
Central Valley Regional Water Quality Control Board

ORDER No. R5-2021-0053

Amending Waste Discharge Requirements General Orders for Growers within the Central Valley that are Members of a Third-Party Group:

Eastern San Joaquin Watershed R5-2012-0116-10

Western San Joaquin River Watershed R5-2014-0002-10

San Joaquin County and Delta Area R5-2014-0029-06

Sacramento River Watershed Area R5-2014-0030-09

Grassland Drainage Area R5-2015-0095-05

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of waters of the State, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
2. The Central Valley Water Board issued Waste Discharge Requirements General Orders for growers within the Central Valley that are members of a third-party group for discharges from irrigated lands to surface water and to groundwater (Irrigated Lands Regulatory Program (ILRP) General Orders).
3. "Irrigated lands" in the ILRP General Orders (except for the Tulare Lake Basin and the Western Tulare Lake Basin General Orders) is defined as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
4. There are approximately 227,840 acres of managed wetlands in the Central Valley Region that currently require regulatory coverage under five ILRP General Waste Discharge Requirements Orders (Orders).
5. The Central Valley Water Board adopted Resolution R5-2016-0015 to allow the use of a wetland-specific evaluation template instead of a farm evaluation template and to remove the requirements that managed wetlands prepare a Nitrogen Management Plan or develop a Sediment and Erosion Control Plan.

6. The Central Valley Water Board adopted Resolution R5-2016-0064, which directed staff to revise the Tulare Lake Basin and Western Tulare Lake Basin Area Orders to remove the requirement for managed wetlands to obtain coverage under the ILRP.
7. Order R5-2016-0064 directed staff to develop an appropriate regulatory strategy to protect water quality in relation to discharges from managed wetlands while also considering goals to increase managed wetlands and minimize regulatory costs.
8. California's Central Valley historically contained more than four million acres of wetlands according to published estimates. Since the 1850's, about 94 percent (3.7 million acres) of those wetlands have been lost.
9. Of the remaining wetlands in California's Central Valley, approximately 227,840 acres are considered managed wetlands.
10. Managed wetlands are defined as publicly or privately-owned wetlands that receive seasonal, semi-permanent, or permanent flooding to simulate natural processes that promote food production and habitat for the benefit of wetland-dependent species. Along with artificial flooding, other routine maintenance and management activities are typically required to maintain habitat, wildlife, and other ecological benefits.
11. Managed wetlands do not include artificial wetlands, which are constructed primarily for one or more of the following purposes: groundwater recharge basins, tailwater recirculation or sedimentation ponds, evaporation ponds, irrigation or stock watering ponds, areas that filter urban or industrial stormwater runoff, and/or wastewater treatment ponds. However, managed wetlands may provide some of the same benefits as these artificial wetlands. Additionally, managed wetlands are not managed for commercial crop production (which includes parcels managed for rice production).
12. The Central Valley Water Board recognizes the unique values of wetlands and the importance of the California Wetlands Conservation Policy, also referred to as the "No Net Loss Policy." The goal of the No Net Loss Policy is to "ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property" (Executive Order W-59-93).
13. Managed wetlands provide valuable water quality benefits. Groundwater is filtered and recharged by wetlands. Nutrients and chemicals entering wetlands are removed and/or transformed before release to surface and groundwater. Sediment is settled out and retained in wetlands.
14. Managed wetlands provide essential habitat for migratory and resident water birds and other wildlife. Managed wetlands are needed to compensate for the extensive loss of seasonal and permanent wetlands in the Central Valley during the past 170 years.

15. Seasonal and permanent wetlands in the Central Valley are critical for maintaining the Pacific Flyway. They also provide crucial breeding and brood habitat for resident waterfowl species such as Mallard and Cinnamon Teal ducks.
16. Managed wetlands of the Central Valley provide vital habitat for threatened and endangered animal and plant species such as the Giant Garter Snake, Sandhill Cranes, Tri-colored Blackbirds, and Palmate-bracted Bird's-beak.
17. The Central Valley Water Board seeks to support efforts to protect and enhance wetlands, while also ensuring that beneficial uses are maintained.
18. Agencies, organizations, and individuals that oversee managed wetlands activities in the Sacramento River and San Joaquin River Basins of the Central Valley Region are currently required to obtain regulatory coverage under the Irrigated Lands Regulatory Program's Waste Discharge Requirements Orders.
19. The costs of ILRP coverage for managed wetlands has reduced the acreage of managed wetlands in the Central Valley by reducing the financial resources available to obtain water for flooding seasonal wetlands.
20. The Central Valley Water Board recognizes that managed wetland operations and management practices differ significantly from irrigated agriculture.
21. The Irrigated Lands Regulatory Program is intended to address water quality concerns that are primarily agricultural in nature (e.g., broadcast pesticide use, fertilizer use, soil erosion, groundwater contamination). Associated ILRP activities include monitoring that focuses on agricultural water quality effects. The monitoring results are used for education and outreach efforts that assist growers with their compliance requirements. This often includes implementing practices on agricultural fields to prevent discharge of contaminants that are known to impair beneficial uses.
22. Groundwater protection requirements have become a substantial part of the Irrigated Lands Regulatory Program's efforts and costs, with a focus on addressing nitrogen contamination of groundwater and protection of drinking water sources. Because wetlands managers do not apply nitrogen, the groundwater requirements and costs do not pertain to them.
23. Managed wetlands activities may include spot treatments for invasive weed species with herbicides. No broadcast applications are performed, and no insecticides are used. For example, in 2010 commercial agriculture applied more than 108 million pounds of pesticides in the San Joaquin Valley. During the same period, the San Luis National Wildlife Refuge applied 750 pounds of herbicides to target invasive plant species.
24. Fertilizers are not applied to managed wetlands.
25. Managed wetlands may contribute to certain water quality issues (e.g., methylmercury, dissolved salts, bacteria, organic particulates) or contribute to low dissolved oxygen due to naturally occurring processes under certain conditions or during certain seasons.

26. Certain managed wetlands in the Sacramento River Basin and the San Joaquin River Basin are within areas covered by the Delta Mercury Control Program and associated TMDL. Central Valley Water Board staff have identified some management practices to minimize methylmercury discharges from managed wetlands. However, these practices have varying degrees of applicability and effectiveness, or may conflict with the primary management goals.
27. Managed wetlands in the San Joaquin River Basin are participating in the Salt and Boron TMDL and are located within the Grassland Subarea. The Grassland Subarea is a priority subarea for implementation of the two-phase Salt and Boron Control Program. Under Phase 1, managed wetlands have maintained compliance with the TMDL as a participating member of the real-time salinity management program approved by the Central Valley Water Board and by meeting the salinity water quality objectives at Vernalis in the Lower San Joaquin River (set by the Delta Plan). Phase 2 of the Salt and Boron Control Program established water quality objectives on the Lower San Joaquin River upstream of Vernalis, which took effect in January 2020.
28. Due to the seasonal presence of large numbers of water birds in managed wetlands, there is the potential for elevated bacteria levels to occur. However, water body impairments for bacteria have not been linked to water bird use in managed wetlands.
29. The Central Valley Water Board recognizes that the conditions and requirements of the Irrigated Lands Regulatory Program are not generally applicable to exclusively managed wetlands, therefore the Irrigated Lands Regulatory Program is not an appropriate mechanism for regulating managed wetlands.
30. Managed wetlands generally have a minimal risk of impairing the quality of surface waters and groundwater. Where it is found that managed wetlands need to take action(s) to address water quality impairments (e.g., salinity, TMDL, or 303(d) listing), staff will identify and implement an appropriate regulatory mechanism (e.g., coverage under the ILRP, development of wetland-specific WDRs, issuance of MRPs, issuance of 13267 Orders).
31. This Order amends the ILRP General Orders identified herein to remove the requirement for parcels that are operated exclusively as managed wetlands to obtain coverage under the ILRP. However, irrigated lands that combine commercial agriculture and managed wetlands operations on a rotating basis are required to obtain ILRP coverage.
32. It may be appropriate for certain exclusively managed wetlands operations to obtain regulatory coverage under the Irrigated Lands Regulatory Program. This Order provides entities that oversee exclusively managed wetlands activities with the option to voluntarily enroll their parcels with an appropriate Irrigated Lands Regulatory Program Coalition.
33. The Central Valley Water Board, acting as a lead agency pursuant to CEQA (Pub. Resources Code, § 21000 et seq.), certified a Program Environmental Impact Report (PEIR) for the Irrigated Lands Regulatory Program on 7 April 2011. This

Order relies on the environmental impact analysis contained in the PEIR to satisfy the requirements of CEQA. Pursuant to this Order, the removal of managed wetlands from the ILRP is within a range of options identified and analyzed in the PEIR. Therefore, the PEIR identified, disclosed, and analyzed all potentially significant environmental impacts of this Order.

34. The Central Valley Water Board has notified interested agencies and persons of its intent to adopt this Order for discharges of waste from irrigated lands within the Central Valley, and has provided them with an opportunity for a public hearing and an opportunity to submit comments.

35. The Central Valley Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that ILRP Waste Discharge Requirements General Orders No. R5-2012-0116-10, R5-2014-0002-10, R5-2014-0029-06, R5-2014-0030-09, and R5-2015-0095-05 are amended by making the modifications identified in Attachments 1-5 of this Order.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filling petitions may be found on the [Water Quality Petitions webpage](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) or will be provided upon request. <www.waterboards.ca.gov/public_notices/petitions/water_quality/>

I, PATRICK PULUPA, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 15 October 2021.

Original signed by

PATRICK PULUPA, Executive Officer

Attachments

Attachment 1: Order R5-2012-0116-11, Amended Waste Discharge Requirements
Attachment 2: Order R5-2014-0002-11, Amended Waste Discharge Requirements
Attachment 3: Order R5-2014-0029-07, Amended Waste Discharge Requirements
Attachment 4: Order R5-2014-0030-10, Amended Waste Discharge Requirements
Attachment 5: Order R5-2015-0095-06, Amended Waste Discharge Requirements