

Proposed Waiver of Agricultural Discharge Controls Will Ensure That California Fails to Control Central Valley Water Pollution

AGRICULTURAL RUNOFF IS TOXIC

- Agricultural runoff is a major source of pollution statewide. Farm runoff contaminates water supplies for millions of Californians in the Central Valley, San Francisco Bay Area and Southern California.
- Recent U.C. studies show **nearly all (97-100%) Central Valley sites affected by agricultural runoff violate water quality standards**. Up to 80% of those sites are also toxic. Similar studies along the Central Coast found 100% of samples from agricultural runoff channels were toxic to aquatic life.
- Agricultural pesticides, pathogens, nitrates and salts have been detected in drinking water supplies serving 16.5 million people in 46 California counties.
- **The Department of Pesticide Regulation found pesticides in 96% of Central Valley locations tested**; over half of these waterways violated standards for aquatic life and drinking water consumption.
- A 2006 U.C. study of pesticide mixtures in agricultural runoff found “significant harmful effects” on frogs even when the individual pesticide levels in the mixture were 10 to 100 times below EPA standards.

AGRICULTURAL RUNOFF IS A KEY FACTOR IN THE PLUMMET IN DELTA HEALTH

- According to the U.S. EPA’s 2002 list of impaired water bodies, **over 635 miles of rivers and streams in the Central Valley, including the Sacramento and San Joaquin Rivers and Delta, are so polluted by agricultural pesticides that they are unsafe for uses such as fishing, swimming, and/or drinking**.
- California’s vast Delta ecosystem is crashing rapidly. Biologists point to three likely causes: degraded water quality, water diversions, and invasive species. Recent U.C. studies of Delta species such as striped bass found all of the fish tested had gastric inflammations, parasitic infestations, liver lesions, infections or a combination.
- These findings are consistent with earlier work that found nerve damage and developmental abnormalities among newborn bass. Scientists attribute these problems to a **chemical stew of pesticides, herbicides and cancer-causing elements in Delta waterways**, which in addition to fish habitat **serve as drinking water for two-thirds of Californians**.
- The Little Hoover Commission found last fall in its CALFED analysis that “*The Delta is so critical to California’s future that no water policy will be successful if the estuary is not restored.*”

CALIFORNIA LAW PROTECTS BOTH SURFACE WATER AND GROUNDWATER

- California law requires “[a]ny person discharging ... or proposing to discharge waste ... **that could affect the quality of the waters of the state,**” – including groundwater – to: (a) file a report of the discharge (*i.e.*, ask permission) and, as needed, (b) implement waste discharge requirements that protect the use of those waters. It applies to everyone – municipalities, industry, small family-owned businesses – and agribusinesses.
- A regional board may “waive” these waste discharge requirements, with conditions, only if doing so “is consistent with any applicable state or regional water quality control plan and is in the public interest.”
- Given the state and importance of the Delta, and the overwhelming scientific evidence of clear and significant impacts of agricultural runoff, **the use of waivers for agricultural runoff in the Central Valley cannot achieve clean water and so is not “in the public interest.”** This is particularly true of the numerous waterways already identified as “impaired” and in need of immediate cleanup, not continued contamination.

THE PROPOSED CENTRAL VALLEY AGRICULTURAL RUNOFF WAIVER VIOLATES THE LAW AND WILL ENSURE A CONTINUED DELTA COLLAPSE

- The Central Valley Regional Board oversees **40% of California’s land area and the second-largest groundwater basin in the U.S.**, which supplies 74% of California’s groundwater needs. ***The Board’s decision on agricultural runoff will significantly impact the supply of clean water for all Californians.***
- In its 2006-07 Budget Bill Analysis, **the LAO found that “the level of compliance is low” with the current Central Valley waiver**. Though ten agribusiness coalitions have formed around the waiver, the discharger coalitions have **repeatedly failed to comply with even the minimal terms of the current waiver**, including:
 - failure to comply with the monitoring and reporting provisions of the waiver;

- failure to identify currently applied best management practices (BMPs) to control pollution, propose new BMPs, identify who has or has not implemented specific management measures, or describe how the effectiveness of applied BMPs will be monitored; and
 - failure to present a detailed plan of action to address identified water quality violations.
- However, despite consistent and widespread noncompliance with minimal waiver conditions, **the Regional Board has never initiated an enforcement action against a coalition or individual discharger.** Although monitoring has identified many hundreds of violations of water quality standards, only once has the Regional Board directed a coalition to prepare a management plan that identifies how the violations will be addressed.
- **The current and proposed new waivers also conspicuously fail to contain requirements essential to success**, including: (a) requirements to **prevent further pollution of the groundwater basin**, and (b) a **list of those participating** in the waiver. The Central Coast agricultural runoff waiver already includes both of these essential elements, with approximately 90% of irrigated acreage already enrolled.
- The LAO recommended that coalitions “provide their membership lists to the regional board as a condition of” enrollment and make them public, just as is required in every other discharge program. Since December 2005, 1,800 staff hours have been spent trying to identify coalition members using the convoluted process in the waiver. **The waiver’s completely unnecessary process for identifying dischargers has used up almost 20% of all the fees that the coalitions have paid into the program** – and the work is ongoing.
- The program is also vastly understaffed. The Central Valley Board workplan identifies **34 PYs as minimally necessary** to implement the waiver. However, only 18.5 PY are authorized, and of that **only 12 PYs** actually work on the waiver. A mere five PYs are funded by waiver fees. Yet the Coalitions assert that the program is too large, and that no fee increases are warranted. **Without fee support, there will be essentially no discharger-funded oversight of this critical program**, unlike every other discharge program in the state.
- **The proposed new waiver fails to fix the clear problems with current waiver.** The new waiver:
 - Fails to require enrollees to sign up as intending to comply with the waiver,
 - Fails to require management plans, even when standards are already being violated, unless the Executive Officer in her discretion decides to order development of the plan, and
 - Fails to include groundwater requirements (which are included in the Central Coast region waiver).
- **The proposed new waiver also weakens the existing waiver by taking out all references to a timeline for compliance**, stating instead only that the process will be evaluated “as time and resources allow.” It exacerbates this problem by also **removing the basic accountability requirement** that the Executive Officer provide regular updates to the Regional Board regarding the effectiveness of the conditional Waivers.
- **Other ways in which the new waiver is weaker than the current program include** the following:
 - The new waiver fails to include specific water quality objectives, and instead only references them.
 - The new waiver relies upon an as yet-unidentified monitoring plan, the drafts of which are currently weaker than the existing plan (the new monitoring plan apparently will be released by the Executive Officer after the waiver decision, presumably without the benefit of public review or Board approval).
 - It exempts discharges during “large storm events,” a critical term that is notably left undefined.
- **Recommendation**: Given the severity of pollution found to date and the keystone role of the Delta in California water policy, **General Waste Discharge Requirements (WDRs)**, rather than a waiver, **should be developed as the most effective and enforceable approach for addressing agricultural pollution.** Staff did draft General WDRs, but no action was taken on them. Efforts to extend the current waiver must compare the effectiveness, enforceability, costs and efficacy of the proposed new waiver with potential General WDRs.
- **Minimum steps**: The Central Valley Board, if it extends the waiver, must include the following provisions:
 - All dischargers must file “notices of intent to comply” with the waiver,
 - Enrollees must prepare individual farm-based Pollution Prevention Plans,
 - Coalitions must develop management plans that address all water quality standards violations,
 - Enrollees must comply with set requirements for discharges to groundwater, not just surface water, and
 - The monitoring component must include independent third-party monitoring.
- Finally, **fees must be set to support at least the 18.5 PYs authorized** to oversee the program.
- **Conclusions**: The Central Valley Regional Board’s current waiver essentially cedes the Board’s statutory responsibility to protect waterways to industry advocacy groups. The Regional Board doesn’t know who is discharging pollutants, what pollutants are being discharged, who is participating in the waiver program, or who has or has not implemented BMPs. **The health of California’s water supply and Delta depends on how the Central Valley Regional Board acts now to fix its broken agricultural runoff program.**