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*Cooperative Extension, University of California*

## **Ag Water & Land Resource Manager**

TEHAMA, GLENN, COLUSA, AND SHASTA COUNTIES

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*A newsletter from the University of California Cooperative Extension seeking to support wise and judicious use of limited water and land resources in the Northern Sacramento Valley.*

### **In This Issue**

#### **Water Quality Waiver for Irrigated Agriculture Contested**

***Coalition Advances Stakeholder-Based Watershed Approach to Achieve Compliance***

*The April 2003 issue of this newsletter provided background about new surface water quality regulations referred to as the "Irrigation Runoff and Storm Water Conditional Waiver". Background on the newly formed "Sacramento Valley Water Quality Coalition" (SVWQC), a proactive group of agricultural stakeholders, was also provided as they prepared to comply with the new water quality waiver. Since that issue, this new waiver has been subject of much debate. This newsletter is intended to keep irrigated landowners informed as this waiver is scrutinized, formed and implemented. Please take a few moments to stay informed on this important issue. Thank you!*

A handwritten signature in cursive script that reads 'Allan E. Fulton'.

Allan Fulton  
Irrigation/Water Resource Advisor  
Tehama, Glenn, Shasta, and Colusa Counties

## **Background**

Waste is broadly defined in the California Water Code to include nearly all water management and agricultural activities that add materials to a watercourse. The Central Valley Regional Water Quality Control Board ("Regional Board") is the state regulatory agency responsible to enforce the Water Code and to protect the beneficial uses of receiving waters. The Regional Board uses a permitting process where waste discharge reporting is required to formulate Waste Discharge Requirements as a means of regulating and protecting waterways.

In 1982, the Regional Board adopted a resolution waiving Waste Discharge Requirements for 23 categories of discharge, including irrigation return flows and storm water runoff from irrigated lands. The 1982 waiver expired on December 31, 2002 and the right of an entity or irrigated landowner to discharge from irrigated lands was terminated. Anticipating the expiration of the 1982 waiver, on December 5, 2002, the Regional Board adopted a new "Conditional Waiver for Irrigation Return Flows and Storm Water Runoff from Irrigated Lands".

Under the December 5, 2002 "Conditional Waiver" the Regional Board will allow irrigation discharge for a two-year period, beginning January 1, 2003 under the following conditions:

- 1) The dischargers will actively participate in a watershed effort that assists in achieving water quality objectives to comply with the waiver;
- or**
- 2) The dischargers will apply for and obtain an individual Waste Discharge Requirement Permit to comply with the waiver.

In January 2003, a broad group of Sacramento Valley water districts, farm organizations, and waterfowl organizations formed the Sacramento Valley Water Quality Coalition. The Coalition initiated a Sacramento Valley watershed approach to better understand and manage water quality and to comply with the new Conditional Waiver for irrigation return flows and storm water runoff from irrigated farmlands. A watershed approach is viewed by the Coalition as a sensible and effective way to preserve and enhance the high quality of water resources in the Sacramento Valley. The alternative of individuals or small groups applying for Waste Discharge Requirement Permits to comply with the new Conditional Waiver looms as an enormous regulatory task given there are about 7 million acres of irrigated farmlands and 25,000 entities or individuals that discharge throughout the Regional Board's Jurisdiction.

## **Prescriptive versus Stakeholder-Based Watershed Approach to Comply with Waiver**

Agricultural, wetlands, environmental, and urban stakeholders and the Central Valley Regional Board all recognized that the waiver as adopted on December 5, 2002 was general. Many specifics about the waiver requirements and its implementation had yet to be determined. Many questions remained unanswered such as: How is a watershed defined? How should the identity of irrigated landowners be handled? What constituents of water quality are of concern? What level of monitoring and quality assurance is necessary? What will be the costs associated with the new waiver? Who will pay for the effort to protect the beneficial uses of watercourses? and Will there be accountability?

Acknowledging that much work remained to develop the details of this new Conditional Waiver, the Regional Board directed its technical staff to draft and propose its vision for the Conditional Waiver. The staff recommendations were made available to the public in a report on April 10, 2003. A public hearing before the Regional Board was held in Sacramento on April 24, 2003 to collect public input concerning the staff recommendations. Written public response is still being accepted through May 23, 2003.

During this same period, the Sacramento Valley Water Quality Coalition began to formulate its vision of a stakeholder-based watershed approach to comply with the Conditional Waiver as adopted on December 5, 2002. The coalition has until June 30, 2003 to submit a general plan describing its stakeholder-based watershed approach to compliance.

After the Regional Board staff report was released on April 10, 2003, it became clear that there was a stark contrast between the Regional Board Staff's vision and the Coalition's vision for the waiver. The differences in principle are significant.

## **Regional Board Staff Recommendations for Waiver**

Agricultural and wetlands stakeholders described Regional Board technical staff recommendations as "too prescriptive and inflexible to adapt for specific hydrologic conditions in sub-watershed areas". Others viewed the recommendations as "exceedingly expensive to implement and overly controlling and unnecessary". Some but not all of the more highly scrutinized points of the recommendations included:

- Requiring a pre-determined, systematic monitoring grid consisting of a minimum of 1400 water quality compliance points throughout the central valley. Roughly one compliance point per every 5000 irrigated acres ranging from Kern County in the south to Modoc County in the north.
- Requiring water quality samples be analyzed at least monthly from December through August for as many as 61 commonly used, labeled pesticides, various inorganic and organic forms of nutrients and metals, sediments, pathogens, and temperature. If all constituents of concern were analyzed, costs per sample were estimated conservatively to be a minimum of \$2500 per sample.
- A three-tier fee assessment ranging from about \$400 to \$6,750 per waiver period, probably every two years. Fees would be split among all owners of irrigated lands discharging into each compliance point or located within a sub-watershed. Irrigated landowners would be required to identify themselves by submitting a Notice of Intent to Discharge with the Regional Board. Annual reporting of flow and water quality monitoring data would be required for each compliance point along with data to demonstrate that best management practices are effectively addressing water quality concerns.

## **Coalition Advances Stakeholder-Based Watershed Approach to Comply with Waiver**

The Sacramento Valley Water Quality Coalition has advanced a watershed approach for owners of irrigated farmlands to comply with the waiver. The Coalition's approach is much different in principle than that recommended by the Regional Board staff. Key differences include:

- The Coalition favors incremental development and implementation of water quality monitoring and compliance points rather than imposing a pre-determined and expansive network of monitoring and compliance points throughout the Central Valley. Monitoring for water quality compliance will be more affordable and more respectful of private property rights if hydrologic settings, common cropping patterns, and shared farming practices are considered to establish only essential compliance points.
- The Coalition proposes a "phase-in" approach to monitoring constituents of concern rather than pursuing a broad list of constituents. Constituents of concern can be modified as warranted with experience. Valid water quality concerns exist in the Sacramento Valley such as organophosphate insecticides used in orchard crop production and some pesticides used in rice production. Giving priority to constituents of concern that are already known to negatively impact the environment will result in remediation that returns the greatest improvement in water quality. This phase-in approach also considers that not all water quality constituents of concern may be implicitly connected to irrigated agriculture.
- The Coalition prefers to begin complying with the Conditional Waiver without imposing fees upon owners of irrigated land and favors funding the initial efforts with public funds earmarked for preserving water quality in the Central Valley. The Coalition proposes collaboration with owners of irrigated farmlands through collective groups such as sub-

watershed groups and other local farm organizations rather than seeking individual landowner identity. Mandated landowner identity will likely discourage cooperation in addressing valid water quality concerns. Organization of the 25,000 irrigation dischargers in the Central Valley will strengthen communication and streamline compliance reporting to the Regional Board. Ultimately a mechanism of accountability to comply with Conditional Waiver will be in place.

## **Regional Board Action on Technical Staff Recommendations and Stakeholder-Based Watershed Approach**

On April 24, 2003 the Regional Board narrowly decided to continue with the Conditional Waiver as adopted on December 5, 2002. By a 4 to 3 vote the Regional Board rescinded the technical staff recommendations submitted on April 10, 2003. This narrow majority vote did encourage the Coalition to continue its development of a stakeholder-based, watershed approach to comply with these new surface water quality regulations.

However, the Regional Board will revisit the Conditional Waiver again in a hearing on July 10 and 11, 2003 in Sacramento. The Regional Board is under considerable legal and political interest pressure by several environmental groups such as DeltaKeepers, EarthJustice, California Public Research Group, Natural Resources Defense Council, and the California Sport Fishermen's Protection Alliance to force an immediate end to conditional waivers. They strongly advocate the individual waste discharge requirement process for owners of irrigated lands rather than a watershed approach. Lawsuits have been filed against the Regional Board and state legislation (SB 923) is currently being considered that would severely restrict the scope of conditional waivers.

One Regional Board member described the technical staff recommendations as "command and control" policy and described the stakeholder-based watershed approach "a wink and a nod" policy. In all likelihood, assuming the Conditional Waiver process survives the legal and legislative challenges, there will eventually be some modification by the Regional Board to the December 5, 2002 version of the Conditional Waiver. They are likely to seek rigorous yet reasonable regulations and protocol that are legally defensible. They will also seek a mechanism for identifying those who are not participating in local watershed groups.

## **What Can You Do?**

When dealing with such a large scale, scientifically complex, politically and legally charged issue, it is difficult to know what to do as an individual owner or manager of irrigated farmlands. It is also hard to advise landowners regarding their responsibilities.

To begin with, consider this matter to be very real and serious. Take up a proactive attitude and do not convince yourself that the issue can be ignored and that it will eventually go away. Engaging the issue through the Sacramento Valley Water Quality Coalition is the best opportunity to attempt to affect the political and legal aspects of this water quality issue. Participate in local watershed groups, Resource Conservation District activities, and other local farm organizations to remain current on the issue and to be prepared to respond at the grass roots level. At the very least, it will lessen the element of surprise as this waiver takes shape and is implemented. Consider the likelihood that if stakeholder-based efforts to comply with Conditional Waiver fail, a mandated and expensive permitting process will follow.

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## **Air Quality Funds Available**

The Tehama County Air Pollution Control District (District) is offering Carl Moyer Program incentive funding to businesses and agencies. The program offers funding of up to \$15,000 per project on qualifying diesel engine re-powers for both on-road and off-road heavy duty vehicles, off-road equipment, and engines used for agricultural pumping plants. Applications will be accepted beginning 8:00 a.m., Tuesday, July 15, 2003. For additional information, visit the District website at <http://thecoapcd.net> or call the District office at (530)-527-3717.