

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MARCH 7-9, 2017

Prepared on January 18, 2017

ITEM NUMBER: 6

SUBJECT: Order No. R3-2017-0002, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

STAFF CONTACT: Chris Rose, 805/542-4770 or chris.rose@waterboards.ca.gov

KEY INFORMATION

Location: Central Coast Regional Boundaries
Discharge Type: Discharge to surface and groundwater from commercial irrigated agricultural operations
Existing Orders: Proposed Order No. R3-2012-0011 and associated Monitoring and Reporting Programs Nos. R3-2012-0011-01, R3-2012-0011-02, R3-2012-0011-03

This Action: Adopt Order No. R3-2017-0002

SUMMARY

This agenda item recommends that the Central Coast Water Board adopt proposed Order No. R3-2017-0002, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigation Lands*, hereafter referred to as proposed Ag Order 3.0. Proposed Ag Order 3.0 replaces Ag Order 2.0, which expires on March 14, 2017.

The regulatory requirements of proposed Ag Order 3.0 are largely the same as Ag Order 2.0. However, proposed Ag Order 3.0 expands some Ag Order 2.0 requirements to a greater number of ranches, as discussed with the Water Board and stakeholders over the past several Water Board meetings. Similarly, other Ag Order 2.0 requirements have been reduced or deleted in the proposed Ag Order 3.0. These collective changes reflect input from stakeholders and the Central Coast Water Board, and are informed by data and information analysis from Ag Order 2.0 implementation.

Proposed Ag Order 3.0 has a term of three years, which is shorter than the maximum term of five years for conditional waivers. This proposed shorter term reflects Central Coast Water Board direction from the September 2016 meeting, and is in anticipation of being able to incorporate pending legal rulings and policy decisions, and the results of staff's ongoing analysis, in a time-frame sooner than the standard five-year waiver term. Staff's ongoing analysis includes the State Water Board's Antidegradation Policy. When this analysis is adequate for a long-term program, staff will recommend revised requirements. As such, proposed Ag Order 3.0 is intended to be a temporary, interim order to bridge the gap between the expiration of Ag Order 2.0 and the Water Board's consideration of Ag Order 4.0.

Maintaining regulatory coverage of irrigated agricultural discharges via proposed Ag Order 3.0 will provide clarity for growers covered by the current order. Order continuity will also allow staff to focus on implementation of the new Ag Order 3.0, as well as development of Ag Order 4.0. It is important to complete the work of adopting a new Ag Order at this Board meeting and minimize confusion and resource inefficiency by leaving irrigated agriculture unregulated (as Ag Order 2.0 expires on March 14, 2017). Staff recommends adoption of Ag Order 3.0 as proposed.

DISCUSSION

This agenda item recommends that the Central Coast Water Board adopt proposed Order No. R3-2017-0002, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigation Lands*, also known as Ag Order 3.0 (Attachment 1 [Order], Attachment 2 [Additional Findings], and Attachments 3-5 [Monitoring and Reporting Programs for Tiers 1-3]). Proposed Ag Order 3.0 will replace Ag Order 2.0.

Note that Attachments 1 through 5 are “clean” copies of proposed Ag Order 3.0. To see redline/strikeout versions showing changes from Ag Order 2.0 to proposed Ag Order 3.0, please see this link: [Proposed Ag Order 3.0 Redline/Strikeout Version](#)

Proposed Ag Order 3.0 is an Interim Order

The Central Coast Water Board appointed a new Executive Officer in March 2016, and after a brief transition period the Executive Officer directed staff to begin the Ag Order renewal process, starting with a report to the Water Board at its July 2016 meeting detailing the path forward. With Board direction and concurrence, staff subsequently conducted multiple outreach efforts with stakeholders and briefed Central Coast Water Board members at the Board meeting in September 2016. Staff published draft Ag Order 3.0 for public comment on November 1, 2016. Staff briefed the Board again at its Board meeting in December 2016. Given the limited timeframe available for the preparation of proposed Ag Order 3.0 and the pending legal and policy decisions that will affect the Central Coast irrigated lands regulatory program, staff proposes Ag Order 3.0 as a temporary, interim order to bridge the gap between Ag Order 2.0 and Ag Order 4.0.

Ongoing Outreach Efforts

Staff has engaged in and continued outreach efforts throughout the development of Ag Order 3.0. The following is a list of the outreach events hosted by staff:

- July 28, 2016: Central Coast Water Board meeting discussion item
- August 15, 2016: Webcast meeting with technical service providers
- August 15, 2016: Webcast meeting with environmental and environmental justice advocates
- August 23, 2016: Grower workshop in Salinas
- August 24, 2016: Grower workshop in Santa Maria
- August 31, 2016: Grower workshop at San Luis Obispo County Farm Bureau
- September 9, 2016: Webcast meeting with CDFA, DPR, State Water Board
- September 22, 2016: Central Coast Water Board meeting discussion item
- October 17, 2016: Webcast meeting with technical service providers
- November 7, 2016: Grower workshop at San Luis Obispo County Farm Bureau

- November 9, 2016: Webcast meeting with technical service providers
- November 10, 2016: Grower workshop at San Luis Obispo County Farm Bureau
- November 14, 2016: Webcast meeting with CDFA, DPR, State Water Board, Division of Drinking Water
- November 16, 2016: Grower workshop in Santa Maria
- November 28, 2016: Grower Workshop in Salinas
- November 29, 2016: Grower Workshop at Monterey County Farm Bureau
- December 8, 2016: Central Coast Water Board meeting discussion item
- February 14, 2017: Meeting with CDFA, DPR, State Board, Division of Drinking Water
- February 14, 2017: Webcast meeting with agricultural technical service providers

Draft Ag Order 3.0 documents were made available for public comment on November 1, 2016. The original comment period ended on January 3, 2017, but staff extended the date to January 9, 2017, allowing a 69-day comment period, in response to requests from stakeholders. Staff also published a Notice of Opportunity for Public Comment and Notice of Public Hearing in three separate newspapers in circulation in the Central Coast Region. Staff posted the notice and draft Ag Order 3.0 documents on the Central Coast Water Board website. Staff emailed the notice to enrolled growers and landowners, agricultural consultants, and other interested parties.

Comparison of Ag Order 2.0 and Proposed Ag Order 3.0

The changes to proposed Ag Order 3.0 from 2.0 include existing requirements that are discontinued and existing requirements that are expanded. Table 1 below summarizes the similarities and differences between Ag Order 2.0, Draft Ag Order 3.0 (issued November 1, 2016 for public comment), and proposed Ag Order 3.0 (attached to this staff report), and the reasoning behind the proposed changes.

Table 1: Summary of Differences Between Ag Order 2.0, draft Order 3.0, and Proposed Order 3.0

| Ag Order 2.0 | Draft Ag Order 3.0 | Proposed Ag Order 3.0 | Reason |
|--|--|--|--|
| Term: 5 years | Term: 3 years | Term: 3 years | Will be replaced by more permanent order consistent with pending legal/policy decisions |
| Total Nitrogen Applied: 600 farms required | 1,700 farms required. First report due March 1, 2018 | 1,700 farms required. First report due March 1, 2018 | Need data to address nitrate pollution. Phasing in more universal nitrate tracking requirement. Consistent with Expert Panel |

| Ag Order 2.0 | Draft Ag Order 3.0 | Proposed Ag Order 3.0 | Reason |
|---|---|---|---|
| Reports due date (ex: eNOI, ACF, TNA, Disch Mon): Oct 1 each year | March 1st each year beginning 2018 | March 1st each year beginning 2018 | Grower and consultant request. Aligns with growing season |
| INMP Effectiveness Report due once in Order | Due annually | Due once March 1, 2019 | Grower and consultant request. Discussed at Dec2016 Bd. Mtg. |
| Water Quality Buffer Plan due once in Order | Due annually | Due once March 1, 2019 | Grower and consultant request. Discussed at Dec2016 Bd. Mtg. |
| Individual Discharge Monitoring results due annually | Same | Same | No change from Ag Order 2.0 |
| Photo Monitoring due once in Order | Not Required | Not Required | All interested parties generally agree |
| eNOI: grower must name adjacent waterbodies | Not Required | Not Required | Grower request. Staff can conduct this analysis |
| eNOI updates due each October 1; growers must annually login to system and update | Not required if no change. W/in 30-d of change in enrollment information | Not required if no change. W/in 60-d of change in enrollment information | Grower request to not edit/check eNOI unless change occurs. Some operations have no change from year to year |
| ACF Sec-C Risk Assessment: grower must complete annually | Not required | Not required | Sec-C was used to trigger requirements like TNA. TNA now triggered by high risk crops. Also, Sec-C asked growers to "predict" the |

| Ag Order 2.0 | Draft Ag Order 3.0 | Proposed Ag Order 3.0 | Reason |
|---|-----------------------|-----------------------|--|
| | | | next years farming plans; they stated this largely not possible |
| ACF Sec-B well N concentration: grower must report annually | Not required | Not required | Growers and consultants requested removal because redundant in TNA form. Groundwater monitoring also required in MRPs |
| Operator requirement to notify new operator of Order w/in 60 days | Within 30 days | Within 60 days | Consultants requested retain original 60 day requirement; staff agrees |
| New operator must enroll ranch within 60 days of control | Within 30 days | Within 60 days | Consultants requested retain original 60 day requirement. Staff agrees, but ranch must be enrolled prior to new operator farming |
| Reports are due X-days after ranch termination: X not stated | Within 30 days | Within 60 days | Consultants requested 60 days, staff agrees |

Pending Legal and Policy Decisions

There are a number of pending legal and policy decisions, as staff has discussed during several recent Central Coast Water Board meetings. Proposed Ag Order 3.0 does not attempt to presuppose the outcomes of pending legal and policy decisions; instead, staff anticipates that these decisions will shape the content and timing of Ag Order 4.0, as will staff's completed analysis associated with the Antidegradation Policy. Given these pending factors, Ag Order 3.0 is intended to expand certain requirements where necessary, continue the iterative process of

complying with all water quality requirements, and adjust monitoring and reporting requirements based on current water quality information.¹

State Water Board's Antidegradation Policy

The State Water Board's Antidegradation Policy prohibits degradation of high-quality waters unless the degradation is to the maximum benefit to the people of the state, will not unreasonably affect current and future beneficial uses, and the discharge(s) will not cause exceedances of water quality objectives. Antidegradation requirements are triggered when there is a proposed discharge to a high-quality water. "High-quality waters" are those surface waters or groundwater where water quality is (or was since 1968) better than applicable water quality objectives. In addition, individuals who discharge to high-quality waters must implement "best practicable treatment or control" (BPTC) to avoid pollution and maintain the highest water quality consistent with the maximum benefit to the people of the state.

Staff's analysis with respect to the Antidegradation Policy includes three primary steps: 1) conduct a baseline water quality assessment, 2) determine whether ag discharges have degraded and will degrade high-quality waters, and 3) evaluate if Ag Order 3.0 will result in BPTC of the wastes consistent with the maximum benefit to the people of the State. Staff has completed the first two steps, above, including completing the baseline water quality assessment and compiling information to document that agricultural discharges have degraded high quality waters. More information on the Antidegradation Policy and staff's analysis is provided in Attachment 7.

Technical Discussion

Attachment 6 is a technical discussion summarizing proposed Ag Order 3.0 requirements and current research and data gathered during Ag Order 2.0. Regarding proposed Ag Order 3.0 requirements, key points are as follows:

1. Proposed Ag Order 3.0 requirements are essentially the same as Ag Order 2.0, with some requirements being expanded to include more ranches (total nitrogen applied requirements). Some requirements have been removed or adjusted, where reasonable, as requested by growers.
2. Monitoring and reporting requirements have been revised to reflect current water quality conditions and are necessary to inform the Water Board, the public, and growers about ongoing waste discharge issues and the effects on waters of the state. The cost of the monitoring and reporting requirements is reasonable given the documented severe water quality degradation and threats to beneficial uses. The required information is necessary to monitor waste discharges and prioritize waste loading reduction efforts.

Regarding research and data collected during Ag Order 2.0, key points are as follows:

1. Current research continues to document massive loading of nitrogen to the environment, mainly from synthetic fertilizer.
2. Growers submit certain information to the Water Board per Ag Order 2.0, including total nitrogen applied, crops grown, and information on management practices and the effectiveness of management practices. This reported information is critical for growers, the Water Board, and the public to understand waste loading, where it is occurring, under what circumstances, and what is being done to reduce the loading in an iterative

¹ The antidegradation analysis supporting Ag Order 3.0 considers Resolution No. 68-16 in this context.

manner over time. One of the most valuable aspects of the farm-specific reported data is that staff can follow up directly with growers to reduce the over-application of nitrogen relative to plant uptake ranges and the amount of nitrogen already present in irrigation water.

3. Pesticide use and discharges to waters of the state are an ongoing issue. Monitoring and reporting requirements must be revised periodically to deal with issues such as changing pesticide use.
4. Together, the Ag Order 2.0 data and available research further underscore the need to reduce waste loading from irrigated lands to protect and restore beneficial uses and eventually achieve water quality objectives.
5. Staff acknowledges that more must be done to reduce waste loading, and intends to propose revised requirements in Ag Order 4.0.

California Environmental Quality Act (CEQA)

The Central Coast Water Board is the lead agency pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21199 et seq.). The Central Coast Water Board adopted Ag Order 1.0 in July 2004. At that time, the Central Coast Water Board adopted a negative declaration under CEQA. On March 15, 2012, the Central Coast Water Board certified a final subsequent environmental impact report (SEIR) for the new agricultural order (Ag Order 2.0). The final SEIR was limited to impacts of creating buffer strips.

A subsequent CEQA document is not required unless new information is available that was not known and could not have been known when the prior CEQA document was prepared, or the project's circumstances substantially change and there are new significant effects or a substantial increase in severity of previously identified effects. New information regarding nitrate and pesticides is consistent with that disclosed in the 2004 Negative Declaration and the Final SEIR. Proposed Ag Order 3.0 will not result in an increase in the severity of impacts previously identified. The new monitoring and reporting requirements will not result in a physical change to the environment. In addition, the issuance of Ag Order 3.0 is exempt pursuant to CEQA Guideline 15301 (existing facilities).

Therefore, Proposed Ag Order 3.0 finds that no new information or changed circumstances require the Board to prepare a subsequent or supplemental CEQA document.

COMMENTS

The Water Board received 17 comment letters associated with the draft Ag Order 3.0 by the close of the comment period. Staff's response to these comments is included in Attachment 8. Comment themes included:

1. Policy and legal comments, i.e., whether the proposed order is consistent with the Basin Plan, Antidegradation Policy and Nonpoint Source Policy
2. Total nitrogen applied reporting expansion to more ranches
3. Monitoring and reporting requirements (MRPs), such as surface water, groundwater, requirements for tier 3 ranches, and the process of how MRPs are adopted
4. Economics, such as the cost to growers to comply with monitoring and reporting requirements
5. New findings, especially those related to total nitrogen applied data, antidegradation analysis and pesticide use, found in Attachment A, Additional Findings
6. Human right to water, replacement water, and public health

7. Cooperative monitoring programs, especially the need to keep them viable to assist growers in an ever increasing regulatory environment
8. Toxicity in surface waters

Comments received were largely from agricultural, environmental justice, and environmental stakeholders. Generally speaking, some groups suggested that the proposed order is too stringent, while other groups suggested the order is not stringent enough.

CONCLUSION

Following the appointment of the new Executive Officer and starting at the July Central Coast Water Board meeting, staff articulated a two-part strategy for replacing expiring Ag Order 2.0:

1. Because of the extremely limited time available until Ag Order 2.0's expiration (approximately 7.5 months), develop a replacement that aligns with the existing order.
2. Conduct genuine outreach to stakeholders, incorporating suggested changes as appropriate, as well as incorporating limited order modifications, primarily in the form of changes to existing requirements, informed by the implementation of 2.0.

With direction from the Board, staff attempted to strike a balance between these two, sometimes-competing goals in proposed Ag Order 3.0. At the same time, the proposed changes in the transitional Ag Order 3.0 advance the irrigated lands program forward, with more program adaptation anticipated in the subsequent Ag Order 4.0. This iterative alignment process will continue as we adapt to pending legal and policy decisions and program effectiveness information (i.e., monitoring and reporting) from Ag Order 3.0 implementation. To this end, proposed Ag Order 3.0 has a term of three years, shorter than the normal term of five years for conditional waivers, to allow for more rapid iterative adaptation, and to act as an interim order to bridge the gap between the expiration of Ag Order 2.0 and the Water Board's consideration of Ag Order 4.0. Staff has discussed this approach with the Board and stakeholders during the July 2016, September 2016, and December 2016 Water Board meetings as well as in other outreach events conducted over the past several months. The proposed order reflects input staff has received from interested parties and from the Board.

Maintaining continuity of regulatory coverage of irrigated agriculture beyond Ag Order 2.0 (expires on March 14, 2017) is essential in protecting and restoring beneficial uses, in the efficient use of staff resources, and in reducing confusion among those regulated through this program. Therefore staff provides the proposed Ag Order 3.0 for Board consideration.

RECOMMENDATION

Adopt Ag Order 3.0 as proposed.

ATTACHMENTS

1. [Proposed Order No. R3-2017-0002](#)
2. [Order No. R3-2017-0002, Attachment A, Additional Findings](#)
3. [Monitoring and Reporting Program for Tier 1 Ranches](#)
4. [Monitoring and Reporting Program for Tier 2 Ranches](#)
5. [Monitoring and Reporting Program for Tier 3 Ranches](#)
6. [Summary of Requirements and Information/Data Gathered During Ag Order 2.0](#)
7. [Summary of Antidegradation Policy Analysis](#)
8. [Response to Comments](#)