

# Southern San Joaquin Valley Water Quality UPDATE

Fall 2011

## **All irrigators now affected:**

### **State Regulatory Program proposes expansion to include discharges to groundwater**

The Central Valley Regional Water Quality Board has adopted significant amendments to the current Irrigated Lands Regulatory Program (ILRP) to include discharges to groundwater. *The Regional Board's conclusion to include discharges to groundwater in the amended ILRP ensures that virtually all irrigated agricultural operations will fall under the Program.*

The current agricultural waiver applied only to surface water and allowed individuals to avoid regulation if it could be proven that the agricultural operation did not discharge storm-water or irrigation runoff into surface waters of the State. The amended ILRP will begin with the assumption that *every irrigator* is a discharger because of the inclusion of groundwater.

"This is a regulatory program that all farmers will have to deal with," said Dave Orth, coordinator of the Southern San Joaquin Valley Water Quality Coalition. "Except for extremely limited circumstances, irrigators will no longer be able to argue that they are not dischargers."

During the hearings on the amended ILRP, the Coalition and others submitted extensive arguments to the Regional Board opposing the over-reaching regulation of discharges to groundwater, as all irrigated agriculture does not degrade groundwater quality.

The amended ILRP also includes additional changes highlighted below about which landowners should be aware.

The development of the new General Order for the Coalition service area is underway. The Regional Board expects to have an internal draft by June 2012, followed by an administrative draft in September 2012. The Board hearing is expected in January 2013. Because a transition schedule should be created once the Order is adopted, full implementation is not expected until late 2014 or early 2015.

### **New Tier Regulatory Structure**

The amended ILRP calls for a new tiered structure based on groundwater quality for areas of irrigated agricultural operations. The tiers will designate areas as low threat or high threat.

The Coalition's approach will be to concentrate its activities within the high threat areas based on the constituents (nitrates and salts) that have been identified in the groundwater. "Our desire is to focus on solutions," said Orth. "We don't need another monitoring program that does nothing to address specific issues."

The Coalition envisions the General Order (WDR) would generally apply over the entire Tulare Lake Basin; however, a modified program would be developed for foothill and irrigated pasture land.

The General Order may provide some relief for groundwater regulation in certain areas, such as the Tulare Lake Bottom, and other areas with no usable groundwater. As it currently stands, conditions for such terms have not been established, but are expected to be extremely limited. It is unlikely a landowner can assume an exemption or relief from the regulatory program.

### **Farm- Specific Evaluations / Nutrient Plans**

The amended ILRP requires every irrigated agricultural operation to complete a farm-specific evaluation that includes identification of all management practices, not just those affecting water quality, including those that may be considered proprietary. These evaluations must be maintained and made available upon request to Regional Board staff for inspection, which will make the documents open and available to public review.

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The amended ILRP may require irrigated agricultural operations in high risk groundwater areas in which a high level of nitrate has been identified to prepare farm-specific nutrient management plans, signed by a certified crop consultant and/or advisor. These plans must track nutrient inputs and outputs, which is supposed to identify nitrates filtering below the crop root zone. These plans would also have to be submitted to the Coalition or Regional Board upon request, at which time the document becomes public information and subject to outside review.

Part of the emphasis on farm management plans is borne out of the Regional Board's belief that each farmer has a responsibility to acknowledge and comply with state laws protecting water quality. The Coalition is working with the Regional Board staff on the preparation of management plans for specific commodity groups rather than having each individual farmer create a plan.

### **Increased Program Fees**

The State Water Resources Control Board approved a fee increase for the ILRP in September raising fees from \$0.12/acre to \$0.56/acre. For the past several years, the ILRP fees have been held down because of support from the State's General Fund. Despite broad efforts to maintain General Fund support for 2011-2012, the legislators eliminated an allocation from the General Fund, resulting in the fee increase. Implementation of the General Order may prompt another fee increase in 2012-2013 and beyond.

At the Coalition level, costs are expected to increase as a result of work associated with the negotiation of the General Order, and subsequently from the additional monitoring and administration duties required for implementation of the amended ILRP, in whatever form it is finally adopted.

### **Litigation Pending**

The Regional Board certified the Environmental Impact Report for the ILRP in July 2011. The Coalition, in coordination with other coalitions has filed a petition with the State Board challenging the adequacy of the CEQA (California Environmental Quality Act) document. The California Sports Fishing Protection Authority and NRDC also filed a similar petition. Filing with the State Board is the first part of the appeal process, with the Coalition then having the option to file an action with the Superior Court. That filing is dependent upon the State Board's action on the petition and the outcome of the Coalition's General Order.

### **Coalition Role**

The amended ILRP recommends the continued use of coalitions or third-party representation of growers in specific geographic regions or commodities. Coalitions are required to develop and submit for approval a Surface Water Quality Management Plan for any parameter that exceeds water quality objectives two or more times in a three-year period. Coalitions may be required to develop and submit for approval a Groundwater Quality Management Plan within 18 months of issuance of the WDRs by the Regional Board. Interested stakeholders will be provided an opportunity to provide input on these water quality management plans.

Coalitions are expected to be required to track implementation and effectiveness of Best Management Practices; conduct field monitoring studies; determine if progress is occurring in the implementation of Management Plans; demonstrate improvement in groundwater quality; identify failures in meeting time schedules, and the adequacy of grower participation in education/outreach efforts.

### **Next Steps**

The Coalition will continue to meet with the Regional Board staff representing the landowners/growers in an effort to obtain a General Order that best represent water quality issues and conditions for the Tulare Lake Basin. The ability of the Coalition to continue representation of the landowners will depend ultimately on the additional requirements of the Regional Board.

Questions or comments are welcomed and should be directed to the Coalition Steering Committee representative for your region.

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