

STAFF REPORT

IRRIGATED LANDS REGULATORY PROGRAM PROGRAM ENROLLMENT

Some growers enrolled under conditional waivers in the Irrigated Lands Regulatory Program (ILRP) have complained that they are experiencing a competitive disadvantage because they are paying waiver fees and incurring costs to comply with program requirements, while other growers are not. There are four known reasons why growers are not enrolling in conditional waivers under the ILRP. The first three reasons concern a lack of requirements to enroll under a conditional waiver. The fourth reason concerns a lack of compliance with existing requirements.

1. **No Regional Water Board ILRP**

State statutes and the State Water Board "Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program" require the regulation of any non-point source discharge that could affect the quality of waters of the state. However, not all Regional Water Quality Control Boards (Regional Water Boards) have adopted general waste discharge requirements, conditional waivers, or conditional prohibitions to control discharges from irrigated agriculture. Development of these control mechanisms has been delayed because of individual Regional Water Board priorities and available staff resources. Over time, however, more Regional Water Boards have been establishing their own programs. The status of development for each of the Regional Water Boards is shown in the table below.

Regional Water Board	Status
North Coast	Adopted conditional waivers to implement TMDLs in the Shasta and Scott watersheds, which include control of discharges associated with agriculture. Initiated a process to develop regulatory mechanisms to control discharges associated with grazing operations and/or irrigated lands either region-wide or specific to the Klamath Basin. The scope of this future program has not yet been determined.
San Francisco Bay	Initiated a process to develop a conditional waiver to implement a TMDL in one of its watersheds.
Central Coast	Adopted a conditional waiver applicable to growers in its region. It is currently working on an update to this conditional waiver.
Los Angeles	Adopted a conditional waiver for growers in its region. This waiver was recently revised.
Central Valley	Adopted an interim conditional waiver. It is working on replacing this conditional waiver and has released a long-term program proposal and associated environmental documents.
Lahontan	Adopted a conditional waiver for irrigated grazing and will adopt conditional waivers for alfalfa and other commodity specific agricultural discharges as TMDLs are being developed.
Colorado River	Adopted a conditional prohibition for growers in the Imperial Valley watershed to control discharges of sediment as part of a TMDL implementation plan. Similar conditional prohibitions are being developed for Palo Verde Valley, Coachella Valley, and Bard Valley.
Santa Ana River	Developing a conditional waiver for growers in its region.
San Diego	Adopted a conditional waiver for growers in its region. Notices of Intent were due in December 2010. The San Diego Water Board is now processing these applications.

2. Definition of “Discharger” in the Central Valley

When the Central Valley Water Board adopted its interim conditional waiver for discharges from irrigated lands, it defined discharger as “the owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State and could affect the quality of the waters of the State.” In some areas of the Central Valley, irrigation systems do not discharge runoff into surface water and discharge of storm water is infrequent. This has created uncertainty in some areas as to which growers are “dischargers.” Central Valley Water Board staff is developing the next phase of its ILRP and is proposing requirements that would apply to discharges to groundwater. If the Central Valley Water Board adopts these requirements, virtually all growers within the Central Valley who irrigate will likely be subject to the regulatory requirements of its ILRP.

3. Regional Water Board Use of a Conditional Prohibition

The “Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program” adopted by the State Water Board in 2004 authorizes the use of conditional prohibitions to control non-point sources. Using this authority, the Colorado River Basin Water Board has adopted a conditional prohibition that controls discharges of sediment from farms in the Imperial Valley. Only the growers in the Imperial Valley watershed are required to comply with the conditional prohibition. Growers in the Imperial Valley have demonstrated progress in meeting sediment objectives. Unlike growers subject to conditional waivers in other regions, however, none of the growers are required to pay fees to the State Water Board to support Regional Water Board oversight, since fees apply only to growers who apply for waste discharge requirements and waivers.

4. Non-Filers

In the Central Coast, Central Valley, and Los Angeles Water Board regions, some growers have not enrolled under conditional waivers as required by adopted waivers. The Regional Water Boards have been exercising their enforcement authority to identify non-filers and are following due process to enforce enrollment requirements. Although the Regional Water Boards have limited staff resources to identify non-filers and pursue enforcement actions, the Central Coast, Central Valley, and Los Angeles Water Boards have been making progress in enrolling growers in the ILRP. Participation in the ILRP has been steadily increasing and the level of participation is about eighty percent of the irrigated lands acreage over the three regions. Work, such as outreach, identifying and contacting non-participants, and taking enforcement actions to increase participation is continuing. Enforcement action taken by the Central Coast, Central Valley, and Los Angeles Water Boards include the issuance of 13267 Orders, Notices of Violations (NOVs), and Administrative Civil Liabilities (ACLs). The Table below summarizes the enforcement actions taken by the Regional Water Boards and identifies planned activities for the upcoming year:

Regional Water Board	Post Cards Sent	13267 Orders Issued	NOVs Issued	ACLs Issued	Next Steps for 2011
Central Coast		3123	810	5	Staff will continue to issue NOVs and ACLs as resources allow. In November 2010, the Board issued 13267 letters to all enrollees requiring them to update their NOI by January 31, 2010, using an electronic submittal system facilitated by GeoTracker. All enforcement actions are now sent to both the operator and landowner as "Dischargers" increasing landowner accountability and improving landowner engagement in the conditional waiver and related compliance issues. Staff continues to provide compliance assistance to growers for the NOI update and electronic submittal system through in-person, phone, and local enrollment workshop opportunities. The revised NOI and electronic submittal tool also provides growers with an efficient way to access enrollment information and complete enrollment quickly over the Internet. Staff also plans to provide ability for growers to update their NOI electronically via the Internet. The electronic NOI submittal tool will help increase enrollment and provides for greater accuracy and efficiency in data management. In addition, the revised NOI and electronic submittal tool will enable the Central Coast Water Board to identify non-filers more efficiently and prioritize related enforcement. Staff is currently assessing status of enrollment with most severe water quality impairments.
Los Angeles			1100	9	Staff will focus on education/outreach and enrollment workshops. Enrollment workshops have provided the best return on enrollment for the staff time invested. This will be followed by NOVs, as needed. ACLs will only be used to compel enrollment in select cases.
Central Valley	2436	3518	368	6	Staff will request information initially by issuing informal post cards and then by formal 13267 Orders. If the grower does not respond to these requests, then staff will issue an ACL complaint. If a property requires regulatory coverage and the owner (or operator) has not obtained it, staff will then direct growers to submit a report of waste discharge or obtain coverage under an individual or coalition group waiver. If they do not submit a report of waste discharge or obtain coverage under an individual or coalition group waiver, they will be issued an ACL as authorized by Water Code section 13261.