

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

STAFF REPORT FOR REGULAR MEETING OF JUNE 28-29, 2018
Prepared on June 3, 2018

ITEM NUMBER: 11

SUBJECT: Eastern San Joaquin River Watershed Agricultural Order - Update

STAFF

CONTACT: Christopher Rose (Chris.Rose@Waterboards.ca.gov)

ACTION: Informational

SUMMARY

The State Water Board recently (February 2018) adopted a petition order amending an agricultural order for the Eastern San Joaquin (ESJ) watershed and coalition. Elements of this order are precedential statewide to other irrigated lands programs and orders. Ms. Emel G. Wadhvani, Assistant Chief Counsel with the Office of Chief Counsel, will provide a high-level informational overview of the State Water Board's ESJ order. This item is informational and not intended as detailed technical discussion on issues or elements embedded in the State Water Board's order or future Central Coast irrigated lands program orders.

WHAT IS THE EASTERN SAN JOAQUIN ORDER?

The Central Valley Regional Water Quality Control Board regulates agricultural discharges through eight waste discharge requirements (WDR); each WDR regulates discharges based on geographic area, such as a watershed, or commodity, such as rice.

On December 7, 2012, the Central Valley Regional Water Quality Control Board adopted the Eastern San Joaquin Agricultural General WDRs (2012 ESJ Order) for the Eastern San Joaquin River watershed. The State Water Board received three petitions for review of the 2012 ESJ Order, and on August 5, 2014 adopted Order WQ 2014-0135, which allowed the State Water Board time for further review while other efforts impacting agricultural orders in the State were proceeding.

On February 7, 2018, the State Water Resource Control Board issued their final order (Order WQ 2018-0002) on the review of the 2012 ESJ Order. A link to the final order is provided here: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf

Proceedings that informed the final order include:

- State Water Board precedential order in response to petitions for review of Central Coast Region's 2012 Agricultural Order
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0101.pdf

- 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

WHY IS THE EASTERN SAN JOAQUIN ORDER IMPORTANT?

Development of the State Water Board's final Order WQ 2018-0002 was informed by procedural challenges, legal challenges, expert reports required by and submitted to the California Legislature, multiple outreach events to interested parties, and comments received on drafts and the final order. In short, Order WQ 2018-0002 is the result of 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. As such, the State Water Board has directed regional boards to incorporate elements in subsequent regional board orders. WQ 2018-0002 states, in part:

"In the sections that follow, we indicate which of our conclusions have precedential effect and will guide irrigated lands regulatory programs statewide. Our precedential direction is intended to guide all irrigated lands regulatory programs, including programs that directly regulate growers as individuals without a third-party intermediary and programs that regulate growers that are members of a third-party intermediary, except where specifically noted. We direct the regional water boards to revise their irrigated lands regulatory programs within the next five years to be consistent with our precedential direction in this order."

The Central Coast Region's Agricultural Order R3-2017-0002 will expire on March 7, 2020 and, therefore, "within the next five years..." described in WQ 2018-0002. The precedential elements of WQ 2018-0002 must be incorporated in our next agricultural order.

PRESENTATION ON PRECEDENTIAL ELEMENTS

Ms. Emel G. Wadhvani is currently the Assistant Chief Counsel for Regional Water Boards in the Office of Chief Counsel. In her prior position as a senior attorney advising the State Water Board, Ms. Wadhvani played a lead role in the legal review and development of WQ 2018-0002; with this experience, she can inform the Central Coast Water Board, staff, and interested parties regarding the precedential components of the order.

Ms. Wadhvani will provide a presentation summarizing efforts leading to development and adoption of the precedential order, as well as providing a high-level description of precedential elements, and areas where regional boards have flexibility as they develop and adopt agricultural orders henceforth. Although the presentation will thus focus on an overview of the Order WQ 2018-0002 and not on specific technical issues addressed in the order, Darrin Polhemus, Deputy Director for the Drinking Water Division of the State Water Board, who was the primary technical advisor to the Board on WQ 2018-0002, will also be present for this item.

CONCLUSION

Staff plans to provide a more detailed discussion on specific precedential technical elements from the State Water Board's WQ 2018-0002 in forthcoming agenda items relating to Ag Order 4.0.