



Third District Court of Appeals decision becomes precedential for ILRP General Orders

In 2018, the State Water Resources Control Board (SWRCB) revised the Waste Discharge Requirements General Order (General Order) for growers within the Eastern San Joaquin River Watershed. Under the General Order revision, the East San Joaquin Water Quality Coalition (ESJWQC) is responsible for assisting ESJWQC members fulfill regional requirements and conditions including monitoring and reporting of applied nitrogen in irrigated fields. The revised General Order authorizes ESJWQC to anonymize Farm Evaluation and Irrigation and Nitrogen Management Plan (INMP) Summary Report data by using numeric identifiers for member names and field locations to protect its members' privacy before submitting the information to the Central Valley Regional Water Quality Control Board (CVRWQCB). Once the anonymized data using the numeric identifiers is submitted to the CVRWQCB, it is a public document. However, the Coalition retains the key that connects the numeric identifier to names and parcels, and that is not a public document.

Upon the SWRCB's adoption of the General Order that allowed for submittal of anonymous data, the Environmental Law Foundation (ELF) and Monterey Coastkeeper et al. (Coastkeeper) filed petitions for writs of mandate challenging submittal of aggregate and anonymized data and other elements of the General Order as being noncompliant with the Nonpoint Source Policy. Further, although not directly relevant to the anonymous data issue, Protectores Del Agua Subterranea also filed a petition for writ of mandating alleging that the General Order violated the State's Antidegradation Policy. The ESJWQC along with the Kings River Water Quality Coalition and other agricultural interests intervened in the actions to protect agriculture's interests in the litigation. Generally, the ELF and Coastkeeper petitioners argued that they, along with the general public, were entitled to the raw data, including growers' names and property locations associated with applied nitrogen.

On March 17, 2023, the Third District Court of Appeals issued a decision in *Environmental Law Foundation v. State Water Board* that found on behalf of the SWRCB, CVRWQCB, and the Agricultural-Intervenors. According to Tess Dunham, attorney for ESJWQC and other irrigated agricultural coalitions, "All of challenges were rejected by the Court, including

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the State Water Board Order's finding that grower data can be submitted to the Water Board in an anonymous fashion. Meaning that grower nitrogen applied and yield data will continue to be protected, at least until the State Water Board or Central Valley Water Board orders otherwise. Most importantly, the Court's decision recognizes the value of Central Valley agriculture and that the Water Boards have discretion with respect to how they decide to regulate Central Valley agriculture. The Court rejected the environmental advocates arguments that the monitoring programs were not sufficient and were inconsistent with the Nonpoint Source Policy. Instead, the Court found that the ESJ Order and its planning components are a Nonpoint Source Program in its entirety, and that collectively, the program meets the key elements of the Nonpoint Source

Policy. The Court's decision also provides useful and helpful clarification regarding application of the commentary in the Nonpoint Source Policy. It explains, as we and the State argued, that the commentary is just that and it provides suggested guidance to the Regional Boards - but not mandates." On April 26, 2023, the ELF and Coastkeeper petitioners filed a petition for review with the California Supreme Court asking the Supreme Court to disavow the Court of Appeal's decision. On June 14, 2023, the California Supreme court denied the petition for review, which means that the Third District Court of Appeal's decision is a final, published decision.

Your Chance to Be Heard: Stakeholder Listening Sessions

A new study of food safety and water quality regulatory requirements is underway. The California Department of Food and Agriculture (CDFA) wants to hear from growers who have been working under those requirements to hear what works and what doesn't, to help them improve administration and how information is used. The Study is evaluating food safety and water quality regulatory requirements CDFA, California Environmental Protection Agency (CalEPA), and State Water Resources Control Board programs.

KRWQC stakeholders are invited to share your experiences to help the State improve.

Listening sessions will be held throughout 2023 to ask people in the agricultural community and any interested stakeholders about experiences with these regulations. They are a chance for you to provide direct and confidential input.

Schedule a listening session one-on-one, in a group, in-person, or virtually. To sign up or ask questions contact KRWQC staff at (559) 365-7958, info@kingsriverwqc.org; or Crowe, the company conducting the survey, at RegulatoryAlignmentStudy@crowe.com.

Why take the time?

- You get the chance to tell the State what it's like to deal with regulations on your end.
- Share info they can use to make complying with regulations easier to do for you and other growers.

Kings River Water Quality Coalition
P.O. Box 8259
Fresno, CA 93747

Important Coalition member updates enclosed

Member Invoices - Due October 31, 2023

The annual invoices required by the State Board were sent out in August and are due October 31 for the ILRP coverage period of July 2023-June 2024. Coalition member fees include State Board fees, and Irrigated Lands Regulatory Program (ILRP) requirements such as salt and nitrate control programs, replacement water fill stations, member compliance assistance, and water quality monitoring programs.

A 15% late fee will be assessed on all payments not received by October 31. Payments can be made via check (please use the return envelope enclosed with your invoice or mail to P.O BOX 8259 Fresno, CA 93747) or credit card by logging into the member portal at www.kingsriverwqc.org/account.

Check your invoice for updates:

- Member contact information
- Owner/Operator information
- Parcels
 - New purchases
 - Parcels sold
 - Changes in irrigated acres

Need to make a change? Log into the Member Portal, www.kingsriversqc.org/ account, to make changes and request an updated invoice.



Email info@kingsriverwqc.org



Call us at **559.365.7958**



Visit our website
kingsriverwqc.org