

# Non-participant Compliance & Enforcement in the Eastern San Joaquin River Watershed



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Irrigated Lands Regulatory Program

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Central Valley Water Board Meeting  
6 June 2014

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Good morning/afternoon Chair Longley and members of the board.

Presenter: Brett Stevens

I'm here to provide you with a status update on the Irrigated Lands Program's non-participant compliance and enforcement activities in the Eastern San Joaquin River Watershed.

# Topics

- Outreach procedures & timeline
- Enforcement activities
- ESJC enrollment trends

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The major topics that I will discuss are board staff's outreach procedures and timeline,

our current and planned enforcement activities,

and enrollment trends for the East San Joaquin Water Quality Coalition.

This presentation focuses on the Eastern San Joaquin Watershed Area, which is the area bounded by red in the displayed figure.

# Background

- General Order approved in December 2012
- Regulation of discharge to groundwater begins
- 120-day open enrollment period ended May 2013



These are some significant events to keep in mind when considering East San Joaquin outreach:

In December 2012, the Central Valley Water Board adopted a waste discharge requirements general order for growers within the Eastern San Joaquin River Watershed.

A key change that occurred with the new East San Joaquin Order was the regulation of waste discharge to groundwater in addition to the regulation of surface water. This change greatly expanded the number of irrigated parcels that now require regulatory coverage under the Irrigated Lands Program.

This change also simplified staff's efforts to identify non-participants requiring coverage because the change removed the ambiguity for staff in trying to determine if a given parcel discharged to surface water.

Another key event was the open enrollment period: after the East San Joaquin Coalition was approved to serve as the third-party group, growers had 120 days to directly enroll with the Coalition. This 120-day period ended in May 2013.

# Preparing for Outreach

- Public Data for GIS
  - Land Use – Farmland Mapping and Monitoring Program (FMMP)
  - County Assessor's lists
  
- Vetted w/  
Water Board Data
  - Dairy-Permitted Lands
  - Coalition Participant Lists



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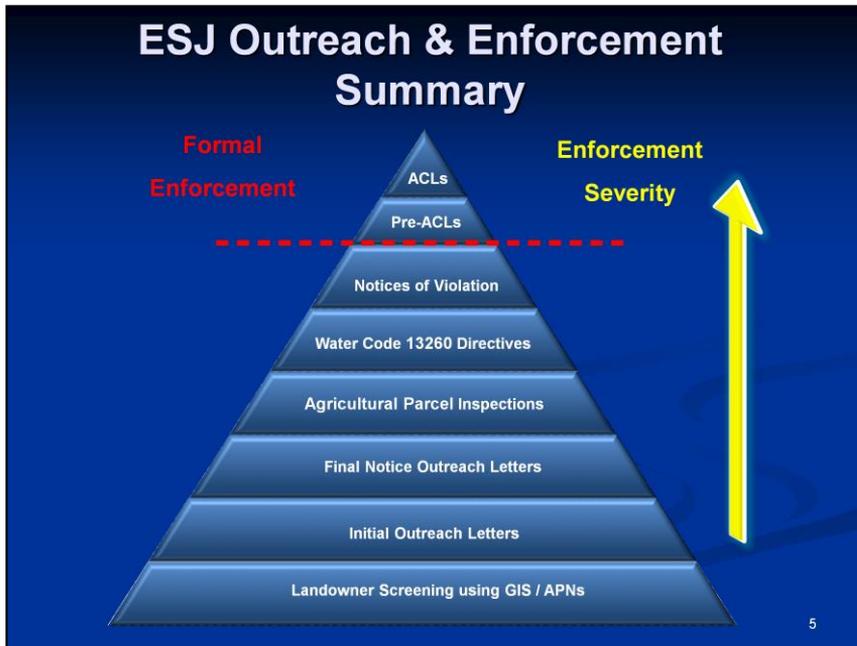
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In our preparation of mailing lists to landowners with irrigated lands, staff used Geographic Information System technology to overlay parcel maps and an irrigated cropland map;

the cropland map came from the California Department of Conservation's Farmland Mapping and Monitoring Program.

Through this effort, staff identified a total of 4,937 landowners with a total of about 284,000 acres of land for outreach.

The landowners' parcels were vetted to remove lands permitted by the Dairy General Order and lands already enrolled with the Coalition.



This figure provides a summary of the steps staff has gone through in pursuing outreach and enforcement in the Eastern San Joaquin Watershed.

I've already discussed the first step, which is identifying potential owners of irrigated lands.

The remaining steps that I'll be discussing are issuing outreach letters during the open enrollment period;

conducting agricultural parcel inspections;

issuing Water Code section 13260 Directives;

sending Notices of Violation for those who don't respond to the Directives;

sending pre-Administrative Civil Liability or pre-ACL letters;

and finally, issuing ACL Complaints.

# East San Joaquin Letter Mail Out

- Landowners identified for outreach:
  - 4,937 “open enrollment” letters
  - 284,013 acres
- Total Response by May 2013 Deadline
  - 2,829 landowners (53%)
  - 158,732 acres (52%)
- New Enrollment
  - 2,142 land owners (40%)
  - 123,422 acres (41%)



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Prior to the end of the open enrollment period, staff sent out two mailings to landowners whose parcels were identified as not having regulatory coverage.

The first set of mailings in January and February 2013 went to over 4,900 landowners that likely required coverage.

A second notice was sent in April 2013 to nearly 2,400 landowners who had not responded to the first mailing.

Of the landowners who received an open enrollment letter, 40 percent joined the East San Joaquin Coalition by the May deadline.

# Other Outreach

- Coalition Outreach
- Local Newspapers
- Farm Bureaus



In addition to the outreach letters that staff sent, credit is also due to the East San Joaquin Coalition, which sent letters out on their own and hosted grower outreach events.

These efforts certainly contributed to the Coalition enrollment increase that occurred from January to May 2013.

Additionally, articles concerning the new regulatory requirements appeared in local papers during the open enrollment period;

And the Madera, Merced and Stanislaus County farm bureaus also informed growers about the new water quality regulations.

# Field Inspections

- Confirm commercial irrigated lands
- 1,894 parcels inspected
- 507 parcels remaining
- Check for waste discharges



In conjunction with sending out the letters, staff began inspecting parcels that had not enrolled.

These inspections began in May 2013 and are ongoing.

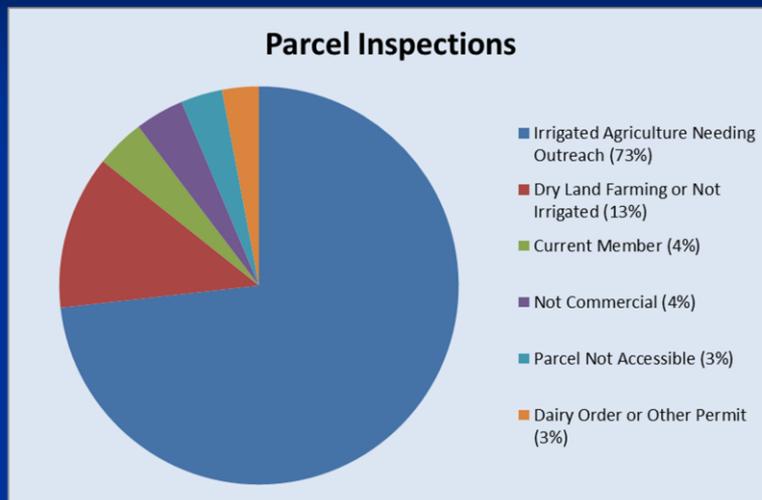
The inspection step is important to ensure that further compliance and enforcement actions are directed at parcels that are being used for irrigated agriculture.

Staff has inspected nearly 1,900 parcels, which account for over 120,000 acres.

About 500 parcels remain to inspect.

Parcel inspections also allow staff to have a field presence and check local water bodies for irrigation-related and storm water-related waste discharges.

# Field Inspection Outcomes



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The inspections have resulted in a number of outcomes, but three quarters of the time the inspections confirm irrigated agriculture requiring regulatory coverage.

Staff found dry land farming or no irrigation 13 percent of the time.

And parcels were sometimes found to have Coalition or Dairy General Order coverage, or non-commercial land use.

Other parcels were found to be inaccessible through public property.

## Water Code 13260 Directives

- Sent after open enrollment period ends
- For confirmed owners of commercial irrigated lands
- 519 Directives issued to date
- Non-responders receive NOV



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For those parcels with evidence of commercial irrigated land use, the Assistant Executive Officer issued Water Code section 13260 Directives, thus informing the landowner of the requirement to get regulatory coverage for their discharges.

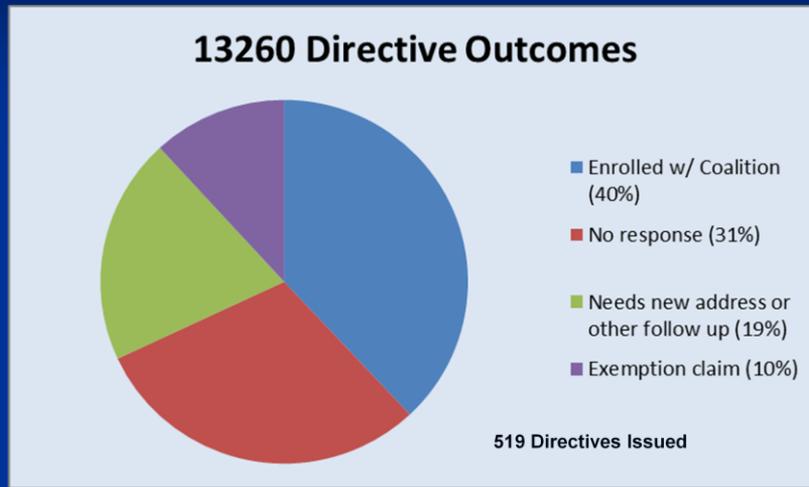
Over 500 such directives have been issued accounting for over 71,000 acres.

Landowners were given 15 calendar days to respond to the directive by submitting a notice of intent to the board to get regulatory coverage.

Landowners who did not respond were issued a Notice of Violation and given 15 calendar days to respond to the NOV.

Over 100 landowners have received NOVs.

# Directive Outcomes



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Staff has received the following responses to the Directives :

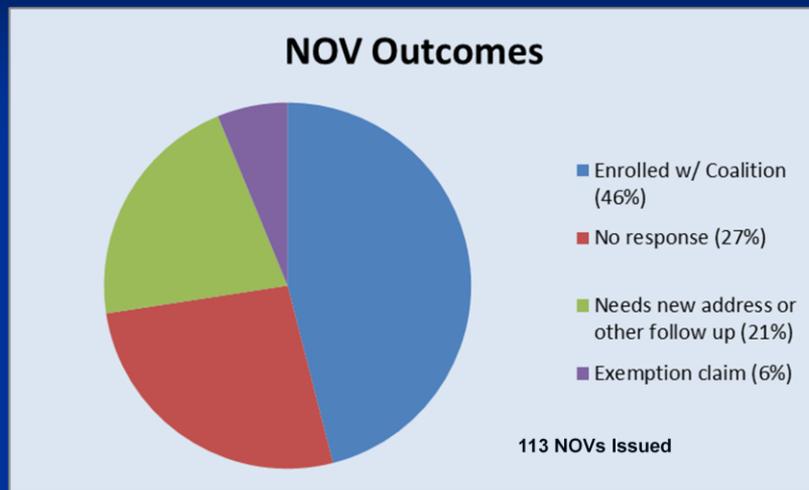
About 40 percent of the time, the landowner gets the required regulatory coverage and becomes a Coalition member;

About a third of the time, staff received no response.

About a fifth of the Directives were returned because of a wrong address or going unclaimed; these outcomes require follow up by staff

And a tenth of the responses have been exemption claims, such as that the property was sold, or it has Dairy Order coverage.

# NOV Outcomes



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As I mentioned earlier, 13260 Directives are followed up with Notices of Violation.

The outcomes for the NOV's have been similar to the Directive outcomes,

but with somewhat better enrollment results and a smaller proportion of exemption claims

# Pre-ACL Letters

- For those who don't respond to NOV
- 24 issued to date; 4 more pending
- Landowners who don't respond receive ACL Complaint



Landowners who fail to respond to the NOV receive a letter notifying them of a forthcoming ACL Complaint;

Staff calls this a pre-ACL letter, which gives the recipient an opportunity to have a settlement discussion with the Prosecution Team.

Staff has sent 24 pre-ACL letters; and four more are pending.

If the landowner fails to respond to the pre-ACL letter, then an ACL Complaint is issued.

The parcel marked in red is an example of a property bordered by Coalition members or dairy property; it is not an actual enforcement target, and is shown as an example only.

# Pre-ACL Letter Outcomes

- Responses not yet due for 13
- Two w/ no further action
- Two sold property (no longer dischargers)
- Two pending settlements



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With regard to pre-ACL letter outcomes,

Responses are not yet due for 13 letters

For the remaining letters, no further action was pursued for two because the landowner obtained the required regulatory coverage;

In these cases, the Prosecution Team determined there were special circumstances that led to the non-compliance.

Two pre-ACL letters have resulted in notification to staff that the property was sold, requiring the issuance of a 13260 Directive to the new landowner.

And two pre-ACL letters have resulted in settlement agreements that are still pending.

# Pre-ACL Letter Outcomes

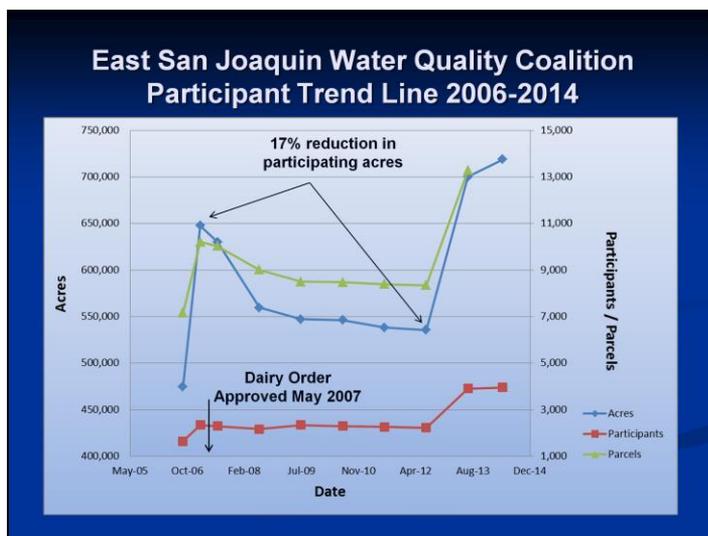
- Five w/ no response – ACL Complaints issued
- Proposed fine amounts for ACL Complaints: \$2,240 to \$8,600



There was no response to the five other pre-ACL letters, so those landowners have been issued ACL Complaints.

These are the pending Complaints that Chair Longley referenced in his opening remarks.

The proposed fine amounts for the five ACL Complaints range from \$2,240 to \$8,600.



The point of all this outreach and enforcement is to get commercial irrigated lands the proper regulatory coverage;

and for the majority of growers, this means joining the East San Joaquin Coalition.

This graph shows Coalition enrollment trends since participant lists were first submitted to the Water Board in 2006.

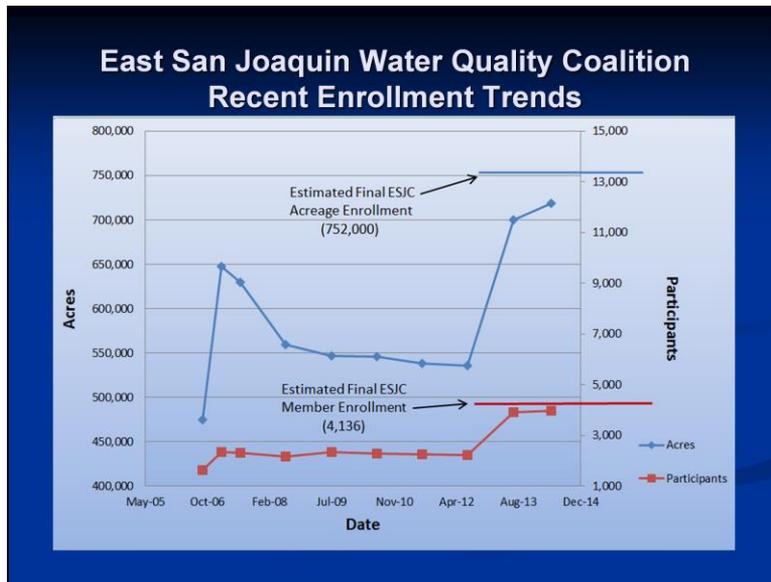
There was a 17 percent reduction in acre enrollment in the years before the East San Joaquin Order was approved.

This was caused by Irrigated Lands transfers to Dairy Order coverage;

growers becoming aware of, and claiming, the surface water exemption under the old program;

growers reducing acreage from total to just irrigated acres;

and member attrition



The East San Joaquin Coalition has seen a substantial enrollment increase since the Eastern San Joaquin Watershed General Order was approved in December 2012.

Through the board's efforts and the Coalition's efforts, participating acreage has increased 34 percent since this time;

and the number of growers joining the coalition has increased by 78 percent.

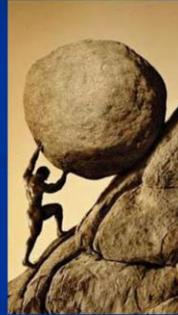
There are currently about 719,000 acres enrolled in the East San Joaquin Coalition.

Staff estimates that the final enrolled acreage will be around 752,000 acres. Based on this final acreage, the Coalition is currently at 95 percent of its final enrollment.

Staff's estimate for final member enrollment is around 4,100, which would put the Coalition currently at 95 percent of its final member enrollment.

## Outreach Challenges

- Margins of error in FMMP and assessor's parcel data
- Identifying dairy parcels
- Contacting and enforcing against private citizens
- List of non-participating growers not available



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In implementing our East San Joaquin outreach, staff has dealt with many challenges in identifying commercial irrigated lands.

The agricultural maps from the Farmland Mapping & Monitoring Program, for example, were last prepared in 2010;

These maps are now four years old, and they do not include recently-developed foothill almond orchards and other more recent agricultural or urban development.

Additionally, the FMMP maps include roads, structures and other non-irrigated lands, which can lead to an over-estimate of final irrigated lands needing Coalition enrollment

Staff's county assessor's parcel data is also two or more years old;

the assessor's data is dynamic, with landowners regularly dividing and combining parcels that will have new parcel numbers;

When parcels are sold, staff must begin outreach anew; so, for example, if a landowner doesn't inform staff of a property sale until receiving an ACL Complaint, staff would have to begin outreach with the new landowner by sending a 13260 Directive

## Outreach Challenges

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Staff must also sort thru irrigated lands that should be enrolled under the Dairy Order;

Irrigated Lands staff is coordinating with Dairy Unit staff to complete the Dairy parcel list, but this is a work in progress

Another challenge regarding outreach is trying to contact private citizens who own irrigated lands.

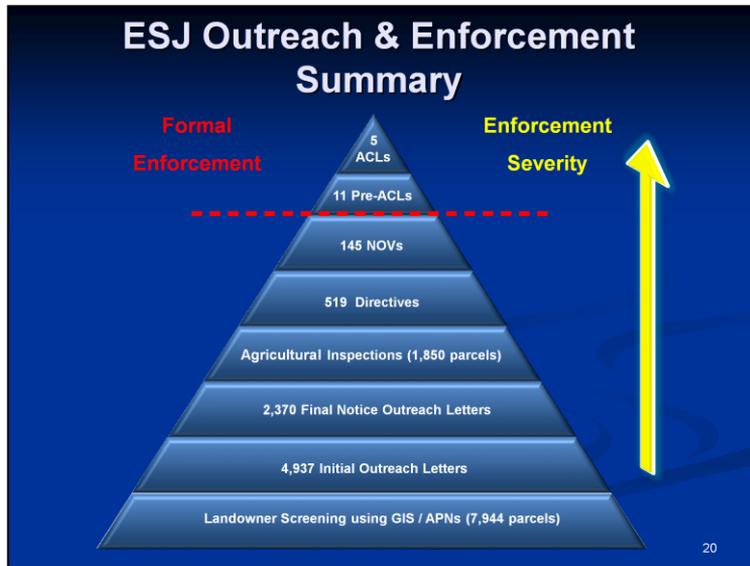
These persons may be absentee landowners who live outside the Central Valley, and even out-of-state;

People are more transient than businesses, and staff oftentimes receives 'return to sender', 'unclaimed', or 'refused' notices in response to our mail outs

Staff's outreach efforts would be greatly simplified if there was a list of non-participating growers, but this list is not available and has to be constructed indirectly from available information.

The East San Joaquin Coalition has indicated that some of their members know of non-participating growers.

If board staff are provided with accurate information from the Coalition or their members, we can follow up with those non-participating growers using the steps I've described.



With this figure here, we're back to the outreach & enforcement summary.

As shown, staff has applied available technology and information to identify potential owners of irrigated lands;

We have inspected thousands of parcels and the Assistant Executive Officer has issued hundreds of directives to landowners requiring them to get the proper regulatory coverage.

Staff has also used the progressive enforcement approach outlined in the State Water Board's Enforcement Policy to bring landowners into compliance.

Our first batch of five ACL Complaints has been issued, and we anticipate more in the near future.

Although there is additional work to be done to bring all of those requiring regulatory coverage into compliance, the board's outreach and enforcement efforts have been successful in moving very close to that goal in a relatively short time.

# Questions/Comments?



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This concludes my presentation.

Joe Karkoski and I are available to answer your questions.

# 2005-2012 Outreach

- 3,559 Water Code 13267 Orders issued to all coalition areas
- 959 13267 Orders issued in ESJ for 358,615 acres
- 230 Notices of Violation issued in ESJ for 119,511 acres
- One ACL Complaint issued

# ESJ Final Acreage Est.

- Current enrolled acreage: 719K
- Remaining acreage for staff inspection or Directive mail out: 46K
- About 73% of remaining acreage will enroll:  
 $46K \times 0.73 = 33K$
- $719K + 33K = 752K$  final acres