

California Regional Water Quality Control Board
Santa Ana Region

April 22, 2016

ITEM: 6

SUBJECT: Supplemental Staff Report: Conditional Waiver of Waste Discharge Requirements for Agricultural Operations in the Watersheds of the San Jacinto River and its Tributaries, Canyon Lake and Lake Elsinore and their Tributaries, Collectively, "The San Jacinto River Watershed", Riverside County, Order No. R8-2016-0003, and Draft Mitigated Negative Declaration

DISCUSSION:

Consideration of this proposed Conditional Waiver ("CWAD") and the draft Mitigated Negative Declaration was scheduled for the Regional Board's January 29, 2016 meeting but was postponed due to the lack of a quorum.

Since that time, as described briefly below, the State Water Resources Control Board has issued a draft order that is expected to provide precedential direction to the regional boards regarding the requirements that should be imposed to regulate agricultural activities in California. Regional Board staff have reviewed the State Board's draft order and considered whether and what changes to the CWAD are necessary to assure conformity with that draft order. On the basis of that review, staff now recommends generally minor modifications to the draft CWAD, which are included in the tentative Order attached hereto. Of more significance is staff's recommendation to include a new finding (#91) that speaks to the conformity of the CWAD with the State Board's proposed direction. In addition, the tentative CWAD now includes minor changes to address informal comments received regarding the potential liability of a Coalition Group administrator, if a Group is formed and an administrator identified, for compliance with the CWAD.

The following provides a succinct overview of the State Board's draft order and the rationale for and nature of the changes recommended to waste discharge requirements issued to certain agricultural operators in the Central Valley Region. Again, this order is expected to be precedential.

The Central Valley Regional Water Quality Control Board (Central Valley Regional Board) adopted Waste Discharge Requirements in 2012 and 2013 that regulate irrigated agricultural operations in the East San Joaquin River Watershed. These requirements (Orders No. R5-2012-0116 and R5-2013-01000) reflect the evolution of the Central Valley Regional Board's agricultural regulatory program, which began in 1982 and was structured initially (and thereafter in 2003 and 2006 regulatory updates) as a waiver of waste discharge requirements under Water Code Section 13269. Order No. R5-2012-0116 was issued to growers within the East San Joaquin River Watershed that are members of a specific third-party group (East San Joaquin Water Quality Coalition); Order No. R5-2013-0100 was issued to irrigated lands dischargers within that watershed that are not participating in a third-party group. These Orders establish a number of requirements for monitoring and planning, for implementation and evaluation of management practices, and for participation in education and outreach activities. In the case of

Order No. R5-2012-0116, certain requirements are assigned to the Members of the Third-Party Group, while other requirements are to be implemented by the Third-Party Group.

The State Board reviewed Order No. R5-2012-0116 on its own motion and on February 8, 2016 issued a draft Order that generally upholds the structure and requirements of Order No. R5-2012-0116 but directs a number of revisions to add: greater specificity and transparency in reporting of management practice implementation; reporting of nitrogen application and removal data needed to assess and manage nitrogen application and potential impacts to groundwater; and, to expand the surface and groundwater monitoring programs. Many of the revisions implement the conclusions and recommendations of an agricultural expert panel convened in response to a legislative effort to address nitrate in groundwater.

Tentative Order No. R8-2016-0003 includes requirements for BMP implementation and evaluation, nutrient management planning, monitoring and education/outreach that are generally comparable to and are intended to achieve the same level of water quality and beneficial use protection as those requirements established in Order No. R5-2012-0116 and as directed in the State Board's draft precedential order. Key differences and the rationale for those differences include:

- While Order No. R5-2012-0116 was issued explicitly for agricultural operators who are members of a specific third-party group, Tentative Order No. R8-2016-0003 specifies requirements that can be met by each individual agricultural operator or by individual agricultural operators as members of a coalition or group. This difference reflects the long history of regulation of agricultural activities by the Central Valley Regional Board and the long-term, established nature of the identified third-party group. No such third-party group has as yet been identified in the San Jacinto River Watershed. Tentative Order R8-2016-0003 encourages the formation of one or more such groups by providing for the efficiencies of representative, rather than individual, monitoring, BMPs assessments, etc. for those agricultural operators who seek to comply as members of a third-party group or coalition.
- Tentative Order No. R8-2016-0003, if adopted and implemented, would regulate agricultural operations (other than CAFOs) in the Santa Ana Region for the first time. The Tentative Order thus emphasizes initially the collection and reporting of baseline data on the nature of the agricultural operations and discharges therefrom, BMPs that have been implemented and/or are proposed, and monitoring to assess discharge quality. Consistent with these circumstances, and given that enrollees may elect to achieve compliance either individually or as a member of a coalition (if one is formed), Tentative Order No. R8-2016-0003 does not specify a formal Monitoring and Reporting Program at this time, unlike Order No. R5-2012-0116. Rather, enrollees are required to prepare proposed monitoring and reporting programs, including monitoring of discharges, receiving waters and BMP effectiveness, for approval by the Regional Board. The programs are to be implemented upon approval. The programs may be proposed and implemented on an individual basis, or representative programs may be proposed and implemented by members of a coalition. Based on review of the data accrued through the early implementation of the Order, a formal Monitoring and Reporting Program may be formulated and included in the Order at a later date.
- Tentative Order No. R8-2016-0003 requires monitoring and reporting of BMP efficacy so that the need for and nature of adaptive management and improvement of such BMPs can occur. With the addition of changes in response to the State Board's draft order, this includes the requirement for the submittal of nutrient

application and removal data, or an equivalent demonstration of proper nutrient application rates and removal efficiencies. This requirement is consistent with the State Board's draft precedential order.

- The State Board's draft precedential order also anticipates that nitrogen application and removal data will be used as a surrogate for groundwater monitoring and as a measure of potential groundwater quality impacts that may result from agricultural discharges. Groundwater quality monitoring and modeling in the Santa Ana Region is well and long-established, and the Basin Plan identifies nitrate-nitrogen objectives for groundwater management zones, including those in the San Jacinto River Watershed. Accordingly, the collection and reporting nitrogen application/removal data, or an equivalent demonstration of proper application rate/removal BMP efficiency, is appropriate as an indicator of BMP effectiveness rather than as a surrogate for groundwater monitoring. Tentative Order No. R8-2016-0003 requires that agricultural discharges not cause or contribute to violations of groundwater management zone objectives for nitrate-nitrogen (and TDS) and provides for offset programs and water quality trading programs where strict compliance with this receiving water limitation is infeasible.
- It is expected that Order No. R8-2016-0003 will be modified in the future, based on the results and findings of implementation of the Order and the data and experience thereby gained. The Regional Board may elect in future to issue separate orders regulating agricultural dischargers who are members of a coalition and those dischargers who are not members of a coalition, per the Central Valley Regional Board approach.

Included in this item are:

1. Staff Report: Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the San Jacinto River Watershed, Riverside County, Tentative Order No. R8-2016-0003
2. Tentative Order No. R8-2016-0003
3. Draft Mitigated Negative Declaration for the Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the San Jacinto River Watershed

RECOMMENDATION

Board staff recommends:

1. Adoption of Order No. R8-2016-0003, as presented.
2. Approval of the Mitigated Negative Declaration prepared for the adoption and implementation of Order No. R8-2016-0003.
3. That the Board direct the Executive Officer to file a notice of determination with the Office of Planning and Research that contains the information and statements specified in the CEQA Guidelines (14 CCR, Chapter 2, section 15075).