

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2018-0002

In the Matter of Review of
Waste Discharge Requirements General Order No. R5-2012-0116
for Growers Within the Eastern San Joaquin River Watershed
that are Members of the Third-Party Group

Issued by the
California Regional Water Quality Control Board,
Central Valley Region

SWRCB/OCC FILES A-2239(a)-(c)

BY THE BOARD:

In this order, the State Water Resources Control Board (State Water Board or Board) reviews on its own motion Waste Discharge Requirements (WDRs) General Order No. R5-2012-0116 issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) for Growers within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group (hereinafter "Eastern San Joaquin Agricultural General WDRs" or "General WDRs"). The Eastern San Joaquin Agricultural General WDRs authorize discharges from irrigated lands¹ operations to waters of the state within the Eastern San Joaquin River Watershed and set forth a number of requirements for monitoring and planning, for implementation and evaluation of management practices, and for participation in various education and outreach events. For the reasons discussed herein, the State Water Board generally upholds the structure and requirements of the Eastern San Joaquin Agricultural General WDRs, but directs a number of revisions, primarily to add greater specificity and transparency in reporting of management practice implementation, to require reporting of certain nitrogen application-related data needed for management of excess nitrogen use, and to expand the surface water and groundwater quality monitoring programs of the General WDRs. Many of the revisions to the Eastern San Joaquin Agricultural General WDRs implement the conclusions of an agricultural expert panel that made

¹ Irrigated lands are lands irrigated to produce crops or pasture for commercial purposes, nurseries, and privately and publicly managed wetlands. (Eastern San Joaquin Agricultural General WDRs, Attach. E, Definitions, p.3.) In this order, we sometimes refer to irrigated lands regulatory programs as "agricultural regulatory programs."

affect the quality of groundwater for irrigation, municipal, and other uses. Collectively, we have a responsibility to acknowledge these impacts and address them, but in a manner that preserves the economic viability of agriculture. In some cases, historic agricultural practices have resulted in the impacts we see today. Current practices are also, in some cases, causing impacts and although agricultural practices have generally improved over time, we have an obligation to continue to develop appropriate solutions. This is an ongoing process that requires a thorough understanding of the complex relationship between agricultural practices and water quality impacts gained through collecting and analyzing real-world data and responding to that data with innovations in practices. This data-driven analysis of the issues forms the foundation for fair, even-handed, and reasonable regulation of irrigated lands.

The Central Valley Water Board began engaging the grower community when it adopted its first regulatory program for irrigated lands in 1982. This initial regulatory program, structured as a waiver of waste discharge requirements under Water Code section 13269, conditionally waived the requirement for submittal of a report of waste discharge for irrigation return flow as long as the discharge did not cause toxicity or excess sediment discharges that would violate turbidity objectives. In 2003, in response to revisions to Water Code section 13269,³ the Central Valley Water Board re-examined its original 1982 waiver and significantly changed its regulatory strategy for irrigated lands (2003 Central Valley Agricultural General Waiver).⁴ The 2003 Central Valley Agricultural General Waiver required surface water quality monitoring of numerous parameters to begin identifying where irrigated lands might be contributing to water quality problems. To take advantage of local knowledge and resources, leverage limited regulatory resources, and minimize costs, the Central Valley Water Board allowed growers to form discharger coalitions, with a third-party representative responsible for grower outreach and education and for implementation of a number of the requirements of the regulatory program, including representative monitoring. In 2006, the Central Valley Water Board modified the 2003 Central Valley Agricultural General Waiver, retaining the third-party structure, but now also requiring submission of management plans when water quality problems were identified

³ There were two relevant amendments to Water Code section 13269. The first amendment required the regional water boards to terminate or extend all existing waivers of WDRs on or before January 1, 2003. Thereafter, waivers of WDRs were not allowed to exceed five years in duration. (See Stats. 1999, ch. 686, § 2.) The second amendment required waivers of WDRs to contain monitoring provisions unless the regional water board determined that the discharge did not pose a significant threat to water quality. (See Stats. 2003, ch. 801, § 1.)

⁴ Central Valley Water Board Resolution R5-2003-0105, Administrative Record (AR) 00001-00012. In addition to the 2003 Central Valley Agricultural General Waiver, Resolution R5-2003-0105 adopted a second conditional waiver for individual dischargers that chose not to join a coalition.

regulate discharges to groundwater from irrigated lands as well as surface water discharges. The Eastern San Joaquin Agricultural General WDRs carry forward many of the program elements from the 2006 Central Valley Agricultural General Waiver. These elements include allowance of a third party to represent the growers, outreach and education requirements, representative monitoring of receiving waters (as opposed to farm discharge monitoring), annual reporting, requirements to implement and evaluate management practices, and receiving water limitations. The Eastern San Joaquin Agricultural General WDRs add programs for groundwater monitoring and groundwater protection, including implementation of groundwater management plans.

The requirements of the Eastern San Joaquin Agricultural General WDRs are discussed in greater detail in the sections that follow. In brief summary, the General WDRs assign certain requirements to the individual growers (Members) and certain requirements to the coalition (Third Party).⁹ Each Member must meet receiving water limitations (except where the Third Party is implementing a management plan to address known exceedances caused by agricultural discharges), which prohibit the Member from causing or contributing to exceedances of applicable water quality objectives in surface water and groundwater. Each Member must also implement management practices that minimize waste discharge to surface water and groundwater and protect wellheads from surface water intrusion. Each Member is responsible for conducting farm evaluations, which must document the Member's management practices. Each Member is required to prepare and implement a nitrogen management plan that meets the Eastern San Joaquin Agricultural General WDRs' requirement to minimize nutrient application relative to crop need. Members in areas susceptible to erosion must prepare and implement sediment and erosion control plans.

The Third Party, in turn, must conduct education and outreach activities, collect data from Members regarding management practice implementation and nitrogen application and analyze and report aggregated information on such implementation to the Central Valley Water Board. The Third Party is also responsible for maintaining the collected data and submitting the data to the Regional Board upon request. The Third Party must conduct surface water and groundwater quality monitoring. In response to certain triggers, including exceedances of water quality objectives in surface water or groundwater, the Third Party must prepare and submit to the

General WDRs are reviewable by the Board itself upon request. (Eastern San Joaquin Agricultural General WDRs, Attach. A, Information Sheet, p.27.) As a result, we do not take up the argument made by Environmental Petitioners regarding improper delegation of certain review and approvals to the Executive Officer.

⁹ Throughout this order, references to the "Third Party" are to the third-party group referenced in the Eastern San Joaquin Agricultural General WDRs; references to a "third party," "third-party group," or "third-party approach/structure" are to agricultural coalitions generally.