

Regional Water Quality Control Board
North Coast Region
Wednesday, February 20, 2019
Regional Water Quality Control Board Office
Santa Rosa, California

ITEM: 4

SUBJECT: Update on East San Joaquin Agricultural Order and Ag-Related Litigation (*Emel Wadhvani, Assistant Chief Counsel, State Water Board*)

BOARD ACTION: This is an information item only; no action will be taken by the Board.

BACKGROUND: In February 2018, the State Water Board adopted a petition order amending an agricultural permit for the Eastern San Joaquin (ESJ) watershed and coalition issued by the Central Valley Regional Water Board. The ESJ Petition Order represented a concerted effort by the State Water Board to address all procedural, legal, scientific, environmental, and implementation issues concerning the regulation of agricultural discharges in the State, in particular with regard to nitrogen management. The Order incorporated recommendations made by a Nitrogen Tracking and Reporting Task Force convened by CDFA and an Agricultural Expert Panel convened by the State Water Board to consider effective means of tracking, reporting, and managing nitrogen application and nitrate impacts.

DISCUSSION: The ESJ Petition Order is precedential for agricultural programs statewide and the State Water Board has directed regional water boards to incorporate elements in subsequent regional water board orders. In an informational item to be presented to the Board at the February 20 Board meeting, Ms. Emel Wadhvani, Assistant Chief Counsel, will present a summary of the ESJ Petition Order. Ms. Wadhvani will provide a high-level description of precedential elements of the Order and areas where regional water boards, including the North Coast Water Board, have flexibility as they develop and adopt agricultural orders.

A recent Court of Appeal decision, *Monterey Coastkeeper v. State Water Board*, (2018) 28 Cal.App.5th 342, interprets the State Water Board's 2004 Nonpoint Source Policy applicable to agricultural programs. The court reviewed a State Water Board petition that, in turn, had reviewed and modified a 2012 agricultural waiver issued by the Central Coast Regional Water Board. The court held that the Nonpoint Source Policy requires agricultural permits to require achievement of water quality objectives within a defined time period, in accordance with a time schedule incorporating quantifiable interim milestones. Ms. Wadhvani will also present the *Coastkeeper* decision, as well as briefly discuss ongoing litigation on the ESJ Petition Order.

RECOMMENDATION: N/A

- **SUPPORTING DOCUMENTS** ESJ Petition Order:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf (First 81 pages attached)
- Nitrogen Tracking and Reporting Task Force Final Report:
<http://www.itrc.org/swrcb/Files/NTRSTFFinalReport122013.pdf>
- Agricultural Expert Panel Report:
https://www.waterboards.ca.gov/water_issues/programs/agriculture/docs/ILRP_expert_panel_final_report.pdf
- Monterey Coastkeeper v. State Water Board., 28 CAL.APP.5th 342 (2018) – Attached