post notice on its website of the request for proposals for PRISM grants. Such posting will open the filing period for PRISM grant applications. The filing period will remain open for 90 days.
- (d) The SWRCB will notify interested parties in writing of the commencement of the PRISM grant program's request for proposals and grant awards process. The SWRCB may hold

public meetings or workshops to outline the timeframe and minimum requirements for participation in the PRISM grants program.

- (e) Applicants shall consult with the appropriate Regional Board or SWRCB staff prior to submitting a project application.
- (f) The filing period for applications will close 90 days after the SWRCB posts the notice on its website of the request for proposals for PRISM grants. Applications received after the close of the filing period will not be considered. Applicants may resubmit applications during subsequent filing periods.
- (g) Applications shall be reviewed and prioritized by the PTAC and presented to the SWRCB for approval within 120 days of the close of the filing period.
- (h) Project proponents shall submit the original, five hard copies, and one electronic copy of each project proposal to the SWRCB. In the interest of resource conservation, the project proponent may supply double-sided copies of the project proposal to the SWRCB.
- (i) A complete application package shall include the following documents:
 - (1) Cover page,
 - (2) Project summary,
 - (3) Budget summary, and
 - (4) Project proposal.
- (j) Incomplete applications will not be eligible.
- (k) The cover page shall include the following contact and project information, as applicable:
 - (1) Indication of whether the applicant is seeking either a pesticide research and source identification grant or a pesticide mitigation grant,
 - (2) Project title,
 - (3) Name of applicant,
 - (4) Address,
 - (5) Name of the project director,
 - (6) E-mail address,
 - (7) Fax number,

- (8) Phone number,
 - (9) Federal tax ID number,
 - (10) Waterbody and watershed of the project, and
 - (11) Amount of PRISM grant requested.
- (l) The project summary, not to exceed one page, shall clearly describe project activities and include purpose, objectives, tasks, products, and results.
- (m) Budget summary. The budget summary, not to exceed one page, shall categorize budget items as follows:
- (1) Contact information as specified in subdivisions (k)(2) and (k)(3);
 - (2) Personnel costs. Such costs shall be limited to those incurred by the principal and cooperating agencies during project implementation;
 - (3) Operating expenses. Such expenses shall be limited to costs directly related to the project and may include travel, rental, and other operating costs;
 - (4) Property purchased in whole or in part with bond funds. Such property shall be itemized as equipment, furniture, portable assets, electronic data, processing equipment, miscellaneous, and real estate easements;
 - (5) Professional and consultant services costs;
 - (6) Sampling and Analysis costs. Such costs shall be itemized as sampling and analysis supplies and services.
 - (7) Estimated costs of material and labor for capital improvements and other construction expenses;
 - (8) Capital costs; and
 - (9) Capital cost match share.
- (n) The project proposal shall not exceed ten pages and shall use a font size of at least 10 pitch. If any of the evaluation criteria are not applicable, the applicant shall note this fact in the project proposal and provide a brief explanation. The applicant may attach other information to the proposal, but such information might not be reviewed during the selection process. The project proposal shall include the following information:
- (1) Contact information as specified in subdivisions (k)(2) and (k)(3);

- (2) The amount of the grant request;
- (3) Names of Regional Board staff contacted as required by subdivision (e);
- (4) Name, mailing address, and phone of cooperating agency, if applicable;
- (5) Description of the technical or academic experience and training that qualifies the applicant's staff to perform the work described in the project proposal;
- (6) The name of the watershed in which the project work will be performed;
- (7) The United States Geological Survey 8 digit catalog number for the watershed and the watershed name;
- (8) The name of the county in which the project work will be performed;
- (9) Identification of the land use impacted or targeted by the project and the population, from the latest census, and area, in acres, associated with each land use;
- (10) A statement of the hypothesis to be tested, if the project involves research or source identification;
- (11) A brief procedural outline of the project activities
- (12) A description of how the hypothesis will be tested, if the project involves research and source identification;
- (13) A description of any monitoring, or sampling and analysis, plan for the project and whether the project includes citizen monitoring;
- (14) Whether the proposed activity involves analysis, measurement, or mitigation of:
 - (A) Unknown sources of pesticide pollution,
 - (B) Known sources of pesticide pollution,
 - (C) Single pesticide product,
 - (D) Multiple pesticide products,
 - (E) Pesticide breakdown products,
 - (F) Additive effects of pesticides or pesticide breakdown products, or
 - (G) Partitioning among various sources of pesticide pollution;

- (15) Identification of the water quality objectives, beneficial uses and land uses addressed by the project;
- (16) An estimate of the areal extent (in acres) and volume of impaired water (in acre-feet) that will be addressed by the project;
- (17) A brief description of the methodologies that will be used to measure water quality improvements and interpret other data or results from the project;
- (18) A description of how the research or source identification project will provide water quality benefits for a period of 20 years beyond project implementation;
- (19) The name of any entity that will conduct sampling or monitoring for the project;
- (20) The name of the analytical laboratory that will perform chemical analyses or assays and whether such laboratory is operated by the applicant, a laboratory or agency designated as a cooperating agency to the project, or other laboratory;
- (21) Starting and ending dates for the activities proposed for funding under this grant;
- (22) Whether this is a phased project or part of a larger project;
- (23) A summary of the products, status, results, and significance of previous work that addresses the pesticide subject described in the project proposal;
- (24) An 8 ½x 11 map depicting the project area if the project involves monitoring sites, trial plots, or other field activity;
- (25) A list of any financial assistance received or pending, including PRISM grants, for work in this watershed. List all funding sources and specific types of assistance that have been used or are currently being used to support work in this watershed. Projects receiving funds pursuant to Division 26, Chapter 7, Article 5 of the Water Code are ineligible;
- (26) A statement of the most effective means for dissemination of the research findings and a description of how the project will result in implementation or acceptance of research results or products throughout the project area, region, or state;
- (27) A description of project's readiness to proceed that includes the status of permit acquisitions prerequisite to the work;
- (28) A response to evaluation criteria in Section 3410.3.

NOTE: Authority cited: Section 79117, Water Code. Reference: Sections 79114, 79114.3, and 79117, Water Code.

3410.3. Evaluation Criteria

- (a) Project proposals must be consistent with nonpoint source plans, projects, or strategies developed by the SWRCB and Regional boards, or be otherwise consistent with Section 79114(a) of the Water Code.
- (b) Project Proposals will be evaluated for technical or scientific soundness and likelihood of effectiveness in preventing degradation of water quality or restoring water quality.
- (c) Project proposals will be evaluated for readiness to proceed.
- (d) For pesticide mitigation grants the SWRCB will prioritize project proposals received during each filing period using the following criteria:
 - (1) Likely effect on nonpoint sources of pesticide pollution that pose immediate or widespread threats to state waters;
 - (2) Likely effect on pesticide pollution problems that have been considered resistant to treatment or mitigation;
 - (3) Likely benefit to water quality over a wide area;
 - (4) Ability to facilitate compliance with action levels, permitting thresholds, toxicity, allocations, numeric objectives, narrative objectives, and other characterizations of allowable pesticide concentrations in water;
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 - (5) Level of cooperation with recognized pesticide research institutions or agencies;
 - (6) Likelihood of measurable water quality improvement;
 - (7) Consistency with an established watershed plan, habitat conservation plan, TMDL, watershed restoration action strategy, general plan, resource management plan, or other plan that will contribute to more effective watershed management;
 - (8) Level of assistance to pesticide users in meeting TMDL guidelines for their respective watersheds;
 - (9) Level of collaboration and coordination among multiple stakeholders, agencies, or interest groups;
 - (10) Level of reliance on additional funding sources, if any. If other funding sources are necessary to make the project fully functional, the applicant shall identify these funding sources and demonstrate a strong likelihood that these funds will be available within the one year time frame for commitment of the funding from this

program; and

- (11) Focus on mitigation activities that achieve measurable water quality improvements.

(e) For pesticide research and source identification grants the SWRCB shall prioritize project proposals received during each filing period using the following criteria:

- (1) Potential to benefit a broad spectrum of pesticide users, researchers, and the citizens and environment of the State;
- (2) Potential to reduce nonpoint pesticide pollution that poses immediate or widespread threats to state waters;
- (3) Potential to augment the existing economically feasible remediation, management, or treatment options available for the prevention and mitigation of pesticide pollution of the state's waters;
- (4) Identification of previously undetected sources of pesticide pollution;
- (5) Development of assays and analytical methods that contribute to the improvement of pesticide detection in environmental samples;
- (6) Development of assays and analytical methods that establish the effects of pesticides on the biological resources and beneficial uses of the states waters;
- (7) Identification of specific pesticides that impact water quality or beneficial uses of state waters;
- (8) Use of source or loading analysis that provides more information on partitioning of pesticide pollutants individually or collectively within the watershed;
- (9) Use of water quality monitoring that supports development of action levels, permitting thresholds, allocations, and other characterizations of pesticide impacts on water quality;
- (10) Support for TMDL development for pesticides that exceed state water quality objectives;
- (11) Likelihood of providing immediate, broad-based reduction of risks associated with pesticide use;
- (12) Potential to provide new or more accurate information about the health and environmental risks of registered pesticides and pesticides in testing or development phases; and

- (13) Level of cooperation with recognized pesticide research institutions or agencies.

NOTE: Authority cited: Section 79117, Water Code. Reference: Sections 79114 and 79117, Water Code.

3410.4. Selection Process

- (a) SWRCB staff will review applications to determine their eligibility for grant funding.
- (b) The PTAC will consult with the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment and prioritize applications by evaluating the level of responsiveness to the criteria set forth in Section 3410.3 and by the number of criteria met.
- (c) The PTAC will consult with the SWRCB Environmental Justice Coordinator and evaluate project impacts to communities.
- (d) The SWRCB will consider the recommendations of the PTAC and will adopt a final consolidated priority list of projects to be funded during each funding cycle.

NOTE: Authority cited: Water Code: Section 79117. Reference: Section 79117, Water Code.

3410.5. Project Implementation

- (a) Grant recipients will receive a notice of award and shall negotiate with the SWRCB a contract to implement the project. If such a contract is not signed within one year of receipt of the notice of award, the SWRCB may reallocate grant funds to other projects pursuant to this article.
- (b) The grant recipient shall promptly notify the SWRCB of events or proposed changes that could affect the scope, budget, or schedule of work performed under the contract.
- (c) The grant recipient shall secure all required permits for project work and submit such documentary evidence of project compliance with permit conditions to the SWRCB prior to contract execution.
- (d) The grant recipient shall develop a water quality monitoring and reporting plan consistent with the provisions of Section 79114 subdivision (f) of the Water Code.
- (e) The grant recipient shall develop a sampling and analysis plan for all monitoring activities.
- (f) The grant recipient shall develop a QAP that meets the SWRCB approval.
- (g) The grant recipient shall coordinate citizen monitoring with the SWRCB where such work is utilized.

- (h) The grant recipient shall develop a project implementation reporting plan. The project implementation reporting plan shall include a brief description of significant activities of the project implementation and a schedule of anticipated completion dates for such activities.
- (i) The grant recipient shall submit status reports that meet the specifications of the project implementation reporting plan, and describe the progress and results of implementation activities. The initial status report shall be submitted to the SWRCB within three months of contract execution. Thereafter, status reports shall be submitted once every six months or concurrent with each grant disbursement request, whichever is more frequent.
- (j) The grant recipient shall submit to the SWRCB a final report before a final payment will be made. The final report shall include an executive summary, project purpose, data, results, methods, analysis, observations, relevant attachments, charts, graphic documentation, and reference sections, unless determined inapplicable by the SWRCB.
- (k) All copyrights and other rights and licenses to reproduce, publish, or otherwise use, and to authorize others to use the copyright in any work developed under the project contract and any rights of copyright which the grant recipient purchases, in whole or in part, with funds from the PRISM grant program shall belong to the SWRCB. The grant recipient shall obtain permission from the SWRCB to sell, lease, or otherwise receive financial benefit from such rights.
- (l) Grant recipients shall publicize, communicate, and otherwise disseminate to stakeholders and other interested parties the substantive results of projects for which they have received grant funds under this article.

NOTE: Authority cited: Section 79117, Water Code. References: Sections 79114 and 79117, Water Code.