

HISTORY and STATUS of AGRICULTURAL WAIVERS

The federal Clean Water Act when adopted in 1972 exempted agricultural irrigation return flows from National Pollutant Discharge Elimination System permitting requirements.

The Regional Water Boards waived discharges from irrigated lands from waste discharge requirements in the early 1980's as authorized by Section 13269 of the California Water Code.

In 1987, Congress added Section 319 to the federal Clean Water Act, which required states to develop nonpoint source pollution control plans. To comply with this section, the State Water Board adopted its first nonpoint source control plan in 1988. This plan established a three tier system, the first tier being voluntary controls, the second tier being conditional waivers, and the third tier being waste discharge requirements.

In the 1990's, environmental groups sued the U.S. Environmental Protection Agency for failing to establish total maximum daily loads (TMDLs) for various water bodies as required by the federal Clean Water Act.

Senate Bill 390 was signed into law October 6, 1999. The bill revised Section 13269 of the California Water Code. In general, the bill requires the regional boards to review the terms, conditions, and effectiveness of the waivers they have adopted; renew waiver policies and individual waivers by January 1, 2003 (failure to renew waivers automatically resulted in the termination); issue general or individual WDR's for ongoing discharges whose waivers have been terminated; enforce waiver conditions; and renew or terminate waivers every five years.

The number and type of waivers varied from region to region, but overall there were more than 40 between the nine regions, four of which have been the bulk of the focus in recent years; Dairy, Timber, Septic, and Irrigated Agriculture Runoff Waivers. With potentially millions of miles of agricultural drains and upwards of 80,000 growers with hundreds of commodities irrigated agriculture arguably poses the greatest challenges.

In February 1977, the State Water Board and the Department of Pesticide Regulation signed a Management Agency Agreement on their respective responsibilities for protecting water quality.

In 1999, the State Legislature amended California Water Code Section 13269. This amendment required the Regional Water Boards to review the conditions of their waivers of waste discharge requirements and to either renew the waivers or replace them with waste discharge requirements. The amendment also required enforcement of conditions in waivers and the re-adoption of waivers every five years. In addition, the State Water Board adopted the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy). This policy more clearly defined the stated requirements of the Water Code. All current and proposed NPS discharges must be regulated under waste discharge requirements, waivers of waste discharge requirements, or a basin plan prohibition or some combination of these administrative tools.

In 2003, California Water Code Section 13269 was again amended. The second amendment provided authority to the State Water Board to establish fees for waivers. These legislative actions are applicable to all waivers but placed particular focus on agriculture statewide. The fiscal year 2004-2005 State budget included up to 22 positions at a cost of \$1.9 million for implementing agricultural waivers and specified that the funding for the positions would come from new fees to be established for waivers.

The Central Coast, Central Valley, Los Angeles and San Diego Regional Water Boards have adopted Conditional Waivers for wastewater discharges from Irrigated Agriculture. The other five Water Boards have no immediate plans to adopt agricultural waivers but may do so eventually to implement TMDLs. Without a waiver, growers are vulnerable to other regulatory actions such as waste discharge requirements (WDRs).

The Conditional Agricultural Waivers adopted by the Regional Water Boards use different regulatory models.

The **Central Coast Water Board** Conditional Agricultural Waiver requires each grower to:

1. Submit a notice of intent (NOI).
2. Take courses in water quality management (15 hours).
3. Prepare and implement a water quality management plan.
4. Perform individual monitoring or participate in a group monitoring program.

The Central Coast Water Board has created a consensus building process with representatives from the agricultural and environmental communities.

The **Central Valley Water Board** adopted two Conditional Agricultural Waivers at the request of agricultural interests and others: one conditional waiver for coalition groups and another for individual growers. The Coalition Conditional Waiver requires growers to:

1. Join coalition groups that assume the responsibility for conducting water quality monitoring.
2. Participate in grower education sponsored by their coalition.
3. Identify and implement necessary management practices to meet water quality objectives.

Growers in the Central Valley Region that do not choose to join coalition groups have the option of being covered under an individual grower conditional waiver or file a Report of Waste Discharge for waste discharge requirements. Both coalition groups and individual growers who have not joined a coalition must file a NOI and various technical reports as conditions of the waiver.

The **San Diego Water Board** Conditional Agricultural Waiver does not require the submittal of a NOI, and does not require water quality monitoring, but does require the implementation of management measures in accordance with State Water Board Nonpoint Source Implementation and Enforcement Policy.

The **Los Angeles Water Board** Conditional Agricultural Waiver is similar to the Central Coast Water Board's waiver but encourages the formation of discharger groups or coalition groups. The Conditional Agricultural Waiver requires each grower to:

1. Submit a notice of intent (NOI).
2. Provision to participate in a coalition group who would submit one NOI on behalf of it's membership.
3. Take courses in water quality management (8 hours).
4. Prepare and implement a water quality management plan.
5. Perform individual monitoring, or participate in a group monitoring program.

The **Colorado River Basin Water Board** has implemented a Conditional Prohibition to address their sediment TMDL.

As previously stated, the Legislature decided waivers are to be supported by fee revenues rather than the State's General Fund. As a result, the State Water Board adopted a Fee Schedule in June 2005 to fund the Conditional Agricultural Waiver Program at the State and Regional Water Boards.

Expectations for the Conditional Agricultural Waiver Program are:

1. A better characterization of the water quality of water bodies that receive agricultural discharges.
2. Identification of the sources of pollutants.
3. Development and implementation of management practices designed to control these sources.
4. Implementation of TMDLs through conditional waivers.