

California Regional Water Quality Control Board  
Santa Ana Region

July 22, 2016

ITEM: X

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 April 22, 2016 meeting but was postponed to allow the submittal and consideration of additional comments from interested and affected parties. The comments received to-date and Board staff's responses are attached to this report.

Board staff reviewed comments received from the Western Riverside County Agriculture Coalition (WRCAC) (item A in the attached Response to Comments document) and the Riverside County Farm Bureau (Farm Bureau)(item B) prior to the April 22, 2016 meeting. Comments were received from the Inland Empire Disposal Association on May 10, 2016 (item C). Based on that review and discussion of the comments and staff responses with WRCAC, Farm Bureau and Inland Empire Disposal Association representatives, Board staff has made changes to the draft CWAD, as reflected in the draft attached hereto.

*Overarching Concern*

The concern has been expressed by WRCAC and other interested parties that the proposed requirements of the CWAD are complicated and costly to implement, and that it would be infeasible for individual agricultural operators, in particular, to comply. It has been asserted that the adoption and implementation of the CWAD would result in the loss of agriculture in the San Jacinto watershed.

Board staff acknowledges that the CWAD would impose regulatory obligations on agricultural operators (other than dairies) in the Santa Ana Region for the first time. Agricultural operators would be required to engage in new monitoring, reporting, and BMP planning and implementation activities not hitherto required. Effective implementation of these tasks will likely require significant education and technical assistance over time. Available technical resources to provide such assistance (e.g., University of California Extension Farm Advisors and other agricultural management experts) are limited.

Recognizing these circumstances, the draft Order employs a flexible, adaptive management approach that, in Board staff's judgment, will fulfill the Board's obligations to implement the Basin Plan and protect water quality standards while allowing agricultural operators to propose actions to address water quality issues and to modify those actions over time, if and as needed.

The adaptive management approach entails requirements for the submittal by the enrolled dischargers, *individually or as members of a Coalition Group*, of proposed plans and schedules, including those for discharge and receiving water monitoring, BMP implementation and evaluation and nutrient management. These proposed plans are to be implemented upon Regional Board approval. It is expected that as implementation proceeds, these plans/schedules will be reviewed and likely revised based on efficacy evaluations, monitoring results and other information.

The draft Order provides incentives for the formation of and discharger participation in one or more Coalition Groups by providing for representative, rather than individual, monitoring, collective evaluation of BMPs in common use, and the like. In short, participation in a Coalition Group is expected to provide significant economic and resource efficiency. While the draft Order provides for Coalition Group opportunities, the Order does not and cannot dictate participation in such a Group by an individual discharger.

The draft Order also recognizes that no Coalition Group has as yet been formed in the San Jacinto watershed to assist dischargers to comply with the CWAD requirements. To allow time for the formation of one or more Groups, the draft Order requires that dischargers file a Notice of Intent (NOI) to enroll in the CWAD no later than six months from the date of adoption of the CWAD. The NOI would take note of the discharger's participation in any Group that may be formed to assist dischargers to address CWAD requirements.

Board staff acknowledges that in addition to changes over time to the approved plans and schedules that would be implemented by the dischargers in response to the CWAD, the CWAD itself is almost certainly going to need to be revised. Board staff does not assert that the proposed Order is "perfect". However, staff believes that it is a reasonable and appropriate first step to regulate agricultural operations in the San Jacinto River watershed so as protect water quality standards and implement the Basin Plan.

#### *Specific Comments*

The most significant, specific change to the draft Order distributed previously for the anticipated April 22, 2016 hearing is the removal of reference to the draft State Water Board Order concerning waste discharge requirements issued by the Central Valley Regional Board for irrigated agricultural operations in the East San Joaquin River Watershed. Reference to this draft State Board Order was contained in Finding 91 of the draft CWAD submitted for Board and public review for the April 22, 2016 meeting.

The Supplemental Staff Report prepared for the April 22, 2016 meeting provides a succinct overview of that draft Order. The inclusion of this reference was intended to provide information of potential use and interest to the State Board regarding the requirements of the CWAD should the CWAD be adopted by the Regional Board but subsequently petitioned to the State Board.

However, WRCAC and the Farm Bureau objected to the inclusion of reference to the East San Joaquin order since it is in draft form only. These organizations pointed out that the reference would like result in further objections from other parties. Because the recommended Finding does not substantively affect the proposed requirements in the draft CWAD, there is no pressing need to burden the draft CWAD with a potential source of objection. Therefore, staff has removed this reference from the draft Order. Board staff will respond if and as needed to State Board inquiries concerning the requirements in the Order.

In their comments (item B), the Riverside County Farm Bureau cited concerns about requirements in the draft CWAD to submit farm-specific information, such as information concerning pesticide application, irrigation practices, etc., to the Regional Board. The Farm Bureau asserts that such information constitutes intellectual property, trade secrets and proprietary information that must remain confidential. Board staff notes that this issue has arisen in the context of other agricultural regulatory programs by Regional Boards in the state.

The Farm Bureau recommends that the information remain on the farm available for Regional Board inspection and states that Regional Boards throughout the state have adopted this approach. The Farm Bureau points to the approach employed in the Central Valley whereby farm-specific information/evaluations are submitted to established coalitions, which then prepare a summary, compatible with ArcGIS, that is submitted to the Regional Board. The Farm Bureau indicates that this approach has proven effective in providing the Central Valley Board with adequate information to protect water quality while protecting intellectual property, trade secrets, and proprietary information.

Board staff agrees with the merits of this approach. However, unlike the Central Valley, where discharger Coalitions are well established, the Santa Ana Region does not yet have any such coalitions. Should one or more coalitions be formed, the proposed Order requires that the coalition submit a proposed Compliance Program to meet the requirements of this order. That Compliance Program can identify a suitable methodology, such as that described above, to maintain farm-specific information in order to address the confidentiality issue. Provided that it is acceptable to the Regional Board, the proposed methodology would be implemented upon approval of the Compliance Program. Individual dischargers who elect not to participate in a Coalition would need to submit the information and provide suitable documentation and legal justification for the Board to maintain farm-specific information in a confidential manner.

Paul Ryan of the Inland Empire Disposal Association (item jC) recommended modifications to specific language in the draft Order pertaining to physical contaminants and trash to include references to the requirements of Title 14 and the Trash Policy

adopted by the State Water Resource Control Board. Board staff has incorporated appropriate changes based on these recommendations.

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 – January 2016
2. Supplemental Staff Report - April 22, 2016
3. Tentative Order No. R8-2016-0003
4. Draft Mitigated Negative Declaration for the Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural Operations in the San Jacinto River Watershed – May 5, 2015

## **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).