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For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Waste Discharge Requirements For)
Barrel Ten Quarter Circle Land Company; Barrel)
Ten Quarter Circle, Escalon Cellars; California)
Regional Water Quality Control Board – Central) **PETITION FOR REVIEW**
Valley Region, Order No. R5-2009-0038)
)**

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 (“CSPA” or “petitioner”) 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 Barrel Ten Quarter Circle Land Company, Barrel Ten Quarter Circle, Escalon Cellars, on 24 April 2009. *See* Order No. R5-2009-0038. The issues raised in this petition were raised in timely written comments.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

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:

Petitioner seeks review of Order No. R5-2009-0038. Waste Discharge Requirements for Barrel Ten Quarter Circle Land Company, Barrel Ten Quarter Circle, Escalon Cellars. A copy of the adopted Order is attached.

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

24 April 2009

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 January 2009 and orally testified at the 24 April 2009 hearing. That comment letter, oral testimony 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:

- A. The waste discharge requirements (WDRs) do not comply with California Code of Regulations (CCR) Title 27, as the discharge is not in compliance with the applicable water quality control plan (Basin Plan). Since groundwater has been degraded by this disposal of wastewater the discharge does not qualify for an exemption from CCR Title 27.**

The WDR does not exempt the discharger from Title 27 requirements. The record clearly shows that the Discharger's waste and disposal practices have released constituents that degraded and polluted the underlying groundwater. In fact, the Regional Board has determined in Cease and Desist Order R5-2003-015 that "This data indicates the discharge of waste from Barrel Ten – Escalon has degraded the underlying groundwater." The C&D Order Finding No. 19 states that "As a result of the events and activities described in this Order, the Regional Board finds that the Discharger has caused or permitted waste to be discharged in such a manner that it has created, and continues to threaten to create, a condition of pollution or nuisance." In addition, the WDR indicates that the facility has degraded the underlying groundwater. Groundwater degradation is discussed in WDR Finding Nos. 36, 49 and 59. Finding No. 59 states in part that "...the winery activities have further degraded groundwater quality." Based on the waste characterization data and the groundwater quality degradation that is observed, the winery waste stream discharged from the west sump to the land application is a designated waste due to concentrations of total dissolved solids, sodium, chloride, sulfate, and electrical conductivity that exceed background groundwater quality.

CCR Title 27, §20090. SWRCB - Exemptions. (C15: §2511), Wastewater may be exempt from the SWRCB-promulgated provisions of the subdivision, so long as the activity meets, and continues to meet, all preconditions listed. Discharges of wastewater may be exempted from CCR Title 27 requirements only if; waste discharge requirements have been issued, the discharge is in compliance with the applicable Basin Plan, and; the wastewater is not hazardous (Section 20090). The Basin Plan contains water quality objectives for groundwater. The Basin Plan *Water Quality Objectives for Groundwater* requires groundwater not exceed: 2.2 MPN/100 ml for coliform organisms; the maximum contaminant levels (MCLs) from CCR Title 22 for drinking water; taste or odor producing substances that cause nuisance or adversely affect beneficial uses, and; toxic substances that produce detrimental physiological responses in human, plant, animal or aquatic life associated with designated beneficial uses. The Basin Plan also includes the State and Regional Board Antidegradation Policy (Resolution 68-16). The Antidegradation Policy requires the maintenance of high quality waters. In accordance with the Antidegradation Policy changes in water quality are allowed only if the change is consistent with maximum benefit to the people of the state; does not unreasonable affect present and anticipated beneficial uses; does not result in water quality that exceeds water quality objectives, and; best practicable treatment and control of the discharge is provided.

The current winery owner purchased the facility in 2003. There is no dispute that groundwater at the site has been degraded by waste disposal practices. The current owner's consultants state that current operations do not continue to degrade groundwater, but this is not supported in the record. Wastewater flows have been eliminated, principally cooling water; however the constituent loading rate appears to be of higher or equivalent strength. The current owner's

consultants further state that future changes at the facility will not degrade groundwater. The Regional Board states in their *Response to Comments* that:

“This Order does not allow an increased volume of waste or an increase in wastewater flow compared to the discharges allowed in Order 91-233. Although the concentration of wastes will increase somewhat, the total volume of waste will not increase due to the reduction in the permitted wastewater flow. This Order therefore does not allow any increased degradation of groundwater.

The Discharger cannot fully evaluate actual impacts on groundwater until completion of crop studies, and implementation and monitoring of new or planned facility upgrades (see Findings 13, 15-20, 26, 29, and 33-39), and any additional measures that will be required to comply with Provision G.1.”

The undefined current and future operations do not meet the preconditions of CCR Title 27, therefore an exemption cannot be granted.

The Regional Board also states in their *Response to Comments*, page 6 No. f, that:

“An analysis of the exemption of the discharge from Title 27 has been added to the tentative WDRs. With the time schedule order in the WDRs, the facility qualifies for the exemption. The WDRs, including the Effluent Limitations, Land Application Area Requirements and the compliance schedule in Provision G.1, require the discharge to comply with the Basin Plan on or before 1 February 2013 for FDS and 26 November 2012 for other constituents.”

Future planned compliance by 2012 does not meet the preconditions of CCR Title 27, therefore an exemption cannot be granted.

Groundwater quality at the winery has been degraded for electrical conductivity, total dissolved solids, calcium, magnesium, sodium, sulfate, chloride, hardness, bicarbonate, and alkalinity. The degradation is the result of waste application at the facility. The discharge has also not been shown to be in compliance with the Basin Plan incorporated Antidegradation Policy (68-16). The Antidegradation Policy requires that an allowance for any degradation must be shown to be in the interest of the people of the state, must not exceed water quality standards and that the discharge must provide best practicable treatment and control (BPTC) of the discharge. The Discharger has degraded groundwater quality; however none of the tests of the Antidegradation Policy have been met. The WDR should not have been adopted. A Cleanup and Abatement Order should be issued immediate cessation of all wastewater discharges until the Discharger applies for, a Title 27 permit is issued, and can comply with the requirements of CCR Title 27. A winery is a for profit business; degrading groundwater quality for profit is not in the best

interest of the people of California. Other wineries in the Central Valley comply with the requirements of Title 27 by constructing wastewater facilities that meet the prescriptive construction standards and do not result in the release of pollutants to groundwater or surface water. Therefore, compliance with Title 27 requirements should be considered BPTC for this discharge.

Water Code Section 13173 defines “designated waste” to include “[n]on hazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations that exceed applicable water quality objectives or that could reasonably be expected to affect beneficial uses of waters of the as contained in the appropriate state water quality control plan.” The discharge of EC or TDS may exceed water quality objectives for each designated beneficial use:

MUN: The Drinking Water maximum contaminant levels (MCLs) are water quality objectives incorporated into the Basin Plan Chemical Constituents by reference. The MCL for TDS is 500 mg/l as the recommended level, 1,000 mg/l as an upper level and 1,500 mg/l as a short term maximum. *McKee and Wolf* (1971 Water Quality Criteria) cites that waters above 4,000 mg/l TDS are generally unfit for human use.

AGR: The Basin Plan states, on Page III-3.00 Chemical Constituents, that “Waters shall not contain constituents in concentrations that adversely affect beneficial uses.” The Basin Plan’s “Policy for Application of Water Quality Objectives” provides that in implementing narrative water quality objectives, the Regional Board will consider numerical criteria and guidelines developed by other agencies and organizations. This application of the Basin Plan is consistent with Federal Regulations, 40CFR 122.44(d). For EC, *Ayers R.S. and D.W. Westcott, Water Quality for Agriculture, Food and Agriculture Organization of the United Nations – Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985)*, levels above 700 μ mhos/cm will reduce crop yield for sensitive plants. The State Water Resources Control Board’s *Irrigation with Reclaimed Municipal Waste (July 1984)* and *McKee and Wolf* (1971 Water Quality Criteria), state that waters with TDS above 2,100 mg/l are unsuitable for any irrigation under most conditions.

IND: *McKee and Wolf* (1971 Water Quality Criteria) lists the limiting TDS concentrations for numerous industrial uses in mg/l; boiler feed water 50-3000, brewing 500-1000, canning 850, general food processing 850 and paper manufacturing 80-500.

The WDR and record indicate that the Discharger's waste has been discharged to groundwater at levels that degrade the designated beneficial uses and therefore is a “designated waste”. The Discharger must comply with the prescriptive standards specified in Title 27, including but not limited to lining ponds to Title 27 standards, submitting a complete RWD for Title 27 and financial assurance documentation.

The hay crop that is proposed will not “prevent” degradation of the groundwater. Many of the waste constituents in the RWD have none or little nutrient value and thus the waste application will only further exacerbate the groundwater degradation. Salt has no agronomic application rate or beneficial application for plants. The information Sheet, page 2, states in part, “The flow limit is based on the hydraulic capacity of the LAAs but as described below, the loading rate for Fixed Dissolved Solids (FDS) likely exceeds the LAAs uptake capacity...The FDS loading rate is estimated to be 2,769 lbs/ac•year; the FDS crop uptake rate is estimated to be 510 lbs/ac•year. The Discharger can grow any crop on the LAAs they choose, but no crop takes up the amount of FDS that is presently being applied.” According to *Wastewater Engineering Treatment and Reuse*, Metcalf & Eddy, 2003, the optimum bacterial degradation of organic wastes, the ratio of carbon to nitrogen to phosphorus (C:N:P Ratio) should be 20:5:1. The percolation of wastewater containing nitrogen but with disproportionately low concentrations of total organic carbon may retard denitrification and, absent sufficient aeration, may also retard nitrification. In anaerobic soil and groundwater conditions, concentrations of nitrogen in the form of ammonia can leach and discharge to groundwater. The Order fails to require that the Discharger maintain the proper ratio of organic waste need for optimum treatment. The Order does not even require the Discharger to monitor for the carbon and phosphorus. For that matter, the RWD failed to disclose what the actual concentration was for these wastes in the effluent. The WDR fails to control the application of waste to the land application areas in any fashion that would prevent continued degradation of the groundwater and allows the Discharger to apply waste at concentrations known to exceed any plant uptake rate. Therefore, the WDR simply does not comply with the Basin Plan and the Antidegradation Policy by preventing groundwater degradation.

In addition to the over application of waste to the irrigation area, waste discharge via percolation in the unlined ponds will result in additional degradation. The Discharger's water balance indicates that a significant amount of waste disposal will occur via pond percolation. The FDS loading rate is estimated to be 2,769 lbs/ac•year and the new unlined pond is 8.3 acres in size. The WDR does not address the loading discharged to the pond and which will infiltrate the pond's bottom. The groundwater is reported to be about 60 feet below the surface. The reported infiltration rate for portions of the site is about 3.0 inches per hour. It is inevitable that the groundwater will be impacted within the first month after the Order's adoption.

The Regional Board utilizes The Designated Methodology for Waste Classification and Cleanup Determination, June 1989, for waste classification, which states, in part, “Where a very low degree of natural water quality protection may exist or for situations in which the mass loading of waste constituents is likely to saturate environmental attenuation processes (e.g., the discharge of large volumes of a liquid waste to a surface impoundment continuously over many years in an area with moderately permeable soils), a factor of one (1) should be used.” The site-specific

conditions include shallow groundwater with highly permeable soils and the lagoons will be used on a continuous basis. Therefore, the attenuation factor for the site is a factor of one.

The Designated Methodology states “The Total Designated Level for a constituent of a liquid waste is calculated by multiplying the water quality goal by the environmental attenuation factor that takes into account reasonable worst-case site- and waste-specific conditions at the proposed place of waste discharge.

$$\begin{array}{rcl} \text{Total Designated Level} & & \text{Water} \\ \text{for constituent of a} & = & \text{Quality} \\ \text{liquid waste (mg/l of waste)} & & \text{Goal (mg/l)} \end{array} \quad \text{?} \quad \begin{array}{l} \text{Environmental} \\ \text{Attenuation Factor} \end{array}$$

In the case of the ponds where the discharge is continuous, the environmental attenuation factor is set at one and therefore, the waste at the point of discharge cannot exceed water quality objectives.

The discharge of waste from the wastewater ponds is known to exceed applicable water quality objectives, the ponds and underlying soils have been found to have a maximum hydraulic conductivity significantly greater than 1×10^{-6} cm/sec, and under ambient environmental conditions the lagoon (i.e. waste management unit), waste is released. In fact, the groundwater data indicates, as described in Finding Nos. 36, 49 and 59. Finding No. 59 states in part that “...the winery activities have further degraded groundwater quality” and so the waste has already degraded groundwater in violation of the Basin Plan. Therefore, the wastewater should be properly classified as a “designated waste” as defined by CWC Section 13173. The discharge of designated waste from the storage ponds and land application must comply with the requirements of Title 27 Section 20005 for the handling, storage and disposal of designated waste.

The Order must require the Discharger to comply with Title 27 regulations including, but not limited to, installing a synthetic liners and leachate collection system for the ponds (ponds are a surface impoundment), expansion of groundwater monitoring, financial assurance, and for closure and post closure plans.

The Information Sheet, page 6, states in part that, “Groundwater monitoring has been conducted at the site and groundwater quality has been degraded.” The discharge is not in compliance with the previous WDRs, CDO No. R5-2003-0125 or the Basin Plan and therefore, the Regional Board may not exempt the discharge from Title 27 requirements.

B. The WDR authorizes expansion of the waste discharge system including allowing construction of new waste ponds without compliance with CEQA and contrary to the Antidegradation Policy (Resolution 68-16). In addition, the Discharger engaged

in illicit construction of wastewater ponds without authorization from the Regional Board.

The Discharger has installed a new 8.3-acre tailwater/wastewater collection pond, which was constructed in the land application area. The pond was constructed without CEQA documentation. While the record indicates that the pond was constructed without input from Regional Water Board staff; the record also shows that the Regional Board is aware that it has been constructed and that the facility is engaged in an expansion project that has the potential to impact the environment. The pond is not lined and will receive designated waste as defined by CWC Section 13173. Therefore, the pond is not be protective of groundwater quality and does not comply with the Antidegradation Policy (Resolution 68-16). Groundwater quality underlying the site has been degraded for electrical conductivity (EC), total dissolved solids (TDS), calcium, magnesium, sodium, sulfate, chloride, hardness, bicarbonate, and alkalinity. Use of an unlined pond accepting designated waste will likely result in continued degradation of groundwater quality. The Discharger must comply with CEQA and because of the potential for water quality degradation complete an Environmental Impact Report (EIR).

In addition to the expansion, the WDR allows waste with acidic conditions (pH 4.5) to be discharged to the ponds and land disposal area, which is a significant change to the quality of waste from previous and the existing WDRs. The newly allowable low pH will potentially liberate additional pollutant loads from the soil structure and present a greater threat to groundwater quality. The lower pH may also lead to poor pond health threatening the microorganisms that are utilized to breakdown and “treat” waste and may lead to septic (low dissolved oxygen) conditions resulting in excessive odors.

The WDR shows that there is no CEQA documentation for the new pond or the expansion project and no legal foundation for increase in the volume of waste that will now be acidic. The Order authorizes a “new project” for the disposal using infiltration from the ponds and allows for a significant increase in waste loading discharged at the sites for which CEQA documentation was not consider. CPRC Section 21065 defines "Project" as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- a. An activity directly undertaken by any public agency.
- b. An activity undertaken by a person which is supported, in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- c. An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The discharge of wastewater to land using infiltration via the new ponds is a project for which the Regional Board has made a discretionary decision in that the Order has been adopted. The Discharger's wastewater disposal using infiltration basins has potential significant impacts to the environment as the previous disposal has already degraded and/or polluted groundwater and as such must comply with CEQA regulations.

CPRC Section 21001.1 states, "projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies." In short, the Regional Board must now ensure that CEQA is satisfied before allowing the project to be utilized for waste disposal.

CCR Title 14 Section 15050 states, "Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project. This agency shall be called the Lead Agency." The Regional Board is the first public agency to undertake an action for the "project" and has jurisdiction over the wastewater disposal site and is responsible for authorizing the increase loading and change in the disposal method allowing the discharge of acidic conditions at the site, and therefore, the Regional Board is the designated lead agency for the project. As discussed, the project will have significant impacts to the environment and the facility's has already polluted groundwater under the site. Therefore, an EIR must be prepared for public review. The Regional Board is acting as the "lead agency" for the Discharger's project. Since our membership is directly impacted by the new project, we request to be an interested party in the CEQA documentation process.

C. The WDR contains no antidegradation analysis and does not comply with the requirements of the State Board's Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247.

There simply is no antidegradation analysis in the WDR. The WDR postpones the required antidegradation analysis to 2010 and as such there is no legal foundation on which the discharge is being authorized. CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the Regional Board has incorporated into its Basin Plan. The Regional Board is required by the CWC to comply with the Antidegradation Policy. Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/other sources, exceptions from otherwise applicable water quality objectives, etc.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in groundwater compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; and 7) an assessment of the significance of changes in ambient water quality. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis.

There simply is no antidegradation analysis in the WDR. The WDR postpones the required antidegradation analysis to 2010 and as such there is no legal foundation on which the discharge is being authorized. Conclusory, unsupported and undocumented statements cannot serve in lieu of a legally required antidegradation analysis. Moreover, the WDR and CDO R5-2003-0125 show that the discharge has degraded groundwater and that the discharge does not comply with the Basin Plan or Antidegradation Policy No. 68-16. Since numerous facilities in the Central Valley comply with Title 27 regulations and do not degrade groundwater the Regional Board cannot claim that the discharge is BPTC. Therefore, the Discharger's facility expansion project cannot be authorized in the WDR.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has 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 members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has 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 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. R5-2009-0038 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 January 2009 comment letter. 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. John Franzia, Jr., Barrel Ten Quarter Circle Land Company, 33 Harlow Court, Napa, CA 94558 and Mr. Paul Franzia, Barrel Ten Quarter Circle, Escalon Cellars, 21801 E. Highway 120, Escalon, CA 95320.

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 January 2009 comment letter and comments at the 24 April 2009 public hearing that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Jackson at (530) 283-1007.

Dated: 22 May 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachment: Order No. R5-2009-0038.