

CSPA, C-WIN Fact Sheet  
Regulation of Pollutant Discharges to Surface Waters from Irrigated Agriculture

1. The State Water Resource Control Board (State Board) report titled *2010 Integrated Report Clean Water Act Section 303(d) List / 305(b) Report* that was submitted to U.S EPA in August 2010 identifies some 730 pollutant/waterbody combinations in the Central Valley where water quality standards are not met and beneficial uses are not protected.<sup>1</sup> Agriculture is the largest identified source of pollution and is responsible for impairing 269 pollutant/waterbody segments covering 1,572 waterway miles plus 96,147 acres of open water. By comparison, urban runoff and municipal point sources have caused or contributed to 55 or 7.5% of impairments.

Agricultural pollution causes 36.8% of all impairments and 57% of impairments where sources are identified. Subtracting resource extraction (primarily mercury from historic mining activities that are largely beyond our control), agriculture is responsible for 79.6% of impairments from identified sources that can be reasonably controlled. And that percentage will rise as unknown sources in agricultural areas are finally identified.

Examination of the 257 impaired segments attributable to unknown sources reveals the majority are in agricultural areas. Pollutants common to agricultural activities cause 225 of these impairments. For example, Spring Creek in Butte County is identified as impaired by aldicarb, chlorpyrifos, diazinon, dissolved oxygen, salinity, sediment toxicity and unknown toxicity but sources are unidentified. The map shows this segment lies in an agricultural area. Indeed, 64 segments comprising over 1,600 miles and over 40,000 acres are identified as impaired for unknown toxicity by unknown sources. Most of these are in agricultural areas.

2. The Central Valley Regional Water Quality Control Board (Region 5 Board) report titled *Irrigated Lands Conditional Waiver Program: 2007 Review of Monitoring Data* remains the only region-wide assessment of data collected pursuant to the Irrigated Lands Program since its inception in 2003.<sup>2</sup> Data collected by UC Davis and agricultural coalitions from some 313 sites throughout the Valley revealed that: 1) toxicity to aquatic life was present at 63% of the monitored sites (50% were toxic to more than one species), 2) pesticide water quality standards were exceeded at 54% of sites (many for multiple pesticides), 3) one or more metals violated criteria at 66% of the sites, 4) human health standards for bacteria were violated at 87% of monitored sites and 5) more than 80% of the locations reported exceedances of general parameters (dissolved oxygen, pH, salt, TSS, etc.).
3. In 2010, the State Board released a report titled *Summary of Toxicity in California Waters: 2001 – 2009*.<sup>3</sup> The report evaluated toxicity at 982 sites in California, of which 298 were in the Central Valley. The results reveal that monitored sites in agricultural

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<sup>1</sup> [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml)

<sup>2</sup> [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/water\\_quality\\_monitoring/staff\\_monitoring\\_data\\_analysis/2007\\_monitoring\\_data\\_report/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/water_quality_monitoring/staff_monitoring_data_analysis/2007_monitoring_data_report/index.shtml)

<sup>3</sup> [http://www.waterboards.ca.gov/water\\_issues/programs/swamp/docs/reports/tox\\_rpt.pdf](http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/tox_rpt.pdf)

areas experience significantly greater toxicity (58%) than urban, ag-urban or undeveloped sites. Only 25% of the monitored sites in the Central Valley failed to register toxicity.

4. The Region 5 Board has waived the issuance of Waste Discharge Requirements and implements the Irrigated Lands Program through “conditional waivers.” The waivers require farmers to join third-party coalitions that conduct some regional water quality monitoring. Where multiple exceedances of water quality standards are identified, management plans are required that describe the efforts coalitions will undertake to address problems.

While the Region 5 Board knows the identity of coalition members, it does not know who is actually discharging, what pollutants are being discharged, the localized impacts to receiving waters, whether management measures (BMPs) are being implemented or if implemented BMPs are effective in reducing pollution. Coalitions shield the identities of actual dischargers from the Region 5 Board. Since coalitions are legally fictitious entities, they lack enforcement powers and their efforts are limited to education, persuasion and “snitching” on their fellow farmers.

After more than seven years and several iterations of the program, the Region 5 Board cannot identify and quantify a single pound of pollution prevented, a single BMP implemented or whether any implemented BMPs are effective.

5. Irrigated agriculture remains exempt from feasible requirements to reduce or eliminate pollution that have long been applicable to virtually every other segment of society, from municipalities to industry to mom-and-pop businesses. Regulatory programs applicable to cities, industry, business and construction have resulted in significant, quantifiable and documented improvement in water quality. For, example:
  - a. The 64 municipal and 62 industrial point-source wastewater dischargers in the Central Valley are regulated through NPDES permits issued pursuant to the federal Clean Water Act (CWA). These dischargers must file Reports of Waste Discharge (ROWD) and comply with monitoring and reporting requirements and discharge limitations to meet water quality standards.
  - b. The 8 large municipal stormwater dischargers (Phase I) are required to submit a ROWD, prohibit non-stormwater discharges, develop a comprehensive management plan, comply with monitoring and reporting requirements and meet discharge limits to a Maximum Extant Practicable (MEP) standard.
  - c. The 86 smaller municipal stormwater dischargers (Phase II) are regulated under a statewide general permit that requires dischargers to submit a Notice of Intent to comply (NOI), identify pollutants of concern, prohibit non-stormwater discharges, develop and implement an iterative Stormwater Manage Plan to reduce pollutants to a MEP standard and file annual reports.
  - d. The approximately 7,500 industrial and construction stormwater dischargers are regulated through compliance with the industrial and construction stormwater general permits. Dischargers must file an NOI, monitor their discharges, develop a Stormwater Pollution Prevention Plan, prohibit non-stormwater discharges,

implement BMPs to a “Best Available Technology” standard to reduce or eliminate impacts to water quality and submit annual reports to the Board.

By contrast, more than seven years of agricultural waivers have failed to provide quantified, documented results. Regional monitoring cannot identify sources or evaluate BMPs. The program lacks targets, milestones, timelines and consequences for non-compliance that would comply with the state’s Non-Point Source Control or Antidegradation Policies. Farmers attempting to do the right thing cannot be separated from bad actors.

It is reasonable and feasible to require agricultural dischargers to submit an NOI to comply with a general order, develop and submit a management plan identifying measures to reduce or eliminate pollution, conduct limited edge-of-field monitoring to evaluate BMPs and file annual reports.

6. Anadromous and pelagic fisheries throughout the Central Valley are collapsing. All four salmon runs and steelhead are down more than 95% from historic levels. Sturgeon are lingering on the brink of extinction. Striped bass, Delta smelt, longfin smelt, American shad, splittail and threadfin shad are at or near historic lows. Native plankton species are down one to two magnitude (90-99%). Indeed, native fish species are disappearing throughout the Valley. Pollution is identified as one of the principle causes of these catastrophic declines.
7. It is unlikely that the Delta estuary can be restored or, for that matter, a peripheral canal constructed if irrigated agriculture cannot be meaningfully brought under the regulatory umbrella. Water quality is identified as one of the three main causes of the estuary’s collapse. Sacramento River water is of better quality and serves to dilute existing pollutant concentrations in the estuary. Diversion of that water around the Delta will exacerbate existing degraded water quality within the Delta by increasing pollutant concentration and residence time (i.e., the time pollutants interact with the environment).

While irrigated agriculture is exempt from regulation under the federal Clean Water Act, potential solutions to the Delta’s problems are not exempted. Any comprehensive Delta solution will have to comply with the Clean Water Act and meet its water quality and antidegradation provisions.

Further, the California Water Code prohibits changes in points of diversion if it harms existing water rights holders. It is doubtful that the state and federal project points of diversion could be successfully relocated to the north Delta without degrading Delta water quality and harming existing water users, including Delta farmers.