

Washington State Water Resources Association – December 4, 2025

CLEAN WATER ACT UPDATE

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The Clean Water Act and the Irrigation Return Flow Exemption

- A ***permit*** is required to discharge any pollutant from a ***point source*** into navigable waters.
- A ***permit*** is not required “for discharges composed entirely of return flows from irrigated agriculture.” CWA Sec. 402(I)(1)
- A ***point source*** does not include “return flows from irrigated agriculture.” CWA Sec. 502(14)

The *Glaser* Case: Challenging the Irrigation Return Flow Exemption

PCFFA v. Glaser, 937 F.3d 1191 (9th Cir. 2019)

- Key points from Ninth Circuit Court decision:
 - 1) Burden of proving exemption applies falls on the defendants;
 - 2) Discharge must be composed “entirely” of return flows from irrigated agriculture; and
 - 3) Exemption broadly includes activities related to crop production, including flows from retired or fallowed lands.

The Remand

- *PCFFA v. Conant*, Order on Motions for Summary Judgment (E.D. CA Feb. 2023)
- MSJs: Project discharges v. separate “commingled” non-agricultural discharges
- Court: Scope of ag return flows exception
 - “irrigated agriculture” to be broadly construed
 - additional point source discharges unrelated to crop production?

Alleged Non-Ag Discharges

- Seepage and sedimentation in the drain
 - = nonpoint sources
- Seepage and runoff from solar farm
 - = nonpoint sources and related to crop production
 - + drainage water is reused for irrigation on farmland
- Highways, residences and other non-ag lands
 - = nonpoint sources
- Would undermine the intent of the exception

Back to the Ninth Circuit

- Summary judgment granted in favor of local defendants
 - Irrigation return flow exemption
 - No NPDES permit required
- Plaintiffs appealed to Ninth Circuit
 - Briefing completed
 - Oral argument held October 21, 2024

Ninth Circuit Decision

- *PCFFA v. Nickels*, Opinion (9th Cir. Sep. 5, 2025) affirmed District Court (request for en banc hearing denied).
- Conclusion: The irrigation return flow exemption applied because the alleged pollutants were either added to the Project via nonpoint sources or via a point source related to crop production.

Waters of the United States

- The *Sackett* decision (2023)
 - WOTUS definition reset
 - Significant Nexus v. Relatively Permanent/Continuously Flowing/Indistinguishable
- The Biden Amended Rule = more litigation
- Trump 47 Proposed Rule
 - Issues: Jurisdiction if continuously flowing or at least during “wet season”; ditches
 - comments due January 5, 2026