
Central Coast Regional Water Quality Control Board

IRRIGATED LANDS REGULATORY PROGRAM

RESOURCES FOR GROWERS

PROTECTION OF TRADE SECRETS AND SECRET PROCESSES

April 27, 2017

One of the most common questions that growers have about Agricultural Order R3-2017-0002 is: How does the Water Board protect proprietary information regarding agricultural operations that is reported to them?

Water Code section 13267, subdivision (b)(2) states that the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies. Condition 65 of the Agricultural Order includes an explanation of how such trade secrets or secret processes are protected from public disclosure.

The Agricultural Order may require growers to report proprietary information to the Water Board. The Agricultural Order provides the opportunity for growers to identify information related to trade secrets or secret processes which are exempt from public disclosure pursuant to Water Code §13267, including a justification of how those portions of the reports are exempt from public disclosure. As soon as a grower identifies the inclusion of trade secret or secret processes in the reported information, the Water Board will determine if any information identified by the grower qualifies as a trade secret and is exempt from public disclosure. If any member of the public wants to review information reported to the Irrigated Lands Regulatory Program, they must first submit a Public Records Act (PRA) request to review the public records maintained by the Water Board. As stated in Condition 65 of the Agricultural Order, Water Board staff will notify the grower prior to making any information identified by the grower as exempt from public disclosure, available for public inspection.

Below is a description explaining how the Water Board handles information related to trade secret and secret processes submitted by growers.

1. Growers report information to GeoTracker through standard reporting forms such as the electronic-Notice of Intent (eNOI) and Annual Compliance Form. GeoTracker provides the opportunity for growers to identify any section of the Annual Compliance Form (ACF) that they claim contains information related to trade secrets or secret processes which are exempt from public disclosure pursuant to Water Code §13267, including an explanation of why those portions of the reports are exempt from public disclosure.
2. In the case where a grower is reporting information to the Water Board in the form of a farm-specific technical report (e.g. not a standard electronic reporting form such as the

eNOI or ACF), the grower must clearly indicate on the cover of the report that the grower asserts that all or a portion of the report is exempt from public disclosure. The grower must submit a complete report with those portions that are asserted to be exempt in redacted form, and submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). Water Board staff will place a cover letter in the file to clearly indicate that an unredacted version of the report is maintained separately. If the Water Board attorney determines that the records are not trade secrets (see bullet 6 below), then the unredacted version will be available to the public.

3. If any member of the public wants to review information reported to the Irrigated Lands Regulatory Program, they must first submit a Public Records Act (PRA) request to review the public records maintained by the Water Board.
4. As stated in Condition 65 of the Agricultural Order, Water Board staff will notify the grower prior to making any information identified by the grower as exempt from public disclosure, available for public inspection. The grower will have an additional opportunity to justify the asserted exemption and submit a complete report with those portions that are exempt in redacted form.
5. After the receipt of a PRA request, certain information that is not a trade secret or secret process will be made readily accessible to the public, including information on the eNOI, including operation name, farm/ranch name, ranch location, operator information, acreage, etc.
6. The Water Board attorney will carefully review PRA requests to ensure that information is handled in compliance with California Privacy Laws and requirements related to trade secrets and other protected information. Upon receipt of a PRA request, the Water Board staff and attorney will determine whether any such report or portion of a report, where a grower has asserted exemption from public disclosure, qualifies for an exemption from public disclosure. If the Water Board disagrees with the asserted exemption from public disclosure, the Water Board staff will notify the grower prior to making such report or portions of such report available for public inspection.

For more information about the Irrigated Lands Regulatory Program, including additional resources and guidance for growers, please visit the Water Board's Internet site at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/index.shtml

If you have questions regarding the Irrigated Lands Regulatory Program or need additional assistance, please contact the Water Board at (805) 549-3147.