

**CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD SAN DIEGO REGION**

**Basin Plan Amendment to Include a
Definition of a Commercial Growing
Operation in Conditional Waiver No. 4 for
Discharges from Agricultural and Nursery
Operations**

TECHNICAL ANALYSIS
February 9, 2011

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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To request copies of the Technical Report for the Basin Plan Amendment to Include a Definition of a Commercial Growing Operation in Conditional Waiver No. 4 for Discharges from Agricultural and Nursery Operations or of Conditional Waiver No. 4 please contact Peter Peuron at (858) 6637-7137, or by email at ppeuron@waterboards.ca.gov.

Documents also are available at: <http://www.waterboards.ca.gov/sandiego>.

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Conditional Waiver No. 4 addresses discharges from agricultural and nursery operations which contain pollutants that can percolate to groundwater or runoff to surface waters. Discharges from agricultural and nursery operations include discharges resulting from growing operations and irrigation return flows. The addition of storm water runoff can transport pollutants from agricultural and nursery operations to surface waters and groundwater.

On October 10, 2007, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) adopted Conditional Waiver No. 4 (as part of Resolution R9-2007-0104, along with 10 other waivers). This Basin Plan Amendment was later approved by the State Water Resources Control Board (as Resolution No. 2008-0081) on November 4, 2008. Enrollment in Conditional Waiver No. 4 is required by January 1, 2011. Growers have the option of enrolling either as a member of a monitoring group or as an individual grower. The cost for waiver compliance for any grower is significantly less when they join a monitoring group because the costs associated with preparing a monitoring plan, conducting monitoring and reporting the results of monitoring are shared among many monitoring group members instead of being borne by one individual discharger. Due to the large number of growers in the San Diego Region, the number of enrollees in the monitoring groups should be substantial and this should be reflected in relatively low costs for individual growers who enroll in the groups.

Conditional Waiver No. 4 (the Waiver) applies to "agricultural and nursery operations." The Waiver, however, does not explicitly identify what is meant by the term "agricultural and nursery operations." The purpose of this Basin Plan Amendment is to define the term "agricultural and nursery operations" and thereby provide clarification as to who is and who is not required to enroll in the Waiver. This Basin Plan Amendment clarifies the applicability of the Waiver by first defining an "agricultural and nursery operation" as being limited to businesses or commercial operations and then specifying the criteria that constitute a commercial operation.

The Waiver pertains to "agricultural and nursery operations" and specifically to growing operations that use irrigation. Based on comments that were made during the adoption of the Waiver, it appears that it was the intent of the San Diego Water Board to apply the Waiver only to commercial growing operations or to those operations that are engaged in agribusiness. The term, "agricultural and nursery operations", however, could be interpreted as applying to any cultivation practices wherein plants are produced for any purpose (including residential fruit trees and vegetable gardens). The Waiver does not exclude any non-commercial growing operations from the requirements of the Waiver which has created confusion among members of the public and operators of agricultural and nursery operations.

Non-commercial growing operations that should not fall under the Waiver include homeowners or other non-commercial entities that may have gardens, fruit trees or flower beds growing on their properties. These non-commercial growing operations are not expected to have a significant effect on the environment. Since the effect on the environment is *de minimus*, it is not necessary to regulate the non-commercial growing operations. If the Executive Director or San Diego Water Board finds that any non-commercial growing operation is having a significant effect, it can direct that operation to comply with the terms of the Waiver..

In addition to residential homeowners, other non-commercial growing operations include "hobby growers/gardeners" which engage in the sale of agricultural products, but at a very low level. Hobby growers/gardeners also have a *de minimus* effect on the environment because of the limited size and intensity of the growing/gardening operations.

In order to clarify who operates a "agricultural and nursery operation" and thus must comply with the terms of the Waiver, the Waiver needs to be amended to define the term. Therefore, it is proposed that the term "agricultural and nursery operations" be amended in Waiver No. 4 to read "commercial agricultural and nursery operations." "Commercial agricultural and nursery operations" will be defined as defined as being commercial agricultural and nursery operations which generate gross sales of at least \$1,000 per average year. An average year is defined as the average of the prior three calendar years. This definition will exclude residential homeowners and hobby growers/gardeners and limit the Waiver to agricultural and nursery operations that have a significant effect on the environment.

The basis for establishing the limit for a commercial grower at gross sales of at least a \$1,000 per year is the definition of a "commercial agricultural operation" by the U.S. Department of Agriculture which uses the same gross sales amount. This criterion (\$1,000 of gross sales) is therefore an accepted standard for identifying agricultural operations that generate income that is significant enough to be considered a commercial enterprise when they exceed this amount. The definition also provides a threshold that would exclude operations with a negligible potential to impact the environment. Since farming operations in the San Diego Region, where land values are generally high, typically produce crops that yield high value such as flowers, avocados and grapes, a very small amount of production will easily yield gross annual revenues of \$1,000. An avocado grower who sells the fruit from ten or fewer trees is a typical example of someone who may not need to enroll using this criterion.

Therefore, setting the definition of a "commercial agricultural and nursery operation" at \$1,000 per year is protective of the environment and it conforms to the standard for a commercial operation established by the US Department of Agriculture.

The California Environmental Quality Act (CEQA) has specific provisions that establish the scope of the environmental analysis required for the adoption of this Basin Plan amendment. CEQA limits the scope to an environmental analysis of the reasonably foreseeable methods of compliance with the conditions of a conditional waiver. The State Water Board CEQA Implementation Regulations for Certified Regulatory Programs require the environmental analysis to include at least the following:

1. A brief description of the proposed activity. In this case, the proposed activity is to amend Conditional Waiver No. 4 for Agricultural and Nursery Operations (from Resolution No. 2008-0081) to define the term "agricultural and nursery operations" as it appears in the waiver. The proposed definition specifies that only commercial operations that generate gross sales of at least \$1,000 per year, as an average, are subject to the waiver's requirements.
2. Reasonable alternatives to the proposed activity. Addition of language that defines the term, "agricultural and nursery operations", which clarifies the original intent of Conditional Waiver No. 4, does not cause significant impacts to occur. Therefore, environmental impacts are not associated with the Basin Plan amendment, which makes developing alternatives unnecessary. Inclusion of a definition of "agricultural and nursery operations" in Conditional Waiver No. 4 is necessary to designate who is subject to the waiver, and who is exempt. Furthermore, a no action alternative (not providing a definition) would create confusion with regard to who is subject to the waiver, or would require everyone generating any amount of income to be subject to the waiver.
3. Mitigation measures to minimize any significant adverse environmental impacts of the proposed activity. Since there is no potential for significant adverse impacts, mitigation measures are not needed.

In addition, CEQA requires the following components:

1. An analysis of the reasonably foreseeable environmental impacts of the methods of compliance. Since there is no potential for impacts, mitigation measures are not needed.
2. An analysis of the reasonably foreseeable feasible mitigation measures relating to those impacts. Since there is no potential for impacts, alternative means of compliance are not needed.
3. An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts. Since there is no potential for impacts, alternative means of compliance with the waiver are not needed.