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For Petitioners California Sportfishing Protection Alliance and California Water Impact Network

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

**In the Matter of Waste Discharge Requirements )  
General Order For Growers Within The Eastern )  
San Joaquin River Watershed That Are Members )     **PETITION FOR REVIEW**  
Of The Third-Party Group, California Regional )  
Water Quality Control Board – Central Valley )  
Region, Order No. R5-2012-0116 )**

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance and the California Water Impact Network (collectively “CSPA” or “petitioners”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional

Board”) in adopting Waste Discharge Requirements For Growers Within The Eastern San Joaquin River Watershed That Are Members Of The Third Party Group, on 7 December 2012. See Order No. R5-2012-0116. The issues raised in this petition were raised in timely written comments.

**1. NAME AND ADDRESS OF THE PETITIONERS:**

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3536 Rainier Avenue  
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Tel: 209-464-5067  
Attention: Bill Jennings, Executive Director

California Water Impact Network  
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Tel: 805-969-0824  
Attention: Carolee Krieger, President

**2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:**

Petitioners seek review of Order No. R5-2012-0116, Waste Discharge Requirements For Growers Within The Eastern San Joaquin River Watershed That Are Members Of The Third Party Group. A copy of the adopted Order is attached as Attachment No. 1.

**3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:**

7 December 2012

**4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:**

CSPA submitted a detailed comment letter on 6 August 2012 and provided oral comments on 7 December 2012. Those and the following comments set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

Discharges from irrigated agriculture are the largest source of pollution to Central Valley waterways. The State Board's *2010 Integrated Report Clean Water Act Section 303(d) List / 305(b) Report* (Category 5 [impairments requiring development of a TMDL] and Category 4A [impairments being addressed by USEPA approved TMDLs]) identifies some 730 pollutant/water body impairments in the Central Valley. Agriculture is identified as the source of 269 pollutant/water body segments covering 1,572 waterway miles and 96,147 acres of open water. Sources of impairment to 257 pollutant/water body segments remain unidentified. However, it is likely that agriculture will ultimately be identified as causing or contributing to many, if not most, of these impairments, as the pollutants or causes are closely linked to agricultural areas and activities.

The Regional Board's region-wide assessment of data collected at 313 sites by U.C. Davis and the agricultural coalitions, pursuant to the Irrigated Lands Program, titled, *Irrigated Lands Conditional Waiver Program: 2007 Review of Monitoring Data* revealed that: 1) toxicity to aquatic life was present at 63% of the monitored sites (50% were toxic to more than one species), 2) pesticide water quality standards were exceeded at 54% of sites (many for multiple pesticides), 3) one or more metals violated criteria at 66% of the sites, 4) human health standards for bacteria were violated at 87% of monitored sites and 5) more than 80% of the locations reported exceedances of general parameters (dissolved oxygen, pH, salt, TSS). While the adequacy of monitoring (i.e., frequency and comprehensiveness of monitoring) varied dramatically from site to site, the report presents a dramatic panorama of the epidemic pollution caused by the uncontrolled discharge of agricultural wastes.

Given the epidemic pollution of Central Valley waterways and the parallel collapse of pelagic and salmonid fisheries, discharges from irrigated agriculture must be required to comply with the highest statutory and regulatory requirements. Unfortunately, the recently issued Waste Discharge Requirements (WDRs) for growers within the Eastern San Joaquin River watershed that are members of the Eastside Coalition grievously fail to meet this standard.

**A. The WDRs fail to comply with Resolution 68-16, the State Board's antidegradation policy.**

The State Board's "Statement of Policy With Respect to Maintaining High Quality of Waters in California" provides, in relevant part, that:

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with

maximum benefit to the people of the State will be maintained.

It is impossible to implement effective, protective or legally adequate WDRs where the Regional Board does not know the owner/operator or location of specific discharge points, the constituents discharged, whether the owner/operator has implemented specific control measures to reduce or eliminate pollution or if any specific implemented measures are effective. Every other regulatory program protecting water quality administered by the Regional Board requires a discharger to identify the discharge points, the constituents and concentrations discharged, measures implemented to control pollution and the results of implemented measures.

It is undisputed in the record that vast stretches of Eastside Coalition waters go unmonitored under the WDRs. As a result, the WDRs fail to ensure that no further degradation will occur in Eastside waters. The WDRs depend upon regional, or watershed-scale, monitoring conducted by the coalition. It is impossible to protect water quality through a water monitoring program predicated upon a very few ambient monitoring sites far removed from actual points of discharge.

For example, the Eastside San Joaquin Coalition is comprised of six zones comprising 987,058 irrigated acres. There is only one core monitoring site in each of the six zones where monitoring is conducted in any given year. Consequently, each core-monitoring site in zones one through six annually monitors collected drainage from 134,304; 164,633; 88,617; 121,746; 142,686 and 334,069 irrigated acres, respectively. Zones one through six also contain 3, 8, 2, 7, 3 and 3 represented monitoring sites, respectively. Consequently, each represented monitoring site monitors collected drainage from 44,768; 20,579; 44,392; 17,392; 47,562; and 111,356 irrigated acres, respectively. Combining core and represented monitoring sites reveals that each monitoring point in the six zones is expected to evaluate collected drainage from 33,576; 18,293; 29,544; 15,218; 35,715 and 83,767 acres, respectively. Huge expanses of waters within the Coalition boundaries go unmonitored.

Further, agricultural cropping and chemical usage patterns are ever changing. The list of monitored constituents at core and represented monitoring sites and the timing of monitoring does not necessarily reflect actual constituents that may be discharged and present in the ambient waters.

A water sample collected once a month represents approximately 0.1% of stream flow. Water quality standards for toxic pollutants, by definition, cause impairment if they're exceeded more than once in three years. The quality of water, compliance with water quality standards or the sources of pollution cannot be determined by collecting samples, perhaps 20 to 40 miles from a discharge point and analyzing 0.1% of streamflow draining 15,218 to 83,767 irrigated acres. This is especially true for constituents that are toxic in low parts-per-billion and that frequently

occur as intermittent “pulse” flows. Watershed scale monitoring cannot measure or detect degradation that may have occurred upstream and dissipated by the time the effected waters commingle with other waters and flow past the downstream monitoring location. Discharger specific or, at a minimum, a statistically significant sampling of specific discharges is fundamental to providing the information necessary to adequately regulate specific sources of pollution.

Nor can watershed or regional-based monitoring determine whether implemented best management practices are effective. Indeed, under the WDRs, the Regional Board will only have summarized information from the Eastside Coalition on management measures implemented by individual farmers. The Board will not know, unless it specifically requests, specific management measures each farmer has implemented and it can never know whether any specific implemented management measures are effective because no site specific monitoring is required.

Information in the record from expert consultants, a number of which were previously employed by the Regional Board, demonstrate that regional monitoring and the failure to monitor actual discharges and management measures cannot protect water quality. For example, former Regional Board geologist Steve Bond, in a letter that is included in the record observes that: 1) it is impossible to protect the beneficial uses of waters of the State without monitoring those waters; 2) it is impossible to evaluate the effectiveness of treatment systems or management measures without monitoring the discharge; 3) it is impossible to evaluate the effectiveness of specific management measures from a distant downstream monitoring location and 4) it is impossible to determine the water quality of upstream sub-watersheds in a complex watershed by measuring at distant downstream locations. Steven Bond and Associates letter to Bill Jennings dated 27 September 2010. Monitoring edge-of-field and adjacent ambient waters is necessary to evaluate whether waters are being polluted or the effectiveness of applied management measures.

Indeed, the Regional Board, itself, admits that regional or watershed monitoring cannot determine local violations of water quality standards or evaluate the effectiveness of implemented management measures and individual compliance with water quality requirements. The WDRs’ Findings state, “[t]he surface water quality monitoring and trend groundwater quality monitoring under this Order are regional in nature instead of individual field discharge monitoring. The benefits of regional monitoring include the ability to determine whether water bodies accepting discharges from numerous irrigated lands are meeting water quality objectives and to determine whether practices, at the watershed level, are protective of water quality. However, there are limitations to regional monitoring’s effectiveness in determining possible sources of water quality problems, the effectiveness of management practices, and individual

compliance with this Order's requirements." Waste Discharge Requirements General Order R5-2012-0116, Finding 23, page 6.

The monitoring required by the WDRs is the same fault monitoring scheme recently rejected by the Court of Appeal in *Asociacion de Gente Unida por el Agua* as violating the antidegradation policy:

The crucial question of fact in this case is whether the monitoring system prescribed in the Order is adequate to ensure the Order's directive that no further degradation of groundwater shall occur. Appellants point to evidence in the record indicating the Order's monitoring method is inadequate. Regional Board cites no contrary evidence. Thus, there are no facts from which any court could determine the monitoring system is adequate to detect and prevent further groundwater degradation. The interpretation of the antidegradation policy and the Order are generally matters of law.

210 Cal.App.4th at 1267. Like the supply wells required to be monitoring by the Regional Board in the general permit issued for dairy discharges that were located a significant distance from the source of the potential degradation (manure ponds), the WDR's regional monitoring locations are "ineffective to accomplish the timely detection of a change in [water] quality." *Id.* at 1260. Like the vacated dairy WDRs, additional upstream monitoring of any sort is not required unless the regional, *i.e.* distant, monitoring sites already show an adverse impact. *Id.* The fact that follow-up management plans may be triggered does not obviate the fact that the prescribed monitoring locations will not monitor localized areas that feel the full brunt of one or more irrigated land dischargers' pollution. Like the dairy WDRs, follow-up management plans by the Eastside are only triggered after multiple violations of water quality objectives far downstream of most sources already are detected. Like the dairy WDRs management plan triggers, that triggering event already establishes that water quality objectives are being violated and beneficial uses unreasonably affected. 210 Cal.App.4th at 1276-77. Thus, whatever discretion the Regional Board staff may have to require or review management plans by Eastside Coalition does not insure that no further degradation of [Central Valley waters] occurs." *Id.*

The Court of Appeals was quite specific that general admonitions that Coalition members not discharge pollutants at levels that exceed applicable water quality objectives or that they apply BPTC do not cure the absence of meaningful monitoring or information establishing a discharger's BPTC and confirmation of implementation to ensure that dischargers are actually complying with those requirements. The Court of Appeals stated:

The Order protects the beneficial uses of groundwater by declaring that degrading groundwater is prohibited. However, as previously shown, the mechanism for

ensuring the groundwater will not be degraded, the monitoring program, is insufficient for the task.

210 Cal.App.4th at 1280. The same is true for the Eastside WDRs. Although the WDRs includes general requirements that each discharger apply BPTC, comply with standards and not degrade surface waters, those general requirements do not cure the absence of any meaningful requirement that farmers monitor their dischargers or the receiving waters measurably affected by their pollution. Indeed, the Court of Appeal said:

The wish is not father to the action. The Order finds that the beneficial domestic, agricultural, and other uses of the groundwater underlying the dairies will be protected by the Order, but the finding wholly depends upon the Order's prohibition of the further degrading of groundwater without requiring the means (monitoring wells) by which that could be determined. Because the monitoring plan upon which the Order relies to enforce its no degradation directive is inadequate, there is not substantial evidence to support the findings.

210 Cal.App.4th at 1260-61. In the absence of water quality monitoring that is able to detect degradation beyond a small percentage of Central Valley waters, the WDRs suffer from the same inadequacy.

The Regional Board has proposed site specific WDRs for growers who elect not to participate in the Eastside Coalition program. This would require farmers to file a report of waste discharge and obtain individual WDRs. These requirements specify individual monitoring of effluent discharges, implementation of management measures and management reports to ensure that the discharge does not cause or contribute to an exceedance of water quality standards and that BPTC is implemented. If the Eastside Coalition WDRs were truly sufficient to protect receiving waters adjacent to non-coalition farms, no such site-specific WDRs would be necessary.

The Regional Board cannot comply with the antidegradation policy requirements to ensure that all discharges "be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge" necessary to avoid pollution or nuisance and that achieves "the highest water quality consistent with maximum benefit to the people of the State will be maintained" without knowing what, if any, treatment or control any given discharger is applying or what, if any, treatment or control a given discharger will apply in the future, and without requiring monitoring of huge expanses of Coalition waters into which irrigated lands discharge. And if the Regional Board does not know what management measures dischargers are implementing or will implement or what pollutants or

levels of pollutants they are discharging or will discharge, they have no evidence basis to show that the WDRs will result in BPTC.

The State Board has provided guidance on determining BPTC for a discharger:

To evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers.... Promulgated requirements such as federal best available technology economically achievable (BAT) or other promulgated technologies may be appropriate for ground water discharges and would apply to surface water discharges.

210 Cal.App.4th at 1282 (quoting State Board, Guidance Mem. (Feb. 16, 1995) pp. 5–6).

The Regional Board admits that “[d]ue to the numerous commodities being grown on irrigated agricultural lands and varying geological conditions within the Eastern San Joaquin River Watershed, identification of a specific technology or treatment device as BPTC or “best efforts” has not been accomplished” and “[t]here is no specific set of technologies, practices, or treatment devices that can be said to achieve BPTC/best efforts universally in the watershed.” Attachment A to Order R5-2012-0116 – Information Sheet, page 35. Simply establishing vague performance standards to minimize offsite waste discharges, minimize sediment above background levels, minimize excess nutrient application, prevent pollution and nuisance and achieve water quality objectives without knowing the specific discharger or location of specific discharge points, the constituents discharged, whether the discharger has implemented specific control measures to reduce or eliminate pollution or requiring sufficient monitoring to determine if any specific implemented measures are effective cannot ensure that waters are protected, BPTC is achieved or compliance with antidegradation mandates is met.

**B. The WDRs fail to comply with California’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program.**

In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (Nonpoint Source Policy). The purpose of the Nonpoint Source Policy is to improve the state's ability to effectively manage Nonpoint source pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The Nonpoint Source Policy requires, among other key elements, a Nonpoint Source control implementation program’s ultimate purpose to be explicitly stated. It also requires implementation programs to, at a minimum,

address Nonpoint Source pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

The WDRs include a generic finding that it complies with the Nonpoint Source Policy. However, the Nonpoint Source Policy includes five key structural elements with which any nonpoint source program adopted by the Regional Board must abide.

### **1. The WDRs are inconsistent with the Nonpoint Source Policy's Key Element 1.**

The Nonpoint Source Policy's Key element 1 states that "[a]n NPS control implementation program's ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements." NPS Policy, page 11. Before approving or endorsing a specific NPS pollution control implementation program, a RWQCB must determine that there is a high likelihood the implementation program will attain the RWQCB's stated water quality objectives. "An NPS control implementation program must be specific as to the water quality requirements it is designed to meet." *Id.*, page 12. For example, if the program relies upon dischargers' use of MPs, there should be a ***strong correlation between the specific MPs implemented and the relevant water quality requirements.*** *Id.* The program also should provide other information as required by the RWQCB, including but not limited to the identification of participant dischargers. The RWQCB must be able to ensure that ***all the significant sources*** of the NPS discharges of concern are addressed." *Id.*

The WDRs fail to address irrigated lands discharges in a manner that achieves and maintains water quality objectives and beneficial uses and complies with the Antidegradation Policy. The Regional Board does not and will not know the specific management measures implemented and at best, may be aware of general types of management practices applied by certain percentages of irrigated lands somewhere within a larger subwatershed. The regional-based water quality monitoring does not allow the Regional Board to correlate "the specific implemented management measures and the relevant water quality requirements. Only within a portion of the Eastside Coalition's area in which water quality standards are violated in the downstream waters will there be any effort by the coalition to correlate some management measures on some farms to those exceedances. Even in an impaired watershed, under the Renewed Waiver, the coalitions need not disclose to the Regional Board, unless specifically requested, which specific farms and specific management measures on those farms are at issue. And because the water quality is only measured downstream in a given watershed or sub-watershed, numerous upstream waters that may be in violation of standards from irrigated lands discharges will go undetected, allowing for no correlation whatsoever with management measures. Consequently, the WDRs do not come close to addressing all of the likely significant irrigated lands pollution sources in the coalition area.

## **2. The WDRs are inconsistent with the Nonpoint Source Policy's Key Element 2.**

The Nonpoint Source Policy's Key Element 2 states that: "[a] nonpoint-source control implementation program must include a description of the MPs and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose, the process to be used to select or develop management practices, and the process to be used to ensure and verify proper management practice implementation." Nonpoint Policy, page 12. A RWCQB must be able to determine there is a high likelihood that MPs will be successful." *Id.* "MPs must be tailored to a specific site and circumstances and justification for the use of a particular category or type of management measure must show that the measure has been successfully employed in similar circumstances." *Id.* "If a management measure has not previously been employed, documentation to establish its efficacy must be provided by the discharger." *Id.*

As previously noted, the Regional Board admits that "[d]ue to the numerous commodities being grown on irrigated agricultural lands and varying geological conditions within the Eastern San Joaquin River Watershed, identification of a specific technology or treatment device as BPTC or "best efforts" has not been accomplished" and "[t]here is no specific set of technologies, practices, or treatment devices that can be said to achieve BPTC/best efforts universally in the watershed."

The Regional Board observes that "Growers need the flexibility to choose management practices that best achieve a management measure's performance expectations given their own unique circumstances. Management practices developed for agriculture are to be used as an overall system of measures to address nonpoint-source pollution sources on any given site. In most cases, not all of the practices will be needed to address the nonpoint sources at a specific site. Operations may have more than one constituent of concern to address and may need to employ two or more of the practices to address the multiple sources." Attachment A to Order R5-2012-0116 – Information Sheet, page 35.

The WDRs establish general generic standards for implementation of management measures that are to be achieved. These include: 1) minimize waste discharge offsite in surface water, 2) minimize or eliminate the discharge of sediment above background levels, 3) minimize percolation of waste to groundwater, 4) minimize excess nutrient application relative to crop need, 45 prevent pollution and nuisance, 6) achieve and maintain water quality objectives and beneficial uses and 7) protect wellheads from surface water intrusion. *Id.*, page 36.

The Regional Board quotes the State Board guidance on implementing the Antidegradation Policy. "To evaluate the best practicable treatment or control method, the discharger should

compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers.” *Id.*

Farmers have been required to implement management measures to prevent pollution since the adoption of the irrigated lands waiver in 2003. A large percentage of rivers, streams and channels in the Central Valley are impaired by pollutants discharged from irrigated lands. The Eastside Coalition’s regional monitoring, even with the benefit of commingling with other waters, confirm that large quantities of pollutants are violating water quality standards throughout the coalition area. In those places where downstream violations have been detected, the Eastside Coalition has surveyed farmers for existing management measures and asked their members to perhaps employ additional management measures. However, because there is effectively no monitoring of receiving waters adjacent to where farms are discharging and effectively no monitoring of actual discharges to evaluate the effectiveness of management measures, water quality standards violations in those waters will remain undetected and the effectiveness of implemented management measures will remain unknown. The Regional Board will continue to have no evidence demonstrating any likelihood that any current management measures will achieve water quality standards in those waters.

Regional Board staff, on page 59 of the Response to Comments, suggested that the Eastside Coalition’s 1 April 2012 Management Plan Update Report identifies specific management practices implemented and that the Coalition had been able to document measurable progress towards improved water quality because of a claimed reduction in chlorpyrifos exceedances and a reduction in *Ceriodaphnia dubia* toxicity test results. We reviewed the Eastside Coalition’s April 2012 Management Plan Update Report but could find no information on the efficacy of the management measures or their effectiveness in preventing pollution. In any case, these new measures in first and second priority watersheds amounted to 4,102 acres (about 1% of irrigated acres in the Coalition area). And while *C. Dubia* toxicity declined from 16% to 2%, zooplankton (*H. Azteca*) toxicity increased from 14% to 20%. Exceedances from chlorpyrifos were down; which was to be expected given the 82% reduction in use. Farmers have shifted to cheaper and more effective (toxic) products that are not reflected in monitoring. Further, there is no chronic toxicity monitoring and the current acute toxicity monitoring fails to capture episodic events when toxicity is likely to be present.

There is nothing in the record to indicate that the WDRs’ regional monitoring approach can detect violations of water quality standards in all upstream waters or that it can evaluate the effectiveness of management measures to prevent violations in waters well upstream of the regional or representative monitoring locations. By eliminating measurement of what is happening in local waters adjacent to dischargers or measurement of what is being locally discharged, the WDRs cannot evaluate whether management measures are “tailored to a specific

site and circumstances.” Nor is there any evidence upon which the Regional Board could determine that implemented management measures are “highly likely” to be successful in attaining standards in those upstream waters. There is no evidence of any studies or data demonstrating the effectiveness of any management measures in the Central Valley to achieve discharges that comply with water quality standards. Only through representative monitoring of edge of field discharges can the Regional Board determine the effectiveness of management measures and whether violations of water quality standards are occurring.

### **3. The WDRs are inconsistent with the Nonpoint Source Policy’s Key Element 4.**

The Nonpoint Source Policy’s Key Element 4 requires that “[a]n NPS pollution control implementation program must include sufficient feedback mechanisms so that the Regional Water Board, dischargers, and the public can determine whether the program is achieving its stated purpose, or whether additional or different management practices or other actions are required.” NPS Policy, page 13. “In all cases the NPS control implementation program should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the MPs are being properly implemented and are achieving the program’s objectives, and/or to provide feedback for use in adaptive management.” *Id.* “[I]f the program relies upon dischargers’ use of MPs, there should be a strong correlation between the specific MPs implemented and the relevant water quality requirements.” *Id.*, page 12.

The Regional Board claims that the Renewed Waiver’s regional monitoring provisions are sufficient to achieve Key element 4. The weight of the evidence does not support this assertion.

The WDRs’ Finding 23 admits that there are limitations to a regional monitoring approach. The Finding states, “[h]owever, there are limitations to regional monitoring’s effectiveness in determining possible sources of water quality problems, the effectiveness of management practices, and individual compliance with this Order’s requirements. Waste Discharge Requirements General Order R5-2012-0116, Finding 23, page 6.

The Order’s acknowledgment of a regional monitoring program’s inability to determine the sources of pollution, also confirms that regional monitoring is unable to determine what, if any, management practices are being employed by upstream dischargers. The evidence in the record shows that the Renewed Waivers regional monitoring requirements are indeed incapable of identifying upstream management practices. The fact that after seven years of implementation, the Eastside Coalition has not produced substantive information describing the locations of management practices actually in place in the Coalition area and the effectiveness of such practices, roundly demonstrates that the WDRs have no feedback mechanism to evaluate management measures, especially one designed to establish “a strong correlation between the specific implemented management measures and the relevant water quality requirements.”

Regional monitoring locations cannot identify localized pollution problems that occur at individual field discharge locations or receiving waters in closer to proximity to pollution discharges. The WDRs' regional monitoring will provide no information and no correlation about dischargers' use of management practices and their discharges' impacts on more localized waters. Even on a regional level, the evidence shows that regional monitoring cannot establish any clear correlation, nevermind a "strong correlation, between pollution levels measured regionally and the effectiveness of any given dischargers' management practices. Likewise, even the limited surveying of management practices being conducted in some watersheds by the Eastside Coalition in their management plans and updates, does nothing to inform either the Regional Board or the public about the effectiveness of those management practices. As discussed above, the coalitions have only disclosed summaries of the survey results. And general summaries for small areas relative to the entire Coalition watershed say nothing about whether management measures are being properly implemented as required by the Nonpoint Source Policy. Consequently, the WDRs do not contain feedback mechanisms by which either the Regional Board or the public could "determine whether the program is achieving its stated purpose, or whether additional or different MPs or other actions are required." NPS Policy, page 13.

**C. The WDRs fail to comply with Water Code Sections 13263 and 13241.**

California Water Code section 13263 requires that the Regional Board consider the factors, found in section 13241, when considering adoption of waste discharge requirements. Among those are "economic considerations." The WDRs state on page 45:

The PEIR was supported by the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program* (Economics Report). An extensive economic analysis was presented in this report to estimate the cost and broader economic impact on irrigated agricultural operations associated with the five alternatives for the irrigated lands program, including the lands regulated by this Order. Staff was also able to use that analysis to estimate costs of a sixth alternative, since the sixth alternative fell within the range of the five alternatives. This cost estimate is found in Appendix A of the PEIR. This Order is based on the alternatives evaluated in the PEIR, which is part of the administrative record. Therefore, potential economic considerations related to the Order have been considered as part of the overall economic analysis for implementation of the long-term irrigated lands program. This Order is a single action in a series of actions to implement the ILRP in the Central Valley region. Because the Order has been developed from the alternatives evaluated in the PEIR, economic effects will be within the range of those described for the alternatives.

CSPA contracted with ECONorthwest to evaluate the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. That report is in the record of this proceeding. The ECONorthwest report concluded the economic analysis had serious errors of omission and commission that violate generally accepted standards of practice that apply to this type of economic analysis. ECONorthwest found:

1. The study's analytical objectives and approach do not follow generally accepted guidelines. The analysts ignored standards and procedures developed by the California Department of Water Resources specifically for this type of economic analysis. The resulting analysis is flawed and incomplete, and, hence, it provides decision-makers and stakeholders with biased and unreliable descriptions of the economic outcomes likely to materialize if the Board were to implement any of the alternatives in the *Draft EIR*.
2. The economic analysis described in the *Technical Memo* does not compare the alternatives against an appropriate baseline that describes potential future conditions absent implementation of each alternative. Hence, it provides an incomplete, biased representation of the alternatives' economic consequences.
3. The management practices considered in the *Draft EIR* and *Technical Memo* do not reflect the full range of options available to irrigators. They particularly exclude low-cost, high-benefit options. Hence, the *Draft EIR* and *Technical Memo* provide an incomplete and biased representation of the choices that realistically are available to irrigators or the Control Board.
4. The analysis described in the *Technical Memo* incorrectly calculates the costs of adopting practices that improve water quality. The analysis also overlooks major categories of economic costs and benefits that would be affected by the alternatives. Hence, it provides an incomplete, biased representation of the alternatives' economic costs.
5. The *Technical Memo* provides no information on how each of the five alternatives would affect the risks and uncertainty facing irrigators and others. Economic analyses of the scale and scope described in the *Technical Memo* typically include analyses of risk and uncertainty as a matter of course. The analysts' failure to comply with this generally accepted standard of practice gives decision-makers and stakeholders incomplete descriptions of the economic significance of the alternatives' outcomes.
6. The *Technical Memo* provides a biased and incomplete description of the regional impacts of the alternatives. The conclusions in this section emphasize negative outcomes and ignore the analytical assumptions that overstate costs and the resulting negative outcomes.

Staff never responded to ECONorthwest's analysis, as noted at page 2-29 of the final PEIR. Nor did staff respond to the ECONorthwest comments in adoption of the WDRs. The seriously inadequate economic analysis in the PEIR, which was employed in the WDRs, makes a mockery of the legal intent of Water Code Sections 13263 and 13241. As economic considerations played a significant role in which components, requirements and mitigation measures that were evaluated in the PEIR were subsequently selected to be included in the present WDRs, the WDRs are flawed and fail to comply with any meaningful interpretation of what is adequate pursuant to Sections 13263 and 13241.

**D. The WDRs fail to comply with the California Environmental Policy Act.**

The Regional Board failed to conduct a CEQA analysis of the adopted Waste Discharge Requirements (WDRs).

The WDRs are predicated on the long-term Irrigated Lands Regulatory Program Environmental Impact Report (PEIR). However, the PEIR failed to identify a preferred project and none of the evaluated alternatives specifically analyzed the specific WDRs adopted by the Regional Board. The PEIR is seriously deficient and being contested by most parties.

Page 3 of the WDRs' Attachment D titled Findings of Fact and Statement of Overriding Considerations states, regarding the applicability of the Program EIR (PEIR):

Pursuant to Guidelines Section 15168(c)(2), the Central Valley Water Board finds that the Order is within the scope of the project covered by the PEIR, and no new environmental document is required. There are no new effects that could occur or no new mitigation measures that would be required as a result of the Order that were not already identified and described in the PEIR. None of the conditions that would trigger the need to prepare a subsequent EIR under State CEQA Guidelines section 15162 exist with respect to the Order.

This Order represents one order in a series of orders that will be developed, based on the alternatives evaluated in the PEIR, for all irrigated agriculture within the Central Valley.

The PEIR describes that potential environmental impacts of all six alternatives are associated with implementation of water quality management practices, construction of monitoring wells, and impacts to agriculture resources (e.g., loss of production of prime farmland) due to increased regulatory costs.

The PEIR describes and evaluates potential impacts of practices likely to be implemented to meet water quality and other management goals on irrigated lands.

There were only five alternatives, not six, evaluated in the PEIR. Staff devised a sixth alternative from the elements of the original five alternatives in the PEIR as an attempt to show how the Regional Board might extract components from each of the five PEIR alternatives to devise a proposed project. However, staff and the Board made clear that the recommended framework was in no way a proposed project being reviewed by the PEIR. By not identifying a project in the PEIR, the Regional Board sought to facilitate its use of a “pick-and-choose approach, in which the ultimate framework or program would be assembled from pieces of the alternatives that were analyzed. This fact is explicitly clear in the interaction between Board members and staff during consideration of the PEIR. Alternative 6, or the Framework, was never evaluated as a project.

The PEIR failed to include a stable project description and no preferred or proposed project was included. Rather than the typical EIR approach of starting with a project and then looking at alternatives to the project, the PEIR was envisioned as a tool to inform decision makers during the selection of components to be included in subsequent orders. To reiterate, the WDRs, and its constituent parts, were never evaluated as a whole alternative in the PEIR.

As a result, the PEIR offers only alternatives but no proposed project. CEQA – not the Regional Board – sets forth the necessary contents of an EIR that can properly serve as a tool to inform the Regional Board. The drafters, staff and the Regional Board do not have any authority to omit a description of the proposed project from the PEIR.

The PEIR did not describe the Eastside Coalition area adequately. A supplemental or subsequent EIR is necessary to adequately describe the details of the Eastside Coalition’s water pollution control features including locations of discharges, affected waterbodies, types of farms and pollutants being discharged, existing and proposed BPTC, presence of listed or sensitive species, etc. The PEIR does not analyze impacts of proposed WDRs on specific waterbodies included in the Eastside Coalition area. A site-specific impact analysis is necessary.

The PEIR punted all cumulative impacts to the individual WDRs, etc. A supplemental CEQA document is required to review existing water quality in that area, coupled with a list of current and future projects that could affect water quality by the same pollutants (DO, pesticides, sediment, temperature, etc.). A project specific document would need to look at other facilities like sewage plants, municipalities and consider the cumulative impacts of all other discharges along with discharges from irrigated lands.

Pages 2 through 49 of CSPA’s September 2010 letter to the Regional Board regarding the proposed PEIR; pages 3 through 58 of CSPA’s May 2011 petition to the State Board of the Regional Board’s adoption of the PEIR and pages 24 through 30 of CSPA’s May 2011 petition to the Superior Court all speak specifically to the inadequacies of the PEIR, the inadequacies of

the individual components that were subsequently included in the WDRs and inadequacy of relying upon the PEIR to evaluate the Eastside Coalition's WDRs. These documents were submitted and accepted into the record of the proceeding.

**D. Because the WDRs conflict with Porter-Cologne's Mandate that the Regional Board Comply with the Antidegradation Policy, the Nonpoint Source Policy, the Regional Board Could Not Approve the WDRs Pursuant to CEQA.**

A lead agency may not approve a project with significant unavoidable impacts unless it is "otherwise permissible under applicable laws and regulations." CEQA §21002.1(c). Likewise, as the PEIR acknowledges, "[t]o be considered as an alternative under CEQA, ILRP alternatives . . . must . . . meet statutory requirements established in applicable state policy and regulations (e.g., . . . , the State Water Resources Control Board *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* [State Water Board 2004], and the State Antidegradation Policy [State Water Board 1968])." PEIR, p. 2-8.

In adopting the WDRs, the Regional Board made a finding that the Renewed Waiver would result in four categories of significant unavoidable impacts: Conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural use; Cumulative climate change; Cumulative vegetation and wildlife impacts, and Cumulative conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural use. AR96. Because the WDRs are inconsistent with other laws outside of CEQA, CEQA §21002.1(c) precludes the Regional Board from approving that project.

**5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.**

CSPA and C-WIN are non-profit, environmental organizations that have a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries. Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas. CSPA's and C-WIN's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA and C-WIN have actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic

resources. CSPA and C-WIN member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

**6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.**

Petitioners seek an Order by the State Board to:

- A. Vacate Order No. R5-2012-0116 and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.
- B. Alternatively, prepare, circulate and issue a new order that is protective of identified beneficial uses and comports with regulatory requirements.

**7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.**

CSPA's arguments and points of authority are adequately detailed in the above comments and our 6 August comment letter and attachments and our 7 December 2012 oral comments. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions. The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

**8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.**

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114. A true and correct copy of this petition, without attachment, was sent to the Discharger in care of: Mr. Perry Klassen, Executive Director, East San Joaquin Water Quality Coalition, 1201 L Street, Modesto, CA 95354.

**9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT**

**RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.**

CSPA presented the issues addressed in this petition to the Regional Board in a 6 August 2012 comment letter with extensive attachments and 7 December oral comments that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Lozeau at 510-836-4200.

Dated: 7 January 2013

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
Submitted on behalf of Carolee Krieger, California Water Impact Network

Attachment: Order No. R5-2012-0116