

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

RESOLUTION R7-2011-0014

Amendment to the Water Quality Control Plan for the Colorado River Basin Region
to Establish a Conditional Prohibition
and
Implementation Plan for Agricultural Wastewater Discharges Originating
within the Palo Verde Valley and the Palo Verde Mesa

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board), finds that:

1. An updated Water Quality Control Plan for the Colorado River Basin (Basin Plan) was adopted by the Regional Water Board on November 17, 1993, approved by the State Water Resources Control Board (State Water Board) on February 17, 1994, and approved by the Office of Administrative Law (OAL) on August 3, 1994. This Basin Plan has been updated to include amendments adopted by the Regional Water Board through December 2008.
2. The Basin Plan may be amended in accordance with the California Water Code (CWC) Section 13240 et seq.
3. CWC Section 13241 authorizes the Regional Water Board to establish Water Quality Objectives (WQOs). CWC Section 13242 sets forth requirements for implementation programs to achieve WQOs.
4. The Basin Plan specifies the following beneficial uses for the Palo Verde Valley Drains, the Palo Verde Valley Lagoon (hereafter referred to as "Lagoon") and Palo Verde Outfall Drain (hereafter referred to as "Outfall Drain"):
 - i. Water Contact Recreation (REC I)
 - ii. Water Non-Contact Recreation (REC II)
 - iii. Warm Freshwater Habitat (WARM)
 - iv. Wildlife Habitat (WILD)
 - v. Preservation of Rare, Threatened, or Endangered Species (Only applies to the Palo Verde Lagoon and Outfall Drain)
5. CWC Section 13243 authorizes the Regional Water Board to specify certain conditions or areas where discharges of specific types of waste will not be permitted.
6. Pursuant to CWC Section 13369, the State Water Board adopted the Nonpoint Source Implementation and Enforcement Policy on May 20, 2004, subsequently approved by OAL on August 26, 2004. The policy requires Regional Water Boards to regulate all nonpoint sources of pollution using the administrative permitting authorities in the Water Code, including, but not limited to: (1) Basin Plan prohibitions, (2) conditional waivers of waste discharge requirements, or (3) waste discharge requirements (WDRs).

7. Palo Verde Valley (Valley) straddles southern Riverside County and northern Imperial County. The Valley is bordered to the north by the Big Maria Mountains, to the west by Palo Verde Mesa (Mesa), and to the south and east by the Colorado River. The Valley is nine (9) miles wide, thirty (30) miles long, and relatively flat ranging from 290 feet above mean sea level (MSL) in the north, to 220 feet above MSL in the south. Soils are well-drained, fine-grained sands and loam alluvial deposits from the Colorado River.
8. The Palo Verde Mesa, formed by flooding of the Colorado River, is divided into the upper and lower terrace. Farming outside the Valley is largely limited to the lower terrace, which is one (1) mile wide, and sixty (60) feet higher in elevation than the Valley. Soils on the Mesa are excessively drained to well-drained fine sand, gravelly sand and loam, older alluvial deposits derived from the adjacent mountains (USDA, 1974).
9. Palo Verde Irrigation District (PVID) administers water delivery, and the agricultural runoff drain system that services the Palo Verde Valley and the Palo Verde Mesa. PVID diverts water from the Colorado River at the Palo Verde Diversion Dam to irrigate approximately 131,000 acres. It also manages 142 miles of open drains that discharge agricultural runoff into the Palo Verde Outfall Drain. The Palo Verde Outfall Drain discharges into an old channel of the Colorado River at the Cibola National Wildlife Refuge before joining the present Colorado River channel.
10. Farming practices in the Valley generate agricultural discharges that may impact the quality and beneficial uses of the aquifer in the Valley and Mesa areas that is hydraulically connected to the Colorado River (river aquifer), and surface waters in the drains, Palo Verde Lagoon, and Colorado River. For the purposes of this Basin Plan Amendment, agricultural wastewaters are defined as:
 - i. storm water runoff from irrigated lands, and
 - ii. irrigation return water, which includes surface discharges (also known as "tailwater"), and subsurface discharges (known as "tile water" in tiled areas, or "seepage" in areas not tiled).
11. Dischargers/Responsible Parties for the subject amendment include:
 - i. farmland owners, renters/lessees, and operators/growers in the Palo Verde Valley and Palo Verde Mesa, who discharge agricultural wastewater that could affect the quality of State waters; and
 - ii. Palo Verde Irrigation District and individuals conducting drain operation and maintenance (O&M) activities that could affect the quality of State waters.
12. PVID services 189 square miles (approximately 131,000 acres) in Riverside and Imperial Counties, and has agreed to manage a "Group Compliance Program" to assist dischargers implement the proposed amendment. As such, PVID is responsible for outreach and education, organizing the farmers, submitting farm Water Quality Management Plans, and performing water quality sampling.
13. The Palo Verde Lagoon and Outfall Drain are listed on the 2006 Clean Water Act Section 303(d) list due to violations of WQOs for pathogens, and Dichloro-Diphenyl-Trichloroethane (DDT).

14. Based on the California Department of Pesticide Regulation Report for the Palo Verde Subbasin, dated December 19, 2007, pesticides used by area farmers that are constituents of concern associated with agricultural runoff include: Chlorpyrifos, Malathion, Dimethoate, and Endosulfan.
15. To protect the beneficial uses in Finding No. 4, the Basin Plan includes a narrative WQO for Chemical Constituents in Chapter 3, Section II.N, which states in relevant part: *No individual chemical or combination of chemicals shall be present in concentrations that adversely affect beneficial uses*
16. A conditional prohibition may include specific conditions under which application or enforcement of the prohibition for a particular discharge may be waived. Prohibitions allow the Regional Water Board to respond in a timely manner to nonpoint source pollution from activities that threaten, or impair water quality, create nuisance conditions, or require an emergency response.
17. The proposed Basin Plan Amendment is contained in Attachment A, incorporated herein and made part of this resolution. The amendment modifies Chapter 4 of the Basin Plan: *Implementation, III. Nonpoint Source Controls, A. Agriculture.*
18. The amendment requires Dischargers/Responsible Parties to implement farm management practices that ensure compliance with applicable water quality standards.
19. The amendment enacts a prohibition that includes conditions that a Discharger/Responsible Party must comply with. These conditions include:
 - i. Enrollment in a Group Compliance Program, approved by the Executive Officer, and compliance with the group's requirements; or
 - ii. Submittal directly to the Regional Water Board an individual water quality management plan (WQMP) and, if applicable, a drain water quality plan (DWQP) for review/approval by the Executive Officer, and implementation of the approved WQMP/DWQP; or
 - iii. Submittal of a Report of Waste Discharge for general or individual Waste Discharge Requirements.
20. The Regional Water Board considered factors in CWC Section 13241, including economic considerations, to develop the proposed amendment. The cost of implementing the amendment is reasonable given the improvement in water quality that is expected.
21. Regional Water Board staff prepared a Staff Report describing the proposed amendment, and evaluating reasonable alternatives. The Staff Report is titled *An Amendment to the Water Quality Control Plan for the Colorado River Basin Region to Establish a Conditional Prohibition and Implementation Plan for Agricultural Wastewater Discharges Originating within the Palo Verde Valley and the Palo Verde Mesa, Riverside and Imperial Counties, California* (hereafter referred to as Staff Report). The Staff Report includes an analysis of the (a) reasonably foreseeable environmental impacts for methods of compliance, and (b) reasonably foreseeable alternative methods of compliance. No environmental impacts were identified in the analysis of reasonably foreseeable methods of compliance.

22. The Staff Report also provides a cost estimate for the proposed implementation program, and identifies potential sources of financing, as required by CWC Section 13141.
23. The State Water Board Resolution No. 68-16, *Policy with Respect to Maintaining High Quality Waters of the State* (Resolution No.68-16), requires a regional water board when regulating a discharge of waste, to maintain high quality waters of the state (i.e., background water quality) until it is demonstrated that a change in quality is consistent with:
 - i. the maximum benefit to the people of the state,
 - ii. will not unreasonably affect present and anticipated beneficial uses of waters, and
 - iii. will not result in water quality less than that prescribed in policies (e.g., violation of any WQO).
24. The conditional prohibition established by this Basin Plan Amendment requires Dischargers/Responsible Parties to implement management practices that achieve compliance with WQOs, and therefore protect beneficial uses for the Palo Verde Valley Drains, Lagoon, and Outfall Drain. As such, the Regional Water Board finds the amendment consistent with Resolution No. 68-16 in that any change in water quality is consistent with paragraphs i. – iii. set forth in Finding No. 23 above. Additionally, the Regional Water Board finds the amendment consistent with the federal Antidegradation Policy (Title 40 Code of Federal Regulations (CFR) Section 131.12).
25. This proposed regulatory action meets the “necessity” standard specified in Government Code Section 11353, subdivision (b)(2)(C) of the Administrative Procedure Act (Gov. Code, Section 11340 et seq.).
26. The basin planning process is certified by the Secretary for Natural Resources as a regulatory program exempt from the requirements to prepare an Environmental Impact Report, Negative Declaration, and Initial Study (Title 14, California Code of Regulations (CCR), Section 15241(g)). However, a certified program is subject to other provisions in the California Environmental Quality Act (CEQA) (Pub. Resources Code, Section 21000 et seq.), such as the requirement to avoid significant adverse effects to the environment where feasible. Regional Water Board staff prepared the required documentation to adopt the amendment, including an environmental checklist and written report, in compliance with the State Water Board’s regulatory procedures prescribed for this certified regulatory program (Title 23, CCR, Section 3777).
27. Regional Water Board staff held a CEQA scoping meeting on September 13, 2005, to receive comments on the draft amendment and to identify significant issues to consider.
28. Regional Water Board staff completed an environmental checklist indicating that implementation of the proposed Amendment will not have any significant or potentially significant effects, individually or cumulatively, on the environment.
29. In accordance with state and federal regulations (Title 23, CCR, Section 3775; 40 CFR 25 and 40 CFR 131), Regional Water Board staff circulated for review and comment on July 1, 2010, a Notice of Public Hearing, a Notice of Filing, the Staff Report, the environmental checklist, and draft proposed amendment, to interested individuals and public agencies, including persons with expertise identifying environmental impacts from

implementing the amendment (Public Notice No. 7-10-28). A 60-day public comment period was provided in the Notice from July 1, 2010, through August 31, 2010.

30. The Regional Water Board held a public hearing on September 16, 2010, for the purpose of receiving testimony on the draft amendment. Notice of the Public Hearing was given to all interested persons, and published in accordance with CWC Section 13244. The Regional Water Board heard and considered all comments.
31. Based on oral comments given at the September 16, 2010 public hearing, written comments received and Regional Water Board staff's responses, and the proposed revised amendment and supporting documentation provided to the Board members, the Regional Water Board determined that it would be appropriate to give affected stakeholders and other interested persons an additional opportunity to discuss the issues raised. Accordingly, the Regional Water Board directed its staff to conduct a Workshop to provide a forum for addressing these issues, and to resume consideration of the proposed Amendment at a subsequent Board public hearing after the Workshop was held.
32. The Public Workshop was conducted on November 16, 2010, at the PVID Headquarters in Blythe, California. A Notice of Public Workshop was posted on the Regional Water Board's website on October 14, 2010 (Public Notice No. 7-10-38). At the Workshop, Regional Water Board staff discussed the revisions made to the proposed Amendment in response to public comments received. Also, stakeholders and other interested persons present were given the opportunity to ask questions of Board members in attendance and Regional Water Board staff.
33. Additional public comments were also received and responded to by Regional Water staff following the Workshop. The Regional Water Board considered these comments and responses in the public hearing held on January 20, 2011.
34. Based on the entire record--draft Basin Plan Amendment, environmental checklist, Staff Report, and public comments, and staff's responses to comments--the Regional Water Board has determined that the subject amendment will not have any significant or potentially significant effects on the environment. Hence, no alternatives or mitigation measures are necessary or proposed to avoid or reduce any significant effects on the environment. The Regional Water Board finds the record, and procedures followed by staff, in compliance with applicable CEQA requirements (Title 23, CCR, Section 3775 et seq.; Public Resources Code Sections 21080.5, 21083.9, and 21159; Title 14, CCR, Section 15187).
35. Basin Plan Amendments for nonpoint source surface waters require approval by the State Water Board and OAL. The proposed amendment is effective under state law after OAL approval.
36. The Regional Water Board finds the Basin Plan Amendment developed in compliance with CWC Section 13240 et seq.

NOW THEREFORE BE IT RESOLVED THAT,

1. Pursuant to CWC Section 13240 et seq., the Regional Water Board, after considering the entire record, including oral testimony at the hearing, hereby approves the Staff Report, and adopts the Basin Plan Amendment as set forth in **Attachment A**.
2. Pursuant to CWC Section 13245, the Executive Officer is hereby directed to forward the Basin Plan Amendment administrative record to the State Water Board for review and approval.
3. Pursuant to CWC Sections 13245 and 13246, the Regional Water Board hereby requests that the State Water Board approve the Basin Plan Amendment, then forward the amendment with supporting documents to OAL for approval.
4. The Executive Officer is directed to transmit to the California Department of Fish and Game payment of its required CEQA filing fee for certified regulatory programs (\$965.50 as of January 1, 2011), which include this Basin Plan Amendment, as prescribed by California Fish and Game Code Section 711.4 and implementing regulations set forth at Title 14, CCR, Section 753.5.
5. If during the review and approval process, Regional Water Board staff, the State Water Board, and/or OAL determine that minor, non-substantive edits to the language of the amendment are needed for clarity or consistency, the Executive Officer may authorize such change(s), and shall inform the Regional Water Board accordingly.
6. After OAL approval of the Basin Plan Amendment, a Notice of Decision (NOD) concerning project approval shall be filed with the Secretary for Natural Resources in accordance with Public Resources Code Section 21080.5(d)(2)(E), and Title 23, CCR, Section 3781, and to include with the NOD a copy of the CEQA filing fee paid to the California Department of Fish and Game.

I, ROBERT PERDUE, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on January 20, 2011.


ROBERT PERDUE
Executive Officer