

ITEM: 20

SUBJECT: Status of Irrigated Lands Regulatory Program Non-participant Compliance and Enforcement Activities in the Eastern San Joaquin River Watershed

BOARD ACTION: *Information Item Only.*

BACKGROUND: On 7 December 2012, the Central Valley Water Board adopted waste discharge requirements for growers within the Eastern San Joaquin River Watershed that are members of a third-party group or coalition (Order R5-2012-0116, which was subsequently revised twice by the board, hereafter referred to as East San Joaquin Order). The board's adoption on 26 July 2013 of a general Order for dischargers not participating in a third-party group (hereafter referred to as the Individual Order) provided growers with an alternative method for getting regulatory coverage.

After the East San Joaquin Water Quality Coalition (Coalition) was approved to serve as the third-party group under the East San Joaquin Order, growers had 120 days to directly enroll with the Coalition. The 120 day time period ended on 13 May 2013 and the Coalition was required to submit their first Membership list by 10 July 2013.

A key change that occurred with the adoption of East San Joaquin Order and the Individual Order was the regulation of discharge to groundwater in addition to the regulation of discharge to surface water. This change not only had implications with respect to expanding the scope of water quality protection requirements, but also expanded the number of irrigated parcels that now require regulatory coverage under the Irrigated Lands Regulatory Program (ILRP).

This change greatly simplified board staff efforts to identify non-participants requiring regulatory coverage. With the initial focus on surface water only, non-participants were those growers of irrigated crops that had a discharge to surface water. Gathering evidence of a discharge to surface water, absent an active discharge during a rain or irrigation event, requires a much greater level of effort than what is required under the new Orders - simply making a determination of whether a crop is irrigated.

Finding 12 of the East San Joaquin Order estimated that a total of 835,000 acres of irrigated crop land and 3,600 growers would need regulatory coverage in the Eastern San Joaquin River watershed. The total number of growers enrolled prior to adoption of the Order was 2,225 and irrigated acres was 535,653 (July 2012 participant information). The anticipated number of growers requiring regulatory coverage was, therefore, 1,375 and an additional 300,000 were thought to need regulatory coverage (or an average of over 200 acres/ grower).

In their preparation of mailing lists to landowners with irrigated lands, staff used Geographic Information System technology to overlay maps of parcels (from county tax assessors) and irrigated crop land (based on the California Department of Conservation's Farmland Mapping and Monitoring Program – FMMP). Through this effort, staff identified a total of 4,937 landowners with a total of 284,013 acres of land (or an average of about 58 acres per landowner). In other words, slightly less acreage and a much greater number of landowners were identified than originally estimated. In addition, it is important to note that

the staff acreage estimates are based on parcel size, whereas, a grower reporting to the coalition may only report the portion of the parcel that is irrigated. Therefore, the gap between the number of acres reported as being enrolled and the estimated total number of acres requiring regulatory coverage may actually be smaller than estimated.

Staff actions to inform landowners of the regulatory requirements and to follow-up with those landowners who did not respond includes multiple steps. Prior to the closing of the time period for direct enrollment with the coalition, staff sent out two mailings to landowners whose parcels were identified as not having regulatory coverage. The first set of mailings (in January and February 2013) went to all 4,937 landowners and 284,013 acres that were estimated to require regulatory coverage. A second notice was sent in April 2013 to 2,370 landowners (covering 193,724 acres) who had not enrolled and had parcels of greater than 10 acres in size.

In conjunction with sending out the letters, staff began inspecting parcels that had not enrolled. The inspection step was important to ensure that further compliance and enforcement actions were directed towards parcels that were being used for irrigated agriculture. Staff have conducted inspections of over 1850 parcels (over 120,000 acres) and have about 526 remaining parcels to inspect (17,710 acres).

The inspections have resulted in a number of outcomes: confirmation that the parcel has an irrigated agricultural use requiring regulatory coverage; identification of parcels that already are permitted by the Water Board (e.g., dairy lands, discharges to land); evidence that the parcels do not have an irrigated agricultural use; evidence that there is no commercial agricultural operation; evidence that the parcel is not irrigated.

For those parcels with evidence of commercial irrigated agricultural land use, the Assistant Executive Officer issued California Water Code 13260 directives, informing the landowner of the requirement to get regulatory coverage for their discharges. When issuing the 13260 Directives, the Directive letter identifies parcels that have been inspected, as well as other parcels owned by the recipient that have not been inspected.

Over 500 such directives have been issued (over 71,000 acres). Landowners were given 15 calendar days to respond to the directive by submitting a notice of intent (NOI) to the board to get regulatory coverage. Landowners who did not respond within that timeframe were issued a Notice of Violation (NOV) and given 15 calendar days to respond to the NOV by submitting a notice of intent. Over 100 landowners have received NOV's.

Staff have received the following types of responses to the directive or NOV: 1) the landowner gets the required regulatory coverage and becomes a Coalition Member; 2) the landowner is a current Coalition Member who adds parcels to their existing membership; 3) the directive recipient indicates they are no longer the landowner; 4) the landowner indicates their land is enrolled under the dairy Order. Staff also receives responses that certain parcels are not agriculture, not irrigated, or not a commercial operation.

For landowners who failed to respond to the NOV, the landowner generally received a letter notifying them of a forthcoming administrative civil liability complaint (pre-ACL letter) and giving them an opportunity to enter settlement discussions with the Prosecution Team. If the landowner fails to respond to the

pre-ACL letter, then an Administrative Civil Liability Complaint (ACL) is issued.

Eleven landowners have received pre-ACL letters. No further action was pursued on two pre-ACL letters, when the landowner obtained regulatory coverage. The Prosecution Team determined there were extenuating circumstances that led to the non-compliance and justice would not be served by pursuing an ACL. Two pre-ACL letters have resulted in notification to staff that the property was sold, requiring the Assistant Executive Officer to issue the 13260 Directive to the new landowner. Two pre-ACL letters have resulted in settlement agreements that are still pending. There was no response to the five other pre-ACL letters, so those landowners have been issued ACL complaints. There are an additional fifteen potential candidates for pre-ACL letters or ACL complaints.

As described in the ACL Complaints, two of the factors considered by the Prosecution Team were the total size of the parcels owned by the landowner subject to the complaint and the fees charged by the Coalition. State fees (and Coalition fees) are based on number of acres, so the Prosecution Team considered parcel size to be an important factor in establishing the proposed fine. In addition, the Prosecution Team considered the Coalition's fee policy, which requires new Members to pay back fees (see <http://www.esjcoalition.org/joinCoalition.asp>). For a new Member joining in 2014, the Coalition fee would be \$12.75 /acre plus \$50. For proposed fines, the Prosecution Team has used a \$2,000 plus \$10 / acre formula for the five ACL complaints issued. A landowner subject to a fine would still need to pay Coalition fees, if they were to join the Coalition.

In summary, the efforts of Water Board staff and the Coalition to inform growers of the new requirements has resulted in a 34% increase in acres enrolled and 78% increase in the number of Members of the Coalition. Staff have inspected thousands of parcels and the Assistant Executive Officer has issued hundreds of directives to landowners requiring them to get proper regulatory coverage. Staff has used the progressive enforcement approach outlined in the State Water Board's Enforcement Policy to bring landowners into compliance. This process is complicated by factors such as the inaccuracy or incompleteness of information available to board staff, leading to misidentification of irrigated lands or landowners, as well as, challenges in ensuring the landowners have received the Directive Letter or other correspondence from board staff. Although there is additional work to bring all of those requiring regulatory coverage into compliance, the board's outreach and enforcement efforts have been highly successful in moving closer to that goal in a relatively short timeframe.

Compliance/Enforcement Actions Taken by Water Board Staff

<i>Action</i>	<i>Date(s)</i>	<i># Acres</i>	<i># Landowners(L)/ Parcels (P)</i>
Notification to Non-participant Landowners	Jan/Feb 2013	284,013	4,937(L)
	April 2013	193,724	2,370(L)
Inspection of Parcels	April 2013 and Ongoing	121,663	1852(P)
Remaining Parcels to Inspect	Pending	17,710	526(P)
13260 Directives Issued	June 2013 and Ongoing	71,631	519(L)
Notices of Violation Issued	August 2013 and Ongoing	11,571	107(L)
Pending Notices of Violation	Pending	2,920	38(L)
Pre-ACL Letters	October 2013 and Ongoing	1,451	11(L)
Pending Pre-ACL Letters	Pending	2,839	18(L)
ACL Complaints	May 2014	976	5(L)

Coalition Enrollment

<i>Year</i>	<i>Members</i>	<i># Acres</i>	<i># Parcels</i>
July 2012	2,225	535,653	8,343
July 2013	3,908	700,130	13,272
May 2014 (est)	3,963	718,832	TBD

RECOMMENDATION This is an information item only.

Mgmt. Review ___JK___

Legal Review _____

5/6 June 2014

Central Valley Regional Water Quality Control Board Meeting

11020 Sun Center Drive, #200

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