

October 16, 2017

Santa Ana Regional Water Quality Control Board

Conditional Waiver for Agricultural Discharges (CWAD)

Frequently Asked Questions and Fact Sheet

CWAD Program: Conditional Waiver of Waste Discharge Requirements

The Conditional Waiver for Agricultural Discharges (CWAD) is the program name for Santa Ana Regional Water Quality Control Board Order R8-2016-003, officially titled the *Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the San Jacinto Watershed*. The Order was adopted on July 29, 2016 and amended on April 28, 2017 (R8-2017-0023). R8-2017-0023 is the final version.

All eligible agricultural dischargers in the San Jacinto River Watershed must complete an online Notice of Intent (eNOI) form for enrollment under the CWAD Program:

<https://geotracker.waterboards.ca.gov/enoi/>

The deadline to enroll in the CWAD Program is October 28, 2017.

The following is only a brief summary of the program – the entire Order is available at the Santa Ana Regional Board’s website (below), **or Google search for *Santa Ana CWAD***:

http://www.waterboards.ca.gov/santaana/water_issues/programs/planning/ag_waiver.shtml

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Background

Water discharges from agricultural operations in California include irrigation runoff, flows from tile drains, and storm water runoff. These discharges can affect water quality by transporting pollutants, including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals, from cultivated fields into surface waters. Many surface water bodies and groundwater basins in California are impaired at least in part because of pollutants from agricultural sources. Groundwater basins in the San Jacinto area have suffered nitrate and salt contamination, and excessive nutrients, algal blooms, and toxicity impact both Lake Elsinore and Canyon Lake.

To prevent agricultural discharges from impairing the waters that receive these discharges, the Irrigated Lands Regulatory Program (ILRP) regulates discharges from irrigated agricultural lands. This is done by issuing waste discharge requirements (WDRs) or conditional waivers of WDRs (Waivers) to growers. These Waivers contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found. The number of acres of agricultural land enrolled in the statewide ILRP is about 6,000,000 acres. The number of growers enrolled is approximately 40,000.

What are Waste Discharge Requirements (WDRs)?

The term “waste” can refer many things (see Water Code § 13050). Generally, waste is a byproduct of human or animal activity. Common types of waste include sewage, byproducts of manufacturing and processing operations, runoff from irrigation (e.g. tailwater), and fertilizers and pesticides that can enter into groundwater, lakes, rivers, or streams. This includes discharges to groundwater and surface water from agricultural operations.

The California Water Code requires regulation of all discharges of waste to waters of the State. The regional board then issues Waste Discharge Requirements (WDRs) for the proposed or existing discharge, in compliance with State law and the regional Water Quality Control Plan (Basin Plan). WDRs are, in effect, permits to discharge waste in a controlled manner. WDRs contain specific water quality monitoring and reporting requirements in order to demonstrate compliance with applicable laws and regulations. Permitted dischargers are often required to collect samples and report laboratory analyses on a regular basis to show that the permitted discharge is not having an adverse effect on the quality of groundwater or surface water.

What is a Conditional Waiver of Waste Discharge Requirements?

A Conditional Waiver is an alternative to a WDR. The regional board recognizes that obtaining and complying with WDRs can sometimes be burdensome for individual dischargers, particularly for small operations with limited staff and budget. The California Water Code (§ 13269) allows state and regional boards to issue a waiver of waste discharge requirements for specific discharges or types of discharge. The *Conditional Waiver of Waste Discharge Requirements from Agricultural Operations in the... San Jacinto River Watershed* (Order R8-2016-0003; herein referred to as the “CWAD”) is such a waiver.

What the CWAD does for you:

- The CWAD allows farmers an alternative to waste discharge requirements (WDRs), which have significantly higher costs and more stringent compliance requirements.
- The CWAD allows agricultural operators to propose their own methods of limiting discharges and protecting water quality (conservation practices a.k.a. best management practices [BMPs]).
- The CWAD allows agricultural operations to work cooperatively to manage their collective discharges as a Coalition Group. Shared sampling and reporting requirements would save individual operators a significant amount of money.
- If one or more Coalition Groups form, the State fees are far less.
- Coalition Groups can propose a representative (i.e. group) sampling and analysis program, reducing the number of samples collected.
- The CWAD allows for the formation of Water Quality Trading Plans to facilitate salt and nutrient offsets.

How do I enroll in the CWAD?

The regional board website has an electronic Notice of Intent (eNOI) enrollment form that must be completed by all owners/operators with 20 or more cumulative acres. When you have completed the form, print out a copy, sign it, and mail it to the Santa Ana Regional Board.

The website is:

<https://geotracker.waterboards.ca.gov/enoi/>

What are the deadlines for enrolling in the CWAD?

Enrollment:	Oct, 28, 2017
Coalition Formation:	Jan 28, 2018

What are the consequences for dischargers that do not enroll in the CWAD program or apply for individual WDRs?

Dischargers who are required to comply with the CWAD program and do not enroll, must instead apply for an individual WDR. According to California state law, a discharger who does not enroll in the CWAD and does not apply for a WDR is in non-compliance, which is a misdemeanor and may be subject to civil liability of up to \$1,000 per day of violation in addition to the required fees.

What are the requirements for compliance in the CWAD?

Dischargers, either individually or as members of a Coalition Group, must submit the following:

Table 1 - Summary of CWAD Requirements <i>See Order R8-2017-0023 for details</i>	
CWAD Requirement	Due Date
Enrollment (eNOI on website):	10/28/2017
Coalition Formation:	All Coalition Groups must apply by 1/28/2018
Best Management Practices (BMPs):	
<i>Propose BMPs</i>	6 mos from Notice of Authorization (NOA) ¹
<i>Annual BMP Report</i>	12 mos from approval of Proposed BMPs, 9/15 annually thereafter
Water Quality Monitoring Program Plan (WQMPP)/Coalition Compliance Program:	
<i>Propose WQMPP</i>	180 days from NOA ¹ /Coalition formation
<i>Annual WQ Monitoring Report</i>	12 mos from approval of Proposed WQMPP, 9/15 annually thereafter
Agricultural Nutrient Management Plan (AgNMP):	
<i>Propose AgNMP</i>	6 mos after Draft Revised TMDLs are issued

¹Note: NOAs are issued by the Executive Officer after the enrollment form is found to be complete/applicable.

Are there any Coalition Groups that I can join?

Eastern Municipal Water District is in the process of forming a coalition of recycled water users. At this time (Oct 2017), no other Coalition Groups have stepped forward. The deadline for Coalition Group formation is Jan 2018.

Does the landowner enroll, or does the lessee enroll?

Both parties are ultimately responsible for compliance, but only one has to enroll as long as both the owner and operator are listed on the enrollment form. Some land owners require their lessees to manage regulatory compliance, while others prefer to handle it themselves. It is up to each owner/lessee to determine how to comply.

What are the fees for the CWAD program?

Yes – the California Code of Regulations Title 23 (23 CCR) section 2200.6 “Annual Agricultural and Irrigated Lands Fee Schedule” requires an annual fee for WDRs and for waivers of WDRs for discharges from agricultural lands. Fees are invoiced by the State Board, primarily based on acreage.

The fee schedule is a tiered structure consisting of three fee levels. Under this structure, the lowest fees are paid by dischargers who are members of a Coalition Group approved by the Regional Board, where the group manages fee collection and payment. The highest fees are paid by dischargers who do not participate in a Regional Board approved Coalition Group.

Fees: Do I have to pay when I enroll?

No. State Board fees will be assessed in 2018, after Coalition Group(s) have formed.

Fee Structure for fiscal year 2016/17:

An explanation of the 2016/17 fee structure, along with a table of fee examples is below.

- (1) Tier I: If a discharger is a member of a group that has been approved by the state board to manage fee collection and payment, then the fee shall be \$100 per group plus \$0.75 per acre of land.
- (2) Tier II: If a discharger is a member of a group that has been approved by the state board but that does not manage fee collection and payment, then the fee shall be \$100 per farm plus \$1.27 per acre of land.
- (3) Tier III: If a discharger is not a member of a group that has been approved by the state board, the following fee schedule applies:

FY16/17 Ag/Irrigated Land Fee Schedule			
Acres	Fee Rate	Min Fee	Max Fee
0-10	\$404 plus \$13.50/acre	\$404	\$539
11-100	\$1,010 plus \$6.70/acre	\$1,084	\$1,680
101-500	\$2,692 plus \$3.40/acre	\$3,035	\$4,392
501 or more	\$5,384 plus \$2.70/acre	\$6,737	no max

Here are some hypothetical examples of what fees a farmer might pay, based on the size of the operation and whether the farmer is a member of a Coalition Group:

Hypothetical Annual Fees - 100 Member Coalition (50% Participation)					
Farmer 1					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	First Year Total
Yes - in group of 100 farms (group managed fees)	1	20	\$ 50.00	\$ 16.00	\$ 66.00
Yes - in group of 100 farms (indiv fees)	2	20	\$ 50.00	\$ 125.40	\$ 175.40
Yes - Indiv CWAD or WDR (not a member of group)	3	20	\$ 50.00	\$ 1,144.00	\$ 1,194.00
No - (WDR/Non-compliance)*	3	20	\$ 200.00	\$ 1,144.00	\$ 1,344 plus penalties*
Farmer 2					
CWAD Compliance?	Tier	Farmer's Acreage	One-Time Application Fee	Annual Fees	Total
Yes - in group of 100 farms (group managed fees)	1	4,000	\$ 50.00	\$ 3,001.00	\$ 3,051.00
Yes - in group of 100 farms (indiv fees)	2	4,000	\$ 50.00	\$ 5,180.00	\$ 5,230.00
Yes - Indiv CWAD or WDR (not a member of group)	3	4,000	\$ 50.00	\$ 16,184.00	\$ 16,234.00
No - (WDR/Non-compliance)*	3	4,000	\$ 200.00	\$ 16,184.00	\$ 16,384 plus penalties*

* Additional Civil Liability Penalties of up to \$1,000 per day may be applied if non-compliant

I already am a member and pay fees to WRAC. Do I also have to pay CWAD fees?

Most likely yes. Your WRAC membership is for TMDL compliance, which is an ongoing surface water program. The CWAD program includes both surface water monitoring and reporting requirements and has additional requirements to protect groundwater. Your WRAC membership offsets some (but not all) of the CWAD requirements, such as the Ag Nutrient Management Plan (AgNMP). Individual enrollees who are not members of WRAC will have to complete those requirements on their own, at their own cost.

Do dairies/stockyards have to enroll?

Parcels covered under any other permit (NPDES, CAFO, etc.) do not have to enroll in the CWAD.

I stopped farming/don't farm on my land – what do I do?

If no agricultural activity is taking place on a parcel, and has not taken place in the past 5 years, CWAD enrollment is not required. This is subject to verification, by aerial photos and/or a site visit. If this is the case, please send Regional Board staff a list of APNs and we will take a look. If everything checks out, the property is removed from the mailing list.

If farming is no longer taking place, but the land has been farmed within the past 5 years, enrollment with an exemption is required. If you think you may be exempt, the Regional Board asks that you complete an electronic enrollment form and send a written (or email) request for exempt status. The enrollment form will be used to track the status of the property, but no state

fees would be assessed and the parcels would be exempt from CWADs monitoring and reporting requirements. In such a request, please include the following:

- A request for exempt status for your properties;
- A list of all affected APNs;
- A business address and phone number where you can be reached;
- A brief statement affirming that no irrigation water is applied, and that no chemicals or soil amendments are applied, including fertilizers, manure, pesticides, and herbicides;
- Acknowledgment that Regional Board staff may periodically verify the above.

Exempt status can be revoked if agricultural activities/operations take place on the property (as defined in Order R8-2017-0023).

I only have dry-land farming on my parcel(s). Do I have to enroll?

Many land owners in the area lease their land to local farmers for dry-land farming of wheat and other fodder as a de facto weed abatement practice. If this is the case, enrollment with an exempt status may be required. Parcels that are dry-farmed may be exempt from CWAD requirements if they are entirely non-irrigated, and where no fertilizers, manure, pesticides, or herbicides are applied. But if irrigation water or any of the above ARE applied, full CWAD enrollment is required.

If you think you may be exempt, the Regional Board asks that you complete an electronic enrollment form and send a written (or email) request for exempt status. The enrollment form will be used to track the status of the property, but no state fees would be assessed and the parcels would be exempt from CWADs monitoring and reporting requirements.

In such a request, please include the following:

- A request for exempt status for your properties;
- A list of all affected APNs;
- A business address and phone number where you can be reached;
- A brief statement affirming that no irrigation water is applied, and that no chemicals or soil amendments are applied, including fertilizers, manure, pesticides, and herbicides;
- Acknowledgment that Regional Board staff may periodically verify the above.

Exempt status can be revoked if agricultural activities/operations take place on the property (as defined in Order R8-2017-0023).

For more information:

The enrollment form is located here (choose Region 8 from the drop menu):

<https://geotracker.waterboards.ca.gov/enoi/>

The Order and further info can be found here:

http://www.waterboards.ca.gov/santaana/water_issues/programs/planning/ag_waiver.shtml

If you have questions regarding the CWAD or WDRs for Agricultural Operations, please contact:

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