

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JANUARY 29-30, 2015
Prepared December 19, 2014

ITEM NUMBER: 15

SUBJECT: Timing and Planning for Next Agricultural Order

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KEY INFORMATION

Location: Region-Wide
Type of Discharge: Irrigated Lands Runoff
Existing Orders: Order No. R3-2012-0011 and WQ2013-0101

THIS ACTION: Board Discussion and Direction

SUMMARY

Waivers of waste discharge requirements expire five years after their adoption. Conditional Waiver of Waste Discharge Requirements (Agricultural Order) No. R3-2012-001 will expire in March 2017. The Central Coast Regional Water Quality Control Board (Central Coast Water Board) adopted its first agricultural waiver in July 2004, and it was scheduled to expire in July 2009; however, this order was not replaced with a new agricultural order until March 2012, nearly three years past the initial expiration date. The 2012 Agricultural Order marked significant changes, relative to the 2004 agricultural waiver, hence the additional time needed to adopt the 2012 Agricultural Order.

Staff anticipates that developing a new Agricultural Order will take about two years. Therefore, we need to consider, now, how and when to develop a new Agricultural Order in anticipation of the 2017 expiration date. To begin the discussion, staff is today presenting a conceptual process to develop a new Agricultural Order, as well as options and a recommendation regarding when to implement the process.

Options for When to begin the Agricultural Order Renewal Process

A key question that must be resolved is *when* to begin the renewal process. Options include:

1. Begin later, after *unresolved issues* have been resolved at the State Water Resources Control Board (State Water Board), to implement a process to develop a draft new Agricultural Order.
2. Begin now to implement a process to develop a draft new Agricultural Order, with the goal of a new Agricultural Order by March 2017.

Staff recommends beginning the process later, waiting until unresolved issues, as described below, are resolved.

DISCUSSION

Unresolved Issues

Unresolved issues are likely to significantly shape the content of the new Agricultural Order. The unresolved issues include:

Recommendations developed by the Expert Panel: The State Water Board convened the Expert Panel to develop recommendations pertaining to requirements of the State's Irrigated Lands Regulatory Programs (primarily Regions 3 and 5). The Expert Panel posed recommendations pertaining to the use of coalitions; reporting nitrogen applied, removed, and sequestered on agricultural lands; requirements for agricultural dischargers; general strategies for assessing progress; and more. The State Water Board intends to discuss the Expert Panel's recommendations at a future State Water Board meeting, which would include opportunity for public comment, Regional Water Boards involvement, and potential direction to Regional Water Boards regarding future agricultural orders.

Some of the Expert Panel's recommendations are being addressed by the State Water Board as they respond to petitions for review of the Central Valley Water Board's Eastern San Joaquin River Watershed Agricultural Order. Therefore, the State Water Board intends to address the Expert Panel recommendations at a future State Water Board hearing after these petitions are resolved.

Petitions of the Central Valley Water Board's Eastern San Joaquin River Watershed Ag Order:

Three petitions of the Central Valley's agricultural order could potentially have a significant impact on the structure and requirements of future agricultural orders in the Central Coast Region. The petitions address questions pertaining to:

- a. Groundwater quality protection.
- b. Antidegradation Policy requirements.
- c. Monitoring and reporting requirements (coalitions and individual).
- d. California Environmental Quality Act (CEQA) requirements in agricultural orders.

Civil case against State Water Resources Control Board Order WQ 2013-0101: This case is against the State Water Board's order that addressed the petitions for review of the Central Coast Water Board's Agricultural Order (R3-2012-0011). The suit addresses:

- a. When agricultural dischargers need to meet water quality standards.
- b. The adequacy of current monitoring and reporting requirements to assess compliance with water quality objectives.
- c. Consistency with the Antidegradation Policy.
- d. CEQA requirements necessary for adoption of agricultural orders.

The outcome of these questions could significantly shape the goals, content, and planning of future agricultural orders in the State. Resolution of these issues could impact:

- a. Whether, and under what conditions, we can use the iterative approach towards achieving water quality objectives.
- b. Timelines and milestones to achieve water quality objectives.
- c. Goals and requirements of monitoring and reporting programs for both coalitions and individuals.
- d. CEQA requirements.
- e. Staff resources necessary to develop a new agricultural order.

Staff anticipates that the petitions could be resolved by the summer of 2015. The civil case could be resolved by the fall of 2015.

Pros and Cons of Beginning Later or Now

Pros for beginning later (Option 1) include:

- If staff waits to begin the process until after the issues discussed are resolved, all parties would have a better understanding, and therefore starting point, to discuss possibilities for the new Agricultural Order; we could potentially minimize unfruitful discussion and work. Simply, some issues are likely to be decided for the regions.
- ILRP staff will have more time to assess and report on findings from information and data gathered to date from current Agricultural Order requirements. These assessments could shed light on the value of the requirements as we consider their inclusion in a new Agricultural Order. Potential information and data that staff will consider in developing the next order include:
 - Total nitrogen applied data
 - Annual compliance form data
 - Individual discharge monitoring data
 - Surface water quality data
 - Groundwater quality data

Cons for beginning later (Option 1) include:

- We will likely not be able to renew the current order before the expiration date of March 2017.
- Needed improvements to the current order would be delayed.

Pros for beginning now (Option 2) include:

- Beginning now is the only option that gives the Central Coast Water Board a chance at renewing the Agricultural Order before it expires in March 2017.
- Recent and upcoming Agricultural Order requirement deadlines are fresh in the minds of growers and interested parties and could therefore result in clear feedback during outreach efforts.

Cons for beginning now (Option 2) include:

- Although the Agricultural Order is nearly two years old, staff has not completed and reported on outcomes of some of the requirements, and some of the requirements are not yet due. Therefore, we could potentially include current requirements in a new order before we have an opportunity to assess their value.
- We anticipate that staff and interested party resource expenditures will be significant in renewing the order. Efforts to move forward now could be wasted if resolution of the currently unresolved issues leads in directions incongruent with this progress. Irrigated Lands Regulatory Program (ILRP) staff is working at maximum capacity to implement the current Agricultural Order; beginning a renewal process now would detract from these efforts.

Draft Process to Develop a New Agricultural Order

Staff has developed a conceptual process for developing a new Agricultural Order that we plan to use regardless of when we begin. The bullets below highlight milestone events of the process, which is presented visually in Attachment 1.

Staff is proposing that the process to develop a draft Agricultural Order include:

- Listening sessions, with board member(s) as the moderator(s) of the sessions. Interested parties would have an opportunity share ideas, concerns, and possibilities. Staff's role will be to listen and take notes. We are planning on three locations with a session in the afternoon and evening at each location to accommodate different schedules.
- Two board workshops, each held in conjunction with a regularly scheduled Central Coast Water Board meeting after the six listening sessions, devoted to discussion of a new Agricultural Order. At the first workshop, staff will present to the board a summary of the listening sessions and a conceptual framework of the permit. The second workshop will follow release of a draft order. This will be a time for stakeholders to present their positions. Interested parties will have an opportunity to provide oral or written comment for the board workshops, but staff will not provide written responses to comments until a new order is proposed to the board.
- First draft of new Agricultural Order: about six months following the first board workshop, staff will release the first draft of a new Agricultural Order, which will be followed by a board workshop and a 60-day public comment period.
- Second draft of the new Agricultural Order: staff will release the second draft of the new Agricultural Order about 90 days after receiving comments from the first draft. The release of the second draft will be followed by another 60-day comment period.
- Board hearing: staff will present the proposed new Agricultural Order to the Central Coast Water Board about 90-120 days after the public comment period of the second draft, depending on the board calendar.

CONCLUSION

Staff anticipates that developing a new Agricultural Order will take approximately two years. In order to draft and adopt a new Agricultural Order by the current expiration date of March 2017, we would need to begin the process now. There are pending legal and petition decisions that will likely affect an approvable new Agricultural Order; these issues will likely not be resolved before fall 2015. ILRP staff is working full-time on implementing the current Agricultural Order and working on a renewal would diminish these efforts.

Staff has proposed a process for developing a new Agricultural Order. One option would be to implement the process later, such as after the pending legal and petition issues are resolved, this is Option 1. Another option would be to implement the process now, this is Option 2.

RECOMMENDATION

Staff recommends Option 1, implementing the renewal process later. Staff will provide an informational item to the board in the fall of 2015. We anticipate that the State Water Board will have made its decisions on the petitions, and the civil case will be resolved. Staff will bring the informational item to the board outlining the State Water Board's decisions, the civil case, and their potential impact on developing a new Agricultural Order, along with a final recommendation of how and when to move forward.

Implementing Option 1 will likely necessitate extending the expiration date of the current Agricultural Order. Details of an extension can be discussed as part of the informational item in the fall of 2015.

ATTACHMENTS

1. Timeline of Ag Order Renewal Process