

California GCSA
Nov 7, 2011

**California
GCSA
Annual
Conference**

**Aquatic
Pesticides &
NPDES
Permits**

Silverado Resort &
Spa
Nov 7, 2011

Mike Blankinship
Blankinship & Associates Inc.
Agricultural & Environmental Consultants



Today's Talk

- Rules
- Risk



Some Rules You May Know:

- **General Rules:**
 - Never lick a steak knife
- **Scientific Rules:**
 - **Law of Probability** - The probability of being watched is directly proportional to the stupidity of your act.
- **Meeting Rules:**
 - Don't say anything until the meeting is half over; this stamps you as being wise
 - "It is better to be thought a fool than to open one's mouth and remove all doubt." (Benjamin Franklin)

Better Not Break the Rules...




Rules

- **Registrations**
 - USEPA
 - DPR
 - Emergency Exemptions (Section 18)
 - Special Local Need (Section 24c)
- **Permits**
 - County Ag Dept: Restricted Materials
 - Ca Department of Fish & Game: Project-Specific
 - Local County Requirements (Marin, Santa Clara, SF)
 - State Water Resources Control Board: NPDES
- **Injunctions**
 - Environmental Advocacy Driven
 - Court Enforced
 - Three to Know About



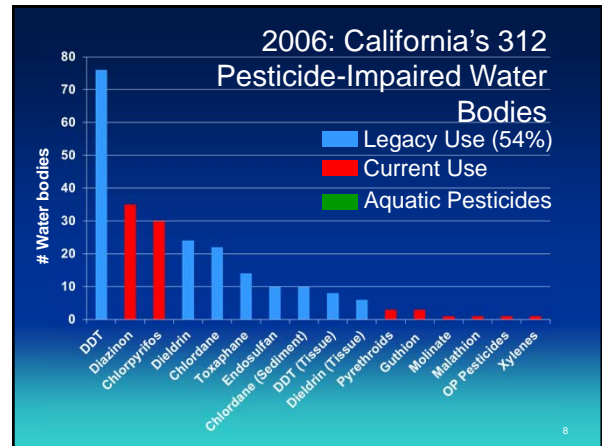
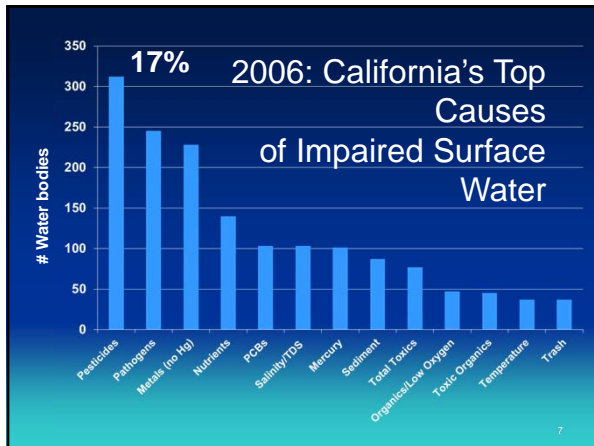
What's the Problem?

- **Pesticides and Water Quality**
- **1996 Talent Irrigation District**
 - leaking gate releases acrolein-treated water; 92K steelhead die
- **On-going Clean Water Act 303(d) List**




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“The vast majority of studies in California that have included TIE evidence have demonstrated that water toxicity is caused by pesticides.”

Source: “Toxicity in California Waters”, SWRCB October 2011.




What's a Solution? NPDES

- National Pollutant Discharge Elimination System
- Part of the Federal Clean Water Act
- Typical Uses: stormwater, construction, industrial discharges
- Benefits:
 - Protect water quality
 - Allows discharge
 - Manages risk



Recent History



- **1996:** Talent Irrigation District
- **2002:** CA issues Emergency General Permit for Discharge of Aquatic Pesticides
- **2002:** Forsgren Case
- **2004:** New 5 year Permit Issued by California
- **2005:** Fairhurst Case
- **2007:** EPA: FIFRA: good enough
- **Jan 2009:** 6th Circuit Court rules on National Cotton Council v. EPA
- **June 2009:** 6th Circuit Court grants 2 Year “Stay”
- **Mar 2010:** Supreme Court Will Not Consider the Case

Legend: ■ Permit Needed, ■ No Permit Needed

2011 Activity



- **Mar 2011:** USEPA grants 6 month extension
- **Mar 2011:** House passes HR 872
- **Mar 2011:** California adopts 3 aquatic pesticide permits
- **Summer 2011:** S 718 Stalled in Senate
- **Summer 2011:** California drafts aquatic weed permit
- **Oct 13, 2011:** EPA announces NOI extension to Jan 12, 2012
- **October 30, 2011:** Senate Fails to Reach Last Minute Deal on 2 Year Moratorium
- **Oct 31, 2011:** USEPA Deadline

Bottomline Today? Permit Needed

Easy to See, right?



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Remember

- No NPDES permit is needed for terrestrial applications
- In CA, use the CA Permit
 - Exception: Tribal Lands uses



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Do I Need an NPDES Permit?

- You “discharge” a “pollutant” to “Waters of U.S.”
- Your pesticide application leaves a “residue”
- Your applications are to, over or near water
- Perceived CWA Violations and Subsequent Citizen Lawsuits Concern You

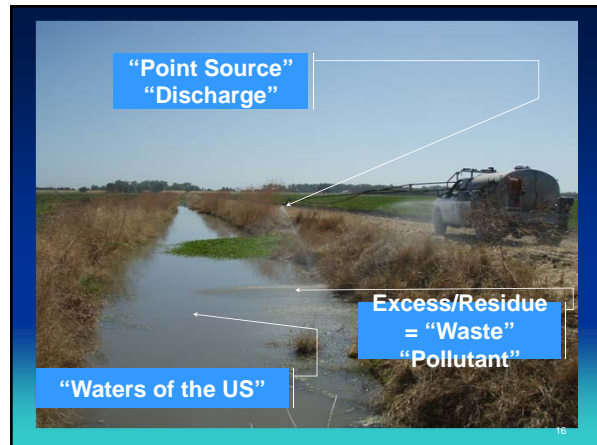


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“Point Source”
“Discharge”

Excess/Residue
= “Waste”
“Pollutant”

“Waters of the US”



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Waters of the US “WOUS”

- All interstate waters and wetlands currently, formally or potentially used in interstate commerce;
- All other waters, including intrastate waters the use, degradation or destruction of which could affect interstate or foreign commerce
- Waters which are or could be used:
 - by interstate or foreign travelers for recreational or other purposes;
 - for industrial purposes by industries in interstate commerce
 - to take fish or shellfish and sold in interstate or foreign commerce; or

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“Waters of the US”

- Adjacent Wetlands and Ponds
- Tributaries
- Seasonally intermittent streams ultimately emptying into a WOUS

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“Waters of the US”

Excludes:

- Pre-1985 converted cropland
- Waste treatment ponds
- Artificial lakes/ponds created by excavating/diking dry land to collect/retain water used exclusively for stock watering, irrigation, settling basins, or rice growing
- Above the “ordinary high water mark”

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“Waters of the U.S.”



Ask: Could I Be Conected?”

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“Waters of the US”

Yes or No?

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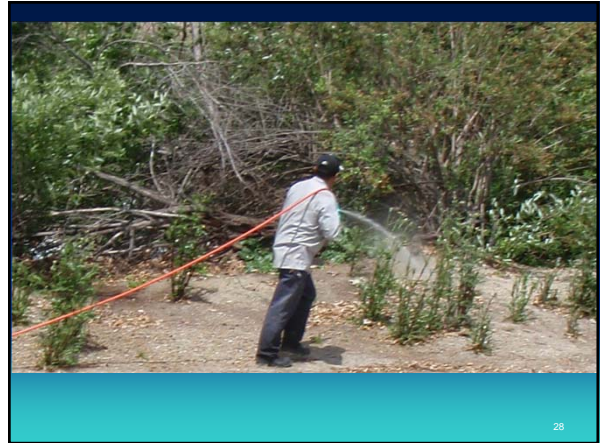
Ordinary High Water Mark

- “...that line on the shore established by the fluctuations of water and **indicated by physical characteristics** such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”



Source: 33 CFR 328.3(e)

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The Four California Aquatic Pesticide Permits

- #1-3: Newly Adopted: Mar 2011
 - #1 Aquatic Animal Invasive Species
 - #2 Spray Applications
 - #3 Vectors
- # 4: Aquatic Weed
 - Draft Revision Due Late 2011



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The California NPDES Aquatic Weed Permit

- Submit Notice of Intent (NOI)
- Prepare and Execute an Aquatic Pesticide Application Plan (APAP)
- Report Annually
- Cost: \$3K-\$8K



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- RISK (rsk)*n.1*. The possibility of suffering harm or loss; danger.
- What is the risk of getting caught?



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Who Enforces this ?

- **Unlikely:**
 - SWRCB
 - RWQCB
 - Ag Commissioner
 - CDFG
- **Likely:**
 - Environmental Advocacy Groups

Manage Your Risk

- Do You Apply to WOUS?
- Are Environmental Groups Present?
- Is permit cost/benefit < or > potential "pain" caused by a lawsuit?
- Track status of Existing Permit
- Be a Steward
- Recognize Perception



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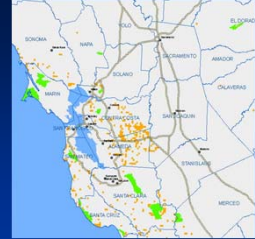
Other "Risks"

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Injunction Dysfunction

- Salmon/Steelhead
- Red-legged Frog
- Goby 11

- Bottomline:
 - Buffer Zones
 - Exceptions for Invasive & Noxious Species Control



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The Future: Stay Informed



- California Aquatic Pesticide Permit ("Weed Permit")
 - http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml
- Goby 11 Injunction
 - <http://www.epa.gov/opplead1/endanger/litstatus/factsheet.html>
 - <http://www.epa.gov/opplead1/endanger/litstatus/use-limitation.html>
- Red-Legged Frog Injunction
 - http://www.cdpr.ca.gov/docs/endspec/rl_frog/index.htm
 - <http://www.epa.gov/espp/litstatus/redleg-frog/rlf.htm>
- Salmonid Injunction
 - <http://www.epa.gov/espp/litstatus/wtc/maps.htm>
- EPA v. CBD/PANNA
 - http://www.biologicaldiversity.org/news/press_releases/2011/pesticides-01-20-2011.html

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- Questions



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(530) 757-0941
mike@h2osci.com

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