

CAPCA
37th Annual
Conference

Aquatic
Pesticide
Permits &
NPDES
Compliance

Reno, NV
Oct 17, 2011

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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

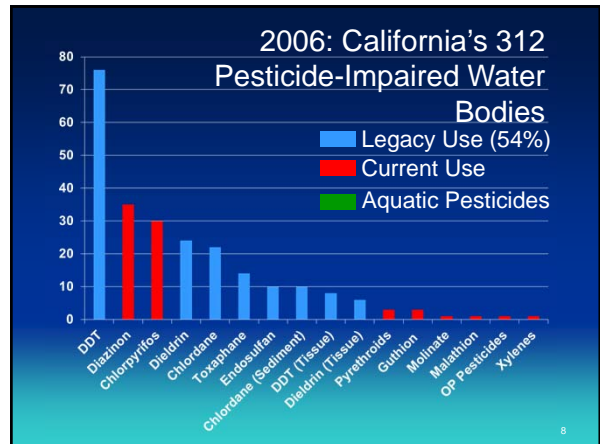
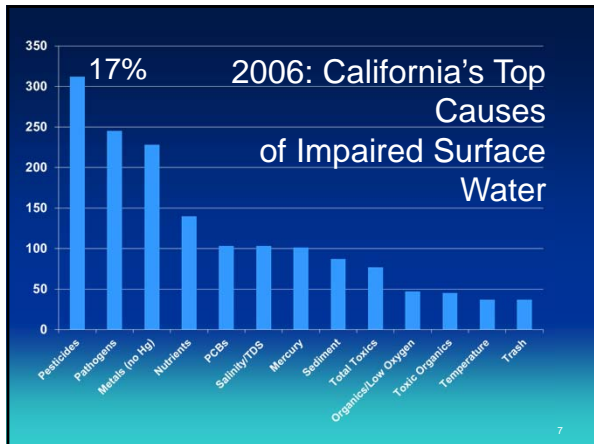
- **Registrations**
 - USEPA
 - DPR
 - Emergency Exemptions (Section 18)
 - Special Local Need (Section 24c)
- **Permits**
 - County Ag Dept: Restricted Materials
 - Ca Department of Fish & Game: Project-Specific
 - Local County Requirements (Marin, Santa Clara, SF)
 - State Water Resources Control Board: 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**





What's a Solution? NPDES

- **N**ational **P**ollutant **D**ischarge **E**limination **S**ystem
- Part of the Federal Clean Water Act
- Typical Uses: stormwater, construction, industrial discharges
- Benefits:
 - Protect water quality
 - Allows discharge
 - Provides legal protection

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

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
- **Oct 31, 2011:** USEPA Deadline

Bottomline Today? **No One Knows**

Easy to See, right?



Let's Assume:

- S 718 does not pass
- Or, S 718 does pass, but has not bearing in CA
- California keeps it's permit



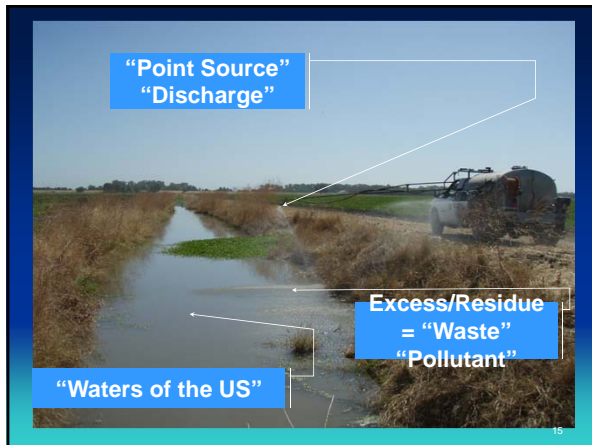
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Do I Need an NPDES Permit?

- 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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**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 Connected?"

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Remember

- No NPDES permit is needed for terrestrial applications



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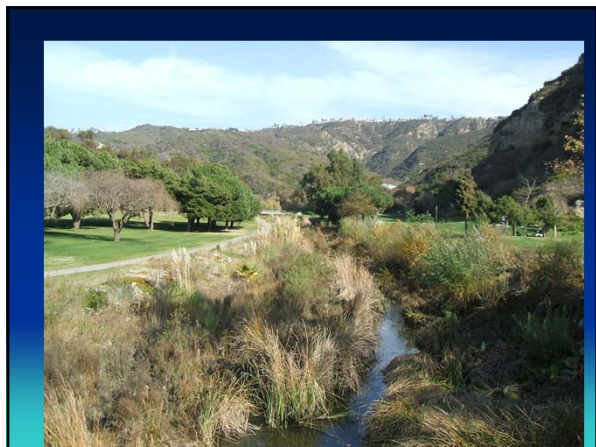
"Waters of the US"

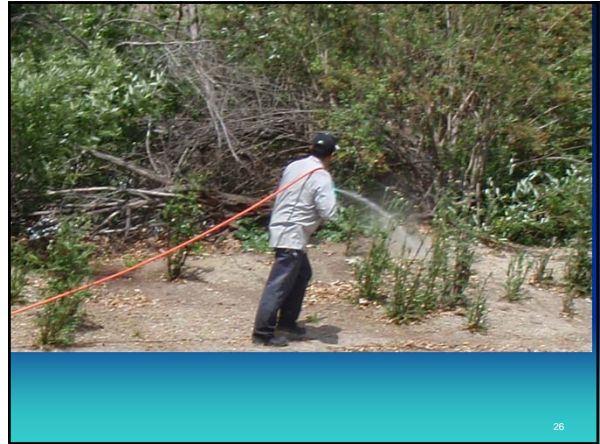
Yes or No?

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The Draft EPA Pesticide General Permit (PGP)

- Does not apply in CA
- Oct 31, 2011 Deadline
- NOI Due Jan 12, 2012
- HR872 & S718 pending
- Not needed for terrestrial applications



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The Four California Aquatic Pesticide Permits

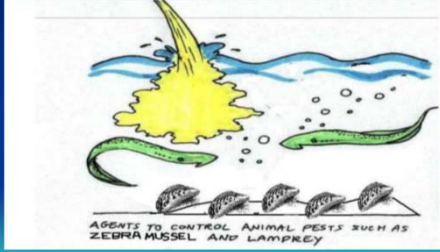
- #1-3: Newly Adopted: Mar 2011
 - #1 Aquatic Animal Invasive Species
 - #2 Spray Applications
 - #3 Vectors
- # 4: Existing Aquatic Weed
 - Draft Due Late 2011



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Aquatic Animal Invasive Species



(Source: P. Mues, USEPA Dec 9, 2010)

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Spray Applications (CDFA and USFS Only)



(Source: P. Mues, USEPA Dec 9, 2010)

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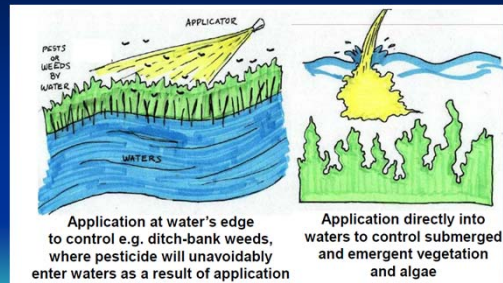
Vectors



(Source: P. Mues, USEPA Dec 9, 2010)

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Aquatic Weeds



(Source: P. Mues, USEPA Dec 9, 2010)

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What Now?

The California NPDES Aquatic Weed Permit

- Still Available for Use
- Special requirements for
 - Copper and Acrolein
- Tentative Revision Schedule:
 - Public Workshop: Fall-Winter 2011
 - Adoption: Spring 2012
 - Not needed for terrestrial applications



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The Ca NPDES Aquatic Pesticide Weed Permit

- Submit Notice of Intent (NOI)
- Prepare and Execute an Aquatic Pesticide Application Plan (APAP)
- Report Annually
- Cost: \$6K-\$15K



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Aquatic Pesticide Application Plan (APAP):

- Prepare Quality Assurance Plan
- Describe weeds, water body, tolerances
- Document all applications
- Sample 10 % of all applications
- Evaluate BMP effectiveness
- List Gates/Control Structures
- Get Local RWQCB Approval

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“California Water Quality Objectives”



Chemical	WQO (ug/L)
Triclopyr	N/A, monitoring required
Diquat Dibromide	20
Glyphosate	700
Fluridone	560
Na ₂ CO ₃ Peroxyhydrate	Pending
Non-ionic Surfactant (nonylphenol)	6.6
2,4-D	70
Imazapyr	N/A, monitoring required
Endothall	100
Acrolein *	320
Copper *	3-52 (Hardness Dependent)

* Requires SIP Exception

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- **RISK (rsk)n.1.** The possibility of suffering harm or loss; danger.

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Who Enforces this ?



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



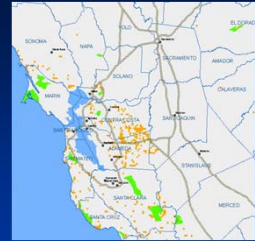
Other "Risks"

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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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