

EXECUTIVE OFFICER SUMMARY REPORT  
June 22, 2016

- ITEM: 12
- SUBJECT: Public Workshop: The San Diego Water Board will hold a public workshop to receive and discuss information on 1) Tentative Order No. R9-2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region* (Tentative General Third-Party Group Order); 2) Tentative Order No. R9-2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Tentative General Individual Order); and 3) Tentative Resolution No. R9-2016-0136, *Adoption of a Negative Declaration and Initial Study for the General Waste Discharge Requirements for Discharges from Agricultural Operations in the San Diego Region* (Tentative Negative Declaration/Initial Study). The San Diego Water Board will not take any action on these items at the workshop. (Barry Pulver)
- PURPOSE: The San Diego Water Board has developed general waste discharge requirements (WDRs) to regulate discharges from commercial agriculture into surface waters and groundwaters of the State in the San Diego Region (collectively Tentative General Orders). The workshop is intended to provide information and address questions San Diego Water Board members or the public may have regarding the Tentative General Orders **(Supporting Document Nos. 1 and 2)** and the associated Tentative Negative Declaration/Initial Study **(Supporting Document No. 3)**.
- RECOMMENDATION: None. The San Diego Water Board will not take any action on the Tentative General Orders or the Tentative Negative Declaration/Initial Study at the public workshop.

## KEY ISSUES:

1. The San Diego Water Board began regulating discharges related to commercial agricultural activities in 1983.
2. If the Tentative General Orders are adopted, the owners and operators of commercial agricultural operations (also referred to as growers or Dischargers) will be required to enroll under the Tentative General Third-Party Group Order, the Tentative General Individual Order, or obtain individual WDRs.
3. If adopted, the Tentative General Orders will implement the State Water Resources Control Board (State Water Board) California *Nonpoint Source Program Implementation Plan* (NPS Program Plan) and *the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (Nonpoint Source Policy).<sup>1</sup>
4. If adopted, the Tentative General Orders will implement the *Total Maximum Daily Load for Total Nitrogen and Total Phosphorus in Rainbow Creek Watershed* (Rainbow Creek TMDL) and the *Revised Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region Including Tecolote Creek* (Bacteria TMDL). The Tentative General Orders may also serve as a TMDL alternative for other identified water quality impairments related to agricultural activities in the San Diego Region.

## PRACTICAL VISION:

Consistent with the mission of the *Strategizing for Healthy Waters* chapter of the Practical Vision, the Tentative General Orders integrate all applicable water quality standards, and require implementation of management practices as necessary in order to optimize protection of water quality and beneficial uses throughout the San Diego Region. Additionally, the Tentative General Orders implement the *Monitoring and Assessment* chapter of the

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<sup>1</sup> The Nonpoint Source Policy is available at [http://www.waterboards.ca.gov/water\\_issues/programs/nps/docs/plans\\_policies/nps\\_iepolicy.pdf](http://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf) (as of May 31, 2016)

Practical Vision by requiring surface water and groundwater monitoring to a) determine the status and trends of conditions in San Diego Region waters with respect to the water quality effects of agricultural operation waste discharges; b) evaluate the effectiveness of agricultural waste management practices; c) identify all drinking water wells on agricultural lands with nitrate concentrations that are detrimental to public health; d) determine if the agricultural operation regulatory program is succeeding in its ultimate purpose of achieving and maintaining water quality standards in surface waters and groundwater; and e) effectively communicate key findings to the public, dischargers, stakeholders, and decision-makers. The Tentative General Orders also further the goals of the *Recovery of Streams, Wetlands, and Riparian Areas* chapter of the Practical Vision by requiring the implementation of appropriate management practices at agricultural operations to prevent or reduce discharges of waste that are causing or contributing to exceedances of water quality standards in waters of the State. This will help protect and restore surface water and groundwater located in areas of agricultural activity. Finally, the Tentative General Orders have provisions for participating in regional monitoring and assessment programs in keeping with San Diego Water Board Resolution No. R9-2012-0069, *Resolution in Support of a Regional Monitoring Framework*.

**DISCUSSION:****Background**

It is estimated that within the San Diego Region there are approximately 6,000 commercial agricultural operations, on approximately 75,000 acres of land. The highest density of commercial agricultural operations is within the Santa Margarita River and San Luis Rey River Watersheds (See **Supporting Document No. 4.**). There are a wide variety of crops produced within the region, including cut flowers, fruit, vegetables, wine grapes, and nuts.

Agricultural discharges, including both irrigation water and storm water running off of agricultural fields into surface waters or percolating into groundwater, may carry constituents considered to be waste as defined under Water Code section 13050(d). These discharges can

affect water quality by transporting agricultural waste constituents such as pesticides and fertilizers, sediment, and salts from growing areas into surface waters and groundwater. In fact, an estimated 43 miles of streams/rivers and 1,244 acres of lakes/reservoirs have been identified as being impaired by pollutants associated with agricultural activities in the San Diego Region. Agricultural activities have also been identified as causing or contributing to nitrate impairment of groundwater in some areas of the San Diego Region.

The San Diego Water Board first began regulating discharges from commercial agricultural operations in 1983 with the adoption of a conditional waiver of WDRs, pursuant to Water Code section 13269 (1983 Waiver). The 1983 Waiver conditionally waived the requirement for submittal of a permit application (report of waste discharge or ROWD) for irrigation water runoff as long as the owner or operator of the agricultural operation implemented effective management practices, and the discharge did not cause exceedances of applicable water quality standards, nuisance conditions in the receiving waters, or toxicity to animal or plant life.

In 2007, the San Diego Water Board adopted Resolution No. R9-2007-0104, *Amendment to the Water Quality Control Plan for the San Diego Basin (9) to Incorporate the Revised Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge Within the San Diego Region* (2007 Waiver). The 2007 Waiver allowed growers to form coalitions with third-party representatives that were responsible for outreach, education, and implementation of a number of the requirements of the regulatory program, including monitoring.

Prior to the expiration of the 2007 Waiver on February 13, 2014, the San Diego Water Board directed staff to develop general WDRs rather than extending the 2007 Waiver or issuing a new waiver. Development of general WDRs and the associated California Environmental Quality Act (CEQA) analysis commenced in 2014. Since 2014, the San Diego Water Board has held eight formal stakeholder meetings/workshops and has solicited public comments on several administrative drafts of the general

WDRs and the CEQA Initial Study and Environmental Checklist. The Tentative General Orders and Tentative Negative Declaration/Initial Study take into consideration comments received to date.

Additionally, the Tentative General Orders considered and incorporated, as appropriate, the following:

- The conclusions of the State Water Board Agricultural Expert Panel (Agricultural Expert Panel) that made recommendations on an appropriate regulatory framework for irrigated lands in fulfillment of Senate Bill X2-1. The Agricultural Expert Panel released their conclusions on September 9, 2014 in a report entitled *Conclusions of the Agricultural Expert Panel, Recommendations to the State Water Resources Control Board pertaining to the Irrigated Lands Regulatory Program.*<sup>2</sup>
- On February 8, 2016, the State Water Board issued *Draft Order WQ-2016-, In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116, for Growers within the Eastern San Joaquin River Watershed, that are Members of the Third-Party Group, Issued by the California Regional Water Quality Control Board, Central Valley Region, SWRCB/OCC FILES A-2239(a)-(c).* The proposed order was issued in response to several petitions made to the State Water Board to review General Order No. R5-2012-0116.<sup>3</sup>

### **Tentative General Orders Overview**

The Tentative General Orders propose to regulate waste discharges from commercial agricultural operations in the San Diego Region. For the purposes of the Tentative General Orders, an agricultural operation is any agricultural business or trade activity, including farms, nurseries, and orchards, that produces crops with the

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<sup>2</sup> Conclusions of the Agricultural Expert Panel, Recommendations to the State Water Resources Control Board pertaining to the Irrigated Lands Regulatory Program (September 9, 2014), available at [http://www.swrcb.ca.gov/water\\_issues/programs/agriculture/docs/ILRP\\_expert\\_panel\\_final\\_report.pdf](http://www.swrcb.ca.gov/water_issues/programs/agriculture/docs/ILRP_expert_panel_final_report.pdf) (as of May 31, 2016) (Agricultural Expert Panel Report).

<sup>3</sup> The proposed order can be accessed on the State Water Board website at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/a2239\\_sanjoaquin\\_ag.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/a2239_sanjoaquin_ag.shtml)

intent to make a profit. Discharges from agricultural activities not engaged in for profit, such as hobby farming or gardening are excluded from regulation under the Tentative General Orders.

The Tentative General Orders and the Tentative Negative Declaration/Initial Study will be considered by the San Diego Water Board for adoption at a public hearing to be held later this year. If adopted, the owners and operators of commercial agricultural operations (the growers) will be required to enroll under either the Tentative General Third-Party Group Order or the Tentative General Individual Order, or submit an ROWD to obtain coverage under individual WDRs.

The Tentative General Third-Party Group Order includes provisions allowing third-party groups to represent the growers. Under the Tentative Third-Party Group Order certain requirements are assigned to the individual growers and certain requirements are coordinated through their third-party representative. From a resource perspective, the third-party groups will allow the San Diego Water Board to leverage limited regulatory staff by acting as intermediaries between Board Staff and the growers, freeing Board Staff to focus on problem areas or actors. In addition, there are a number of cost benefits to the growers enrolled in a third-party group, including: lower annual WDR fees, potentially reduced costs in management practice implementation facilitated by access to third-party group management practice effectiveness information, significantly reduced monitoring costs due to allowance for regional water quality monitoring by the third party in lieu of individual monitoring, and reduced reporting costs.

The Tentative General Individual Order, as the name implies, applies to individual growers who have elected to not join a third-party group. Generally, the costs associated with this option are higher because the individual grower is responsible for developing its own monitoring and reporting program, including any supplemental studies that may be required in the event of a water quality standard exceedance.

Both Tentative General Orders regulate discharges from agricultural operations to surface waters as well as

groundwater. In brief summary, the Tentative General Orders require the growers, or their Third-Party Group, to do the following:

- Pay annual WDR fees.
- Develop and submit a Water Quality Protection Plan (WQPP), to implement management practices that prevent or reduce discharges of waste that are causing or contributing to exceedances of water quality standards in waters of the State. The WQPP must also identify the monitoring locations that will be used to assess the effectiveness of the management practices and to characterize the impacts of agricultural activities on waters of the State. The WQPP must be implemented upon grower enrollment in the Tentative General Orders.
- Meet receiving water limitations which prohibit the grower from causing or contributing to exceedances of applicable water quality standards in surface water and groundwater.
- Conduct surface water monitoring to determine if existing management practices are leading to compliance with water quality requirements and implementation of improved water quality practices where they are not.
- Conduct monitoring of any on-site drinking supply well to determine if agricultural activities are causing or contributing to nitrate contamination of drinking water.
- Conduct visual evaluations of management practices to ensure that selected management practices are appropriate and effective to achieve compliance with water quality standards.
- Develop and implement a Water Quality Restoration Plan (WQRP) to respond to instances where water quality data has shown that water quality standards are not being met. A WQRP must have a specific schedule of tasks to implement new and improved management practices to achieve compliance with receiving water limitations and a monitoring system designed to measure whether the management practice changes are effective.

- Complete annual agricultural water quality protection training.
- Report annually on compliance with the Tentative General Orders.
- Implement applicable waste loads requirements and other implementation actions identified in the Rainbow Creek TMDL and the Bacteria TMDL.

### **Tentative Negative Declaration/Initial Study Overview**

Pursuant to the California Environmental Quality Act (CEQA), (Pub. Resources Code section 21000 et seq.) and CEQA Guidelines (Cal. Code Regs., tit. 14, section 15000 et seq.), the San Diego Water Board is functioning as the lead agency for the adoption of the Tentative General Orders, has the principal responsibility for approving the project, and is responsible for preparation of environmental documents (Pub. Resources Code section 21067; Cal. Code Regs., tit. 14, section 15050).

In 2014, a CEQA Scoping Meeting was held and a draft CEQA Initial Study and Environmental Checklist was prepared. To be reflective of the current Tentative General Orders a second CEQA Scoping Meeting was convened in March 2016.

Based upon the initial study and consideration of comments from the scoping meetings, Staff is preparing a Negative Declaration.

### **Supporting Documents Availability for Public Review and Comment**

Prior to today's workshop the San Diego Water Board will issue a notice announcing the availability of the above Tentative General Orders and Tentative Negative Declaration/Initial Study and the start of the public comment period on or about June 13, 2016. The draft CEQA documents will also be submitted to the California State Clearinghouse for distribution to state agencies for comment.

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS: The Supporting Documents listed below will be provided in the Supplemental Agenda Package



1. Tentative General Third-Party Group Order
2. Tentative General Individual Order
3. Tentative Negative Declaration/Initial Study
  - a. Tentative Resolution No. R9-2016-0136
  - b. Draft CEQA Initial Study and Environmental Checklist
  - c. Draft Negative Declaration
4. Location Map

**PUBLIC NOTICE:**

Notice of today's workshop was provided to all known interested parties via e-mail on May 23, 2016, and posted on the San Diego Water Board website. Notice of today's workshop was also provided in the meeting notice and agenda for the June 22, 2016 Board meeting, which is posted on the San Diego Water Board's website.