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Judge Rules State Must Do Much More to Curb Agricultural Pollution

(August 10, 2015, Sacramento) Today, Superior Court Judge Timothy Frawley ruled that California is not doing enough to curb the witch's brew of pollution pouring from California farms. Judge Frawley ordered the State and Central Coast Regional Water Quality Control Board to create new rules protecting human health and the environment, surface and groundwater, from agricultural pollution.

In 2013, a coalition of five nonprofit organizations and an elderly woman who cannot drink water from her tap because it is contaminated with agricultural waste, filed a lawsuit in Sacramento Superior Court challenging the Central Coast Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Agriculture (also known as the "Ag Waiver") and changes made by the State Water Resources Control Board to cripple the already weak order. The coalition alleged the Ag Waiver was so weakened it did not comply with State Law. The organizations (Santa Barbara Channelkeeper, The Otter Project, The Environmental Justice Coalition for Water, Pacific Coast Federation of Fishermen's Associations, and California Sportfishing Protection Alliance) represent a broad alliance of conservation, environmental justice, and industry united in protecting clean water.

Agricultural pollution is exempt from regulation by the federal Clean Water Act but is governed by California's Water Quality Control Act. In adopting the Water Quality Control Act, the California Legislature declared that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state." Any person or industry proposing to discharge waste that "could affect the quality of the waters of the state" must file a report of waste discharge and be issued a permit (called Waste Discharge Requirements). A group of similar dischargers can be issued a group permit, called a Conditional Waiver of Waste Discharge Requirements. All dischargers in the group must comply with the "conditions" of the waiver.

In a report released on February 1, 2010, Central Coast Water Board staff explained that many water segments throughout the Central Coast region are listed as impaired under section 303(d) of the federal Clean Water Act, nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain "well documented, severe, and widespread." Regional Board staff concluded that "[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life." Staff determined that previous Ag Orders "[lacked] clarity and focus," did not provide for adequate "compliance and verification monitoring," and allowed "agricultural discharges [to] continue to severely impact water quality in most receiving waters." Draft waivers were attacked by

agricultural interests as draconian, punishing, and intrusive over-regulation and the Ag Waiver was significantly weakened when it was finally adopted by the Regional Board in March 2012. Desiring even weaker regulation, organized agricultural interests filed four separate appeals of the Regional Board's decision to the State Water Resources Control Board. Conservation interests also filed an appeal asking for stricter regulation. On October 29, 2013 the State Board issued its decision to further weaken the Ag Order.

The coalition that filed the lawsuit believes the Ag Order fails to protect public health and the environment by allowing the further degradation of surface and ground water quality. The organizations were represented by Stanford Environmental Law Clinic and the Golden Gate University Environmental Law and Justice Clinic, and Ms. Manzo is represented by California Rural Legal Assistance.

"The financial, legal, and political resources of big agriculture eviscerated and weakened the regulation. Agriculture has every right to use the public's water but they do not have the right to return it so polluted that it kills the life that lives in it," said Steve Shimek, Executive Director of The Otter Project.

"We're delighted with Judge Frawley's ruling," said California Sportfishing Protection Alliance Executive Director Bill Jennings, adding " Hopefully the state will now begin to protect our rivers from agricultural pollution rather than protecting polluters from the law."

Judge Frawley agreed.

Although the lawsuit focuses on the Central Coast region that includes the Salinas Valley, the lawsuit is anticipated to influence the entire state. The California Farm Bureau Federation, Ocean Mist, Western Growers and other major farms intervened in the lawsuit to protect the weak regulations.

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A copy of the filed lawsuit and additional background can be found at <http://www.otterproject.org/the-otter-project-v-state-of-california/>