

1 SOMACH, SIMMONS & DUNN
A Professional Corporation
2 KRISTEN T. CASTAÑOS, ESQ (#198672)
JACQUELINE L. MCDONALD, ESQ (#226803)
3 813 Sixth Street Third Floor
Sacramento, California 95814
4 Telephone: (916) 446-7979

5 Attorneys for Petitioner
Northern California Water Association

6 SACRAMENTO VALLEY WATER QUALITY COALITION
7 455 Capitol Mall, Suite 335
Sacramento, California 95814
8 Telephone: (916) 442-8333

9
10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of Sacramento Valley
13 Water Quality Coalition, et al., for Review of the
14 Central Valley Regional Water Quality Control
Board's Action and Failure to Act in Issuing
15 Order No. R5-2006-0053

SWRCB/OCC File _____

**PETITION FOR REVIEW; REQUEST
FOR HEARING; REQUEST FOR
STAY; PRELIMINARY POINTS AND
AUTHORITIES**
[Wat. Code, § 13320]

16
17 Petitioners Sacramento Valley Water Quality Coalition and Northern California Water
18 Association ("NCWA") (collectively referred to as "Sacramento Valley Coalition"), in
19 accordance with section 13320 of the Water Code and Title 23 of the California Code of
20 Regulations section 2050 et seq., hereby petition the State Water Resources Control Board ("State
21 Board") for review of the Central Valley Regional Water Quality Control Board's ("Regional
22 Board") adoption of a renewed Coalition Group Conditional Waiver of Waste Discharge
23 Requirements for Discharges From Irrigated Lands Within the Central Valley Region ("Irrigated
24 Lands Program") through Order No. R5-2006-0053 on June 22, 2006.

25 The issues raised by the petition, a summary of the bases for the petition, and a preliminary
26 statement of points and authorities are set forth below as required by Title 23, California Code of
27 Regulations, section 2050(a). Within this petition, the Sacramento Valley Coalition further
28 requests the State Board to: (1) conduct a hearing to permit presentation of additional evidence,

1 testimony, and argument pertaining to this petition; and (2) stay the effect of paragraphs 1 and 6
2 and Part D of Attachment B to Order No. R5-2006-0053 imposing a September 30, 2006 deadline
3 for submitting participant lists to the Regional Board.

4 **A. GENERAL ALLEGATIONS**

5 1. The petitioners are Northern California Water Association and Sacramento Valley
6 Water Quality Coalition. NCWA represents over seventy agricultural water districts, as well as
7 numerous individual agricultural interests and counties within the Sacramento River Basin.
8 NCWA and its members participate in the Sacramento Valley Water Quality Coalition.

9 2. The Sacramento Valley Water Quality Coalition is a broad cross section of
10 agricultural and waterfowl interests and local governments throughout the Sacramento Valley
11 region. The Sacramento Valley Water Quality Coalition coordinates efforts between ten
12 subwatershed groups organized within twelve subwatersheds, including American River, Butte
13 Basin, Colusa Basin, Feather River Basin, Lake County (Cache Creek), Napa County (Putah
14 Creek), Natomas Cross Channel, North Delta/Cosumnes River Basin, Pit River, Sutter Basin,
15 Tehama-Shasta and Yolo/Solano Basin. Together, the participating entities and various watershed
16 groups form this unprecedented Coalition that complies with the Irrigated Lands Program and
17 implements the "Regional Plan for Action" on water quality in the Sacramento Valley. The
18 Regional Plan for Action, which includes a map of the Coalition and its subwatersheds, is
19 incorporated by reference and attached hereto as Exhibit 1.

20 3. The Sacramento Valley Water Quality Coalition formed in 2002 to enhance and
21 improve water quality in the Sacramento River Basin and to help growers and wetlands managers
22 meet the requirements of the Irrigated Lands Program. On October 6, 2003, the Coalition
23 submitted a Notice of Intent ("NOI") and General Report on behalf of Coalition participants to
24 meet the requirements of the Irrigated Lands Program through a watershed-based water quality
25 management program. On February 10, 2004, the Coalition received a Notice of Applicability
26 from the Regional Board Executive Officer approving the adequacy of the NOI and providing all
27 dischargers within the Coalition area initial coverage under the Irrigated Lands Program. Each
28

1 subwatershed group continues to maintain an active participant list of growers and wetland
2 managers who have chosen to participate in the Irrigated Lands Program.

3 4. The contact information for the petitioners is as follows:

4 Northern California Water Association
5 Sacramento Valley Water Quality Coalition
6 c/o David Guy
7 455 Capitol Mall, Suite 335
8 Sacramento, California 95814
9 (916) 442-8333
10 dguy@norcalwater.org

11 In addition, copies of all materials in connection with the petition, and the administrative
12 record, should be provided to Petitioner NCWA's counsel:

13 Jacqueline L. McDonald, Esq.
14 Somach, Simmons & Dunn
15 813 Sixth Street, Third Floor
16 Sacramento, California 95814

17 5. Sacramento Valley Coalition has actively participated and cooperated in the Regional
18 Board's development of the Irrigated Lands Program. Sacramento Valley Coalition remains
19 committed to help the Regional Board implement its water quality goals and the Irrigated Lands
20 Program. Sacramento Valley Coalition appreciates the extensive time and effort that the Regional
21 Board and its staff have put into developing the Irrigated Lands Program and strongly supports the
22 5-year renewal of the Irrigated Lands Program. To empower the Sacramento Valley Coalition and
23 all of its constituent subwatershed groups to continue to successfully participate in the Irrigated
24 Lands Program and its Regional Board processes, however, two key modifications must be made
25 to the Irrigated Lands Program. First, Order No. R5-2006-0053 must be modified to establish a
26 reasonable approach to identification of irrigators within Coalition Groups and subwatershed
27 groups therein. Second, paragraph 7 of Attachment B to the Order No. R5-2006-0053 must be
28 stricken.

6. Sacramento Valley Coalition challenges certain action and inaction of the Regional
Board in connection with the Regional Board's adoption of Order No. R5-2006-0053 approving a
Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from

1 Irrigated Lands. Specifically, Sacramento Valley Coalition challenges the Regional Board's action
2 requiring that participant lists be submitted to the Regional Board by September 30, 2006 and its
3 failure to allow Coalition groups to submit nonparticipant lists in lieu of such participant lists. This
4 action and failure to act is memorialized in finding paragraph 14 and order paragraph 1 of the
5 Order No. R5-2006-0053, and paragraphs 1, 6, and 7, and Part D of Attachment B thereto (referred
6 to as "Participant List Requirement" herein). The Regional Board adopted Order No. R5-2006-
7 0053 on June 22, 2006, a copy of which is attached hereto as Exhibit 2 ("Order").¹

8 7. As set forth in detail in the preliminary points and authorities provided within this
9 petition, the Regional Board's decision to include the Participant List Requirement, which also
10 requires (through paragraph 7 of Attachment B to the Order) additional technical map submittals
11 upon request, in the Order without allowing an option for submittal of nonparticipant lists is
12 inappropriate and improper for the following reasons:

- 13 • The evidence presented within the administrative record before the Regional Board
14 does not support the Regional Board's arbitrary decision against allowing a non-
15 participant list option.
- 16 • The Irrigated Lands Program requirement of participant lists is unnecessarily
17 burdensome and inflexible; the requirement does not reasonably balance the Regional
18 Board's need for sufficient accountability to the public with the Coalition groups'
19 need for flexibility to shape an Irrigated Lands Program that works for the diverse set
20 of irrigators throughout the vast Central Valley.
- 21 • Inclusion of a nonparticipant list option is appropriate because nonparticipant
22 information allows the Regional Board to contact non-cooperating irrigators to
23 confirm that any discharges from irrigated lands are regulated by the Irrigated Lands
24

25 ¹ Sacramento Valley Coalition is attaching two versions of the "Final" Order No. R5-2006-0053 due to a
26 discrepancy identified on the Regional Board's website. After the June 22 adoption of the Irrigated Lands
27 Program renewal, Regional Board staff emailed a "final order" to the Coalition Groups that comprised a
28 signed order appearing to include language in finding 14 of the Order that is not included in the *unsigned*
Final Order No. R5-2006-0053 now posted online at [http://www.waterboards.ca.gov/centralvalley/
programs/irrigated_lands/index.html](http://www.waterboards.ca.gov/centralvalley/programs/irrigated_lands/index.html). Without knowing which Order to submit as the Final Order
No. R5-2006-0053, Sacramento Valley Coalition attaches both hereto within Exhibit 2.

1 Program while also providing the Coalition groups the requisite flexibility to
2 encourage irrigators in their area to participate in the Coalition;

- 3 • The Regional Board is not legally required to collect names of all individual irrigators
4 in order to maintain a Coalition waiver of waste discharge requirements;
- 5 • The Coalition groups were not provided a sufficient opportunity to submit evidence in
6 support of the nonparticipant list option and to respond to concerns raised about
7 allowing nonparticipant lists.
- 8 • The specific amendments to the Participant List Requirement made during the
9 Regional Board meeting were not noticed with the April 2006 Tentative Order
10 (“Tentative Order”) and not open to discussion or comment by the interested and
11 affected parties.
- 12 • The Participant List Requirement is inconsistent with the Policy Working Group
13 recommendations and completely ignores the efforts that the Coalitions, in good faith
14 and at the request of the Regional Board during the November 2005 meeting, have
15 been working for months to authorize, develop, and implement.
- 16 • The portion of the Participant List Requirement within paragraph 7 of Attachment B
17 to the Order authorizing the Executive Officer to additionally demand technical maps
18 beyond participant lists is unnecessarily duplicative.

19 8. In challenging the Participant List Requirement through this Petition, Sacramento
20 Valley Coalition is not challenging the requirement that Coalitions maintain participant lists as
21 required by paragraph 5 of Attachment B to Order No. R5-2006-0053. In fact, the Sacramento
22 Valley Coalition and its watershed groups maintain lists of the participants as required by
23 paragraph 5 of Attachment B to Order No. R5-2006-0053.

24 9. Further, this Petition does not seek to limit alternative forms of complying with
25 Regional Board participant list requirements, such as allowing maps or identification and contact
26 information of participants to fulfill the Regional Board requirements.

27 10. As explained further within the preliminary points and authorities below, NCWA and
28

1 the Sacramento Valley Water Quality Coalition are individually and collectively aggrieved by the
2 Regional Board's failure to allow submittal of nonparticipant lists in lieu of participant lists is
3 overly burdensome and will affect the ability of the irrigators they represent to comply with and
4 participate in the Irrigated Lands Program. Sacramento Valley Coalition has informed the
5 Regional Board on numerous occasions that the Sacramento Valley Water Quality Coalition
6 participants and certain subwatershed groups are uncomfortable releasing, and in some instances
7 do not have permission to release, a list of the "dischargers" participating in the Coalition Group.
8 The reasons for this are multi-fold and addressed further in the points and authorities and the
9 request for stay. In sum, however, the Regional Board's decision to disallow satisfaction of the
10 requisite submittal via nonparticipant lists will result in considerable withdrawal from the coalition
11 by certain subwatershed groups therein, particularly those in Yolo, Solano, Glenn, and Colusa
12 Counties. As a direct result of such withdrawal, other participants within Sacramento Valley
13 Coalition will unwarrantedly bear the burden of a proportionately increased expense to pay for the
14 monitoring, administrative, and regulatory fees associated with the regional effort to monitor and
15 improve water quality in the Sacramento Valley. Further, for reasons that may not make sense at
16 first blush to those unconnected to family farms but are nonetheless real in rural areas of the
17 Sacramento Valley, the participant list requirement will provide a disincentive for participating and
18 currently nonparticipating dischargers to participate in a Coalition.

19 11. A copy of this petition has been sent to the Regional Board.

20 12. A copy of this petition has been emailed to representatives of the other Coalition
21 Groups covered under the Irrigated Lands Program.

22 13. The general substantive issues and objections raised in this petition have been raised
23 before the Regional Board during the June 2006 hearing as well as during past proceedings and
24 workshops related to the Irrigated Lands Program. Due to last minute revisions to the Tentative
25 Order released with the agenda for the Regional Board hearing on the Irrigated Lands Program,
26 Sacramento Valley Coalition and other Coalition groups were not given an opportunity to provide
27 oral or written comments on some of the specific aspects of the Participant List Requirement

1 addressed within this petition.

2 14. Sacramento Valley Coalition requests the right to amend this petition.

3 15. By this petition, Sacramento Valley Coalition does not waive its right to assert, in any
4 forum, further objection to portions of R5-2006-0053 challenged by petitions to the State Board
5 submitted by other parties, including but not limited to the December 30, 2006 deadline for electing
6 to participate in a Coalition group. Sacramento Valley Coalition reserves the right to challenge
7 application of the provisions relating to "Water Districts" set forth in the Order and Attachment B
8 thereto.

9 16. Sacramento Valley Coalition has made a request to the Regional Board for
10 preparation of the administrative record. A copy of this request is attached hereto as Exhibit 3.

11 17. All data, comments, documents, testimony and information pertaining to the Irrigated
12 Lands Program (including Resolution No. R5-2003-0015, Order No. R5-2003-0826, and Order
13 No. R5-2006-0053) submitted to the Regional Board or Regional Board staff by NCWA, the
14 Sacramento Valley Water Quality Coalition, the Agricultural Water Quality Coalition, and/or the
15 agricultural Coalition groups and their representatives are hereby incorporated by reference.

16 18. All data, comments, documents, testimony and information pertaining to the Irrigated
17 Lands Program and the Irrigated Lands Program adopted in 2003 (Resolution No. R5-2003-0015,
18 Order No. R5-2003-0826) submitted to the State Board or State Board staff by NCWA, the
19 Sacramento Valley Water Quality Coalition, the Agricultural Water Quality Coalition, and/or the
20 agricultural Coalition groups and their representatives are hereby incorporated by reference.

21 19. Sacramento Valley Coalition has included a preliminary statement of points and
22 authorities provided within this petition as required by Title 23, California Code of Regulations,
23 section 2050, subsection (a). Until the Regional Board compiles and makes available a complete
24 administrative record for R5-2006-0053 and related matters, Sacramento Valley Coalition cannot
25 possibly submit a complete and thorough statement of points and authorities. Thus, Sacramento
26 Valley Coalition requests the right to file supplemental points and authorities after the
27 administrative record and other materials become available.

1 **B. REQUEST FOR HEARING**

2 20. Pursuant to Water Code section 13320(b) and Title 23 of the California Code of
3 Regulations section 2050.6(b), Sacramento Valley Coalition requests a hearing before the State
4 Board to permit presentation of additional evidence, testimony, and argument pertaining to this
5 petition.

6 21. In sum, the requested hearing would address, and introduce evidence relating to, the
7 following: (1) the Regional Board's contention that the Irrigated Lands Program must require
8 Coalition participant lists to be legally defensible; (2) Sacramento Valley Coalition's contention
9 that the submittal of nonparticipant lists is a legal and appropriate condition of the Irrigated Lands
10 Program; (3) Sacramento Valley Coalition's contention that the mandatory submittal of participant
11 lists is inappropriate, overly burdensome, and too inflexible to facilitate Sacramento Valley
12 Coalitions' water quality efforts in Northern California; and (4) specific concerns of particular
13 subwatershed groups within Sacramento Valley Coalition that cannot comply with the condition of
14 submitting participant lists.

15 22. A hearing on the above-listed contentions is necessary as Sacramento Valley
16 Coalition, other Coalition groups, and affected parties did not have an adequate opportunity to
17 introduce evidence and testimony on the specific Participant List Requirement ultimately adopted
18 by the Regional Board. Sacramento Valley Coalition and the public were initially put on notice that
19 Staff recommended adoption of a publicly circulated and noticed April 2006 Tentative Order that
20 included language allowing nonparticipant lists in lieu of participant lists. This language was
21 drafted and agreed to during the Policy Work Group created by the Regional Board. Days before
22 the hearing, Sacramento Valley Coalition and other Coalition groups were informed that the
23 Executive Officer would not recommend adoption of the language within the Tentative Order and
24 that Staff would present various alternatives to the Regional Board for consideration at the June 22,
25 2006 meeting. These alternatives resulted in confusion among the Regional Board surrounding the
26 alternative list requirements. (See, e.g., Transcript of Regional Board Proceedings on June 22,
27 2006 ("Transcript"), pertinent excerpts attached hereto as Exhibit 4, at p 268:8-11 ["[a]nd so I do
28

1 think that Alternative II, III, whatever the blend – the exact blend is makes sense and get – and I
2 totally agree that we need to get that issue off the table”).) The Coalition groups were unable to
3 adequately address this confusion because the Coalition groups were not given an opportunity for
4 rebuttal of subsequent comments after making their comments, and the Regional Board
5 subsequently closed the public hearing for deliberations that resulted in an entirely different
6 Participant List Requirement alternative being adopted without opportunity for comment thereon.
7 (See, e.g., Transcript at 249:1-249:25 [testimony of Executive Officer]; 251:4-24; 253:21-256:16;
8 256:1-261:1; 277:7-278:22; 281:9-284:6; 307:3-311:17.)

9 23. For the foregoing reasons, Sacramento Valley Coalition requests that the State Board
10 conduct a hearing to allow the stakeholders and Regional Board Staff an opportunity to discuss the
11 Participant List Requirement and its affect on certain subwatershed groups within the Sacramento
12 Valley Water Quality Coalition.

13 **C. REQUEST FOR STAY**

14 24. Pursuant to Water Code section 13221 and Title 23 of California Code of
15 Regulations section 2053, Sacramento Valley Coalition requests the State Board stay in part the
16 effect of Order No. R5-2006-0053. Specifically, Sacramento Valley Coalition requests the State
17 Board to stay the effect of the September 30, 2006 deadline for submitting participant lists
18 comprised within Finding paragraph 14, Order paragraph 1 and Attachment B paragraphs 1 and 6.

19 25. A Declaration Of David J. Guy Supporting The Request For Stay (“Guy Decl.”) is
20 attached hereto as Exhibit 5.

21 26. The public interest, Sacramento Valley Coalition, and its participants will suffer
22 substantial harm if the State Board does not grant the requested stay because:

- 23 • Some of the participating watershed groups within the Sacramento Valley
24 Coalition do not have permission to release their contact information from
25 those irrigators that have chosen to participate in the Sacramento Valley
26 Coalition and have been entrusted by the participant dischargers to keep the
27 information confidential. The need to obtain such permission alone prevents

1 the Sacramento Valley Coalition from submitting complete participant list
2 information prior to September 30, 2006. Since certain subwatershed
3 groups of the Sacramento Valley Coalition will not be able to comply with
4 the September 30, 2006 submittal condition of the Irrigated Lands Program,
5 the entire Sacramento Valley Coalition's status will be in jeopardy of
6 dissolution by the Regional Board.

- 7 • The public interest will not benefit from the dissolution of this regional
8 coalition that has been in existence since 2002 and has since then collected
9 important monitoring data to identify problems in water quality within the 12
10 subwatersheds covered by the Sacramento Valley Coalition.
- 11 • In order to enforce the waiver condition imposing the September 30, 2006
12 deadline, the Regional Board would have to direct considerable resources
13 towards rejecting participants within certain subwatersheds from the
14 Sacramento Valley Coalition or dissolve the entire Sacramento Valley
15 Coalition. This will be a time-consuming endeavor and once completed
16 would require considerable resources to then develop individual waste
17 discharge requirements for each participating discharger and/or undertake
18 enforcement action against dischargers that do not submit reports of waste
19 discharge. These resources will deter from the Regional Board's efforts to
20 improve water quality in the Sacramento River Basin.
- 21 • If the Regional Board allows the subwatersheds that have submitted
22 participant (rather than nonparticipant) information to remain as a coalition,
23 then the remaining Coalition participants will suffer because they will have
24 an increased proportionate share of the administrative expenses, regulatory
25 fees, and monitoring expenses.

26 (See Guy Decl; see also Transcript at pp. 77:13-81:12; 115:15-117:23; 175:5-
27 176:23; 180:25-182:25; 220:13-223:2.)

1 27. If granted, the requested stay will not cause substantial harm to other interested
2 persons or the public interest because:

- 3 • The Stay will be lifted as soon as the State Board resolves the important
4 issue raised by the petition, the timing of which the State Board has
5 discretion to control as necessary to avoid harming the public interest.
- 6 • Despite its petition, the Sacramento Valley Coalition will partially comply
7 with the September 30, 2006 deadline by continuing to update participant
8 information for those participants within subwatershed groups that have
9 given the Sacramento Valley Coalition permission to release the participant
10 information.
- 11 • Additionally, the Sacramento Valley Coalition will continue to update and
12 provide nonparticipant information that has assisted the Regional Board
13 enforce the Water Code against irrigators that have not participated in the
14 Sacramento Valley Coalition in the past, and will continue to assist the
15 Regional Board in that regard.

16 (See Guy Decl; see also Transcript at pp. 77:13-81:12; 115:15-117:23; 175:5-
17 176:23; 108:25-182:25; 220:13-223:2.)

18 28. The Stay will allow the State Board to resolve substantial questions of fact and law
19 that are fundamentally connected with the September 30, 2006 deadline. These questions are as
20 follows:

- 21 • Whether the Regional Board must require submittal of participant lists within the
22 Irrigated Lands Program to comply with Water Code section 13269. (See Guy
23 Decl., ¶ 15; cf. Transcript at pp. 249:22-250:25.)
- 24 • Whether the Regional Board is required to obtain participant lists from each
25 Coalition group to maintain a legally defensible regulatory program. (See Guy
26 Decl., ¶ 15; cf. Transcript at pp. 249:22-250:25.)

- Whether, as a factual or policy matter, submittal of nonparticipant lists as one of several acceptable ways to provide detailed information about the Coalition group is an acceptable condition of the Coalition waiver. (See Guy Decl., ¶ 15; cf. Transcript at pp. 249:22-250:25.)
- Whether, as a factual or policy matter, submittal of nonparticipant lists serves as an incentive for irrigator participation in a Coalition. (See Guy Decl., ¶ 15.)
- Whether, as a factual or policy matter, mandatory submittal of personal participant information to the Regional Board creates a disincentive for irrigator participation in a Coalition. (See Guy Decl., ¶ 15.)
- Whether the benefits to the Regional Board of collecting the participant information justifies the burdens to the Coalitions and their regional water quality efforts. (See Guy Decl., ¶ 15.)

29. In requesting this Stay, Sacramento Valley Coalition does not seek to avoid the participant list submittal requirement. In fact, a majority of its subwatershed groups have submitted participant lists that Sacramento Valley Coalition believes to meet the new terms of the new Participant List Requirement. This Stay is necessary only to allow the few subwatershed groups that have submitted lists of nonparticipant information a sufficient opportunity to be heard by the State Board without losing their standing under the Irrigated Lands Program while the State Board processes this petition.

30. Thus, a Stay of the effect of the September 30, 2006 deadline for submitting participant lists, comprised within finding paragraph 14, order paragraph 1 and Attachment B paragraphs 1 and 6, and Part D, is appropriate and justified. Sacramento Valley Coalition requests the State Board to conduct a hearing on this Stay request and grant the requested Stay.

D. REQUEST FOR RELIEF

31. For the foregoing reasons and as further set forth in the points and authorities below, Sacramento Valley Coalition specifically requests that the State Board:

- 1 • Modify the Participant List Requirement within the Order (which requires a Coalition
2 to submit participant lists identifying individual dischargers participating in the
3 Coalition by September 30, 2006 pursuant to finding paragraph 14 and order
4 paragraph 1 of the Order, and paragraphs 1 and 6, and Part D of Attachment B
5 thereto) to allow, but not require, nonparticipant lists to be submitted in lieu of
6 participant lists;
- 7 • Modify the Order by striking paragraph 7 of Attachment B, which authorizes the
8 Executive Officer to demand technical maps in addition to the participant lists; and

9 32. If the State Board does not intend to grant the above requested relief, Sacramento
10 Valley Coalition alternatively requests that the State Board grant any relief it deems appropriate,
11 including but not limited to directing the Regional Board to modify the Participant List
12 Requirement of the Order to allow nonparticipant lists and strike paragraph 7 of Attachment B to
13 the Order.

14 33. Sacramento Valley Coalition understands that the Central Valley Region includes a
15 diverse set of agricultural operations and interests and in no way seeks to limit the ability of other
16 Coalition Groups to submit alternative methods of identifying participants and/or nonparticipants,
17 including but not limited to maps and participant lists. Thus, Sacramento Valley Coalition
18 specifically requests that any relief granted does not narrow but rather expands the universe of
19 document submittals that the Regional Board must accept as satisfactory to meet the conditions of
20 the Coalition waiver.

21 **E. PRELIMINARY STATEMENT OF POINTS AND AUTHORITIES**

22 **1. Summary and Introduction**

23 Sacramento Valley Coalition presents to the State Board for review a narrow and, in light of
24 the significant resources of the Regional Board and Coalition groups to develop a comprehensive
25 Irrigated Lands Program, somewhat small issue. Over the past several years, Sacramento Valley
26 Coalition has cooperated with the Regional Board to build an effective regulatory program for
27 irrigated agriculture that provides accountability and flexibility. Sacramento Valley Coalition
28

1 greatly appreciates the Regional Board resources that have gone and continue to go into developing
2 this Irrigated Lands Program and the subject renewal of the Coalition Waiver. Sacramento Valley
3 Coalition strongly believes that the 5-year renewal of the Coalition Waiver is a lawful and
4 appropriate action for the Regional Board to take. (See Guy Decl.; see also Transcript, pp. 77:11-
5 81:12, 110:12-115:9.)

6 After numerous discussions, public meetings, and Policy Working Group negotiations,
7 however, the Regional Board has approved a waiver that disregards one of the fundamental issues
8 for irrigators, particularly family farmers and ranchers, in the Sacramento Valley. That is, the
9 Irrigated Lands Program does not offer Coalition group requisite flexibility to submit participant
10 information in the form of a "nonparticipant" list in lieu of a "participant list." Rather, the
11 Participant List Requirement (memorialized in finding paragraph 14 and order paragraph 1 of the
12 Order No. R5-2006-0053, and paragraphs 1, 6, and 7 of Attachment B thereto) stringently requires
13 specific personal information of participants. (See Order.) Though small in proportion to all of
14 the various goals, requirements, and concerns involved within the Irrigated Lands Program, this
15 issue is certainly not small in importance. In fact, the appropriate flexibility for submittal of non-
16 participant lists is fundamental to the Irrigated Lands Program. (See Guy Decl.; see also Transcript
17 at 115:15-117:23; 175:5-176:23; 180:25-182:25; 220:13-223:2.)

18 At the outset, it is important to note what this request to the State Board for modification of
19 the Participant List Requirement to allow submittal of nonparticipant lists does not seek: this
20 petition does *not* seek to require all Coalition groups to submit nonparticipant information; this
21 petition does *not* seek a way out of compiling and maintaining participant information for their
22 administrative and accountability purposes. With respect to maintenance of the participant
23 information, Sacramento Valley Coalition does not challenge the condition set forth in paragraph 5
24 of Attachment B of the Order, which requires maintenance of participant information. Sacramento
25 Valley Coalition will explain this distinction further below, but Sacramento Valley Coalition is in
26 no way trying to avoid the requirement to maintain participant information. Rather, Sacramento
27 Valley Coalition requests that the State Board modify the Participant List Requirement to

1 accommodate its needs for flexibility to submit nonparticipant information in lieu of the participant
2 information.

3 **2. Background Information**

4 The Porter-Cologne Water Quality Control Act, Water Code sections 13000 et seq. ("Porter-
5 Cologne") grants primary responsibility for water quality control in California to the State Board
6 and the Regional Water Quality Control Boards (collectively, "Water Boards"). Water Code
7 section 13000 declares that activities that may affect water quality "shall be regulated to attain the
8 highest water quality which is reasonable." Water Code section 13001 mandates that the Regional
9 Board, in exercising its powers under Porter-Cologne shall conform to and implement the policies
10 of "this chapter", which includes Water Code section 13000. The adoption of waivers pursuant to
11 Water Code section 13269 must conform to Water Code section 13000.

12 Porter-Cologne obligates the Water Boards to address all discharges of waste that could
13 affect the quality of the waters of the State, including potential nonpoint sources of pollution. (See
14 Policy for Implementation and Enforcement of the Non Point Source Pollution Control Program,
15 May 20, 2004, attached hereto as Exhibit 6 ("State NPS Policy") at p. 1.) Porter-Cologne
16 provides the Water Boards with a variety of administrative tools to carry out this charge. (*Id.* at
17 pp. 1-6.) The Water Boards have and exercise considerable discretion in using these
18 administrative tools. (*Id.* at p. 4.)

19 Water Code section 13260 requires any person discharging waste that affects the surface
20 waters of the State to submit a report of waste discharge and obtain waste discharge requirements
21 ("WDRs") from a Regional Water Quality Control Board. Water Code section 13269,
22 subdivision (a) provides that the Water Boards may waive waste discharge requirements for
23 specific discharges or specific types of discharges "if the state board or a regional board
24 determines, after any necessary state board or regional board meeting, that the waiver is consistent
25 with any applicable state or regional water quality control plan and is in the public interest."

26 The Irrigated Lands Program has an extensive history rooted in a long duration within which
27 the Regional Board did not regulate discharges from irrigated lands but rather maintained a general

1 waiver of waste discharge requirements for irrigated lands. The legislature revisited its
2 authorization of such waivers in 1999, and imposed specific requirements on use of waivers into
3 the future. Sacramento Valley Coalition hereby incorporates by reference the extensive history of
4 the Irrigated Lands Program leading up to the June 2006 renewal within the Regional Board Order
5 No. R5-2006-0053, the State Board Order WQO 2004-0003, *SWRCB/OCC Files A-1536, A-*
6 *1536(a), A-1586, and A-1586(a) through A-1586(f)*, attached hereto as Exhibit 7 (“State Board
7 2004 Order”), and the May 10, 2005 Superior Court of California, County of Sacramento Ruling,
8 attached hereto as Exhibit 8 (“Superior Court Decision”), which upheld the 2003 Coalition
9 Waiver. Sacramento Valley Coalition further incorporates by reference all data, comments,
10 documents, testimony and information submitted to the Water Boards pertaining to the history of
11 the Irrigated Lands Program.

12 In November 2005, the Regional Board considered a renewal of the Irrigated Lands Program
13 and, during the November meeting, determined that Staff needed more time to flesh out certain
14 issues of importance to the Regional Board and the stakeholders. (See e.g., Transcript at
15 pp. 249:3-250:25.) Thus, the Regional Board instituted a Policy Working Group to address at
16 least two issues of importance to the Regional Board and the stakeholders: (1) who is a discharger,
17 and (2) the appropriate requirements to impose on Coalitions with respect to submitting participant
18 information.

19 The Policy Working Group included Regional Board Staff, representatives of the
20 environmental community, and the Coalition groups. Unfortunately, the environmental community
21 did not actively participate in most of the meetings. The Policy Working Group attempted to
22 devise a working solution to the Regional Board’s desire to obtain participant and nonparticipant
23 information that the Regional Board and Staff asserts is necessary to: 1) maintain accountability
24 through a legitimate regulatory program; 2) enable the Regional Board to take appropriate
25 enforcement action, and 3) give the Regional Board and Staff an understanding of which individual
26 farmers and ranchers knowingly elect to participate in the Irrigated Lands Program as dischargers.

27 The Policy Working Group held several meetings to discuss, negotiate and draft alternative
28

1 provisions to meet these goals. During the meetings, the Regional Board Staff explained what
2 participant information they deemed necessary and the process Staff embarks on to retrieve such
3 information. The Coalition groups explained the limitations imposed on them by their participant
4 landowners and the incentives and disincentives to participation experienced with respect to the
5 submittal of participant information. Based thereon, the Policy Working Group agreed to a
6 condition of the Irrigated Lands Program that was included within the publicly noticed and
7 circulated April 2006 Tentative Order:

8 Each Coalition Group existing as of the effective date of this Conditional
9 Waiver shall submit a list(s) or map(s) sufficient for the Central Valley
10 Water Board to identify which landowners and/or operators of irrigated
11 lands that discharge waste to waters of the State are knowingly
12 participating in the Coalition Group or those that are not participating in
13 the Coalition Group. Tentative Order, Att. B at ¶ 5, 5(a), and 5(b).

14 At the Regional Board hearing of June 22, 2006, however, the Executive Officer reported to
15 the Regional Board that she could not support or recommend allowing a nonparticipant list option.
16 (See Transcript at pp. 249:1-250:25.) To support the Executive Officer's position, Staff proposed
17 language for numerous alternatives to develop a condition of participant list submittals. After the
18 close of public hearing, the Regional Board created yet another alternative condition requiring
19 participant lists and refusing to accept an alternative submittal of nonparticipant lists, which is
20 memorialized within the Participant List Requirement adopted by the Regional Board in R5-2006-
21 0053 and states:

22 Each Coalition Group shall submit an electronic list of the landowners
23 and/or operators of irrigated lands that discharge waste to waters of the
24 State who are knowingly participating in the Coalition Group. The list
25 shall include: (a) assessor parcel number(s), (b) parcel size, (c) parcel
26 owner or operator name, and (d) parcel owner or operator mailing
27 address. To the extent information required by this section may not be
28 disclosed because it requires the disclosure of confidential or proprietary
information, including names and addresses, in violation of Food and
Agricultural Code Sections 71089 and 71124(a), the Coalition Group
must provide a detailed area map(s) that clearly delineates the coverage
area and acreage. The initial electronic Participant List shall be submitted
to the Central Valley Water Board by 30 September 2006. Thereafter, by
31 July of each year, the Coalition Group shall submit an updated
Participant List. The information provided by a Coalition Group to
comply with this condition is subject to public disclosure unless subject
to an exemption under applicable law, including the California Public

1 Records Act. (See Order; see also Transcript at p. 307:4-12.)

2 3. **The Regional Board's Action Imposing The Stringent Participant List**
3 **Requirement And Failing To Allow An Alternative Nonparticipant Option**
4 **Was Inappropriate and Improper.**

5 a. **The Evidence Before the Regional Board Does Not Support the Regional**
6 **Board's Decision To Disallow Submittal Of Nonparticipant Lists To Satisfy**
7 **The Participant List Requirement.**

8 The Regional Board seeks to obtain participant information from the Coalitions pursuant to
9 Water Code section 13267, which allows the Regional Board to request certain reports. Water
10 Code section 13267 allows the Regional Board to demand such submittals so long as the burden
11 of the requirement bears a reasonable relationship to the need for the report. However, the
12 Regional Board is not legally required to collect the names and contact information of all individual
13 irrigators in order to maintain the Irrigated Lands Program. Water Code section 13269 simply
14 does not require this condition. The Regional Board will suggest that the Participant List
15 Requirement is necessary to comply with the Water Code section 13269(e), which requires the
16 Regional Board to require "compliance with the conditions pursuant to which waivers are granted
17 under this section." However, as set forth in paragraph 1 of Attachment B to the Order, the
18 Coalitions are required to comply with the conditions of the Irrigated Lands Program to maintain
19 the waiver of WDRs for the individual members within the Coalition group. If the conditions are
20 not met, the Regional Board has ample authority to dissolve the Coalition and thus dissolve the
21 coverage of the waiver for the individual irrigators within the Coalition.

22 Notably, by imposing stringent conditions (such as the Participant List Requirement) in an
23 attempt to ensure "compliance with the conditions pursuant to which" the waiver is granted, the
24 Regional Board has stepped onto a spinning wheel that never stops. Put simply, the Coalition
25 Groups are a sufficient contact for the Regional Board to work with in ensuring compliance with
26 the Irrigated Lands Program. In fact, since the Coalition Groups are the collective group of
27 individual irrigators within the watershed, enforcing the conditions against the leadership of the
28 Coalition Group declared through the Notice of Intent submittals is sufficient and appropriate.
(See Transcript at pp. 112:8-113:3.) Moreover, the Regional Board cannot blur the distinction

1 between the enforcement of conditions of a waiver granted to a collective set of dischargers, the
2 Coalition Groups, with the enforcement of Water Code section 13260, which prohibits unregulated
3 discharge. The Regional Board has wide discretion to design the enforcement process for violating
4 conditions of a waiver, which can and does include the loss of coverage under the waiver and/or the
5 general enforcement procedures used to enforce Water Code section 13260. (See Wat. Code,
6 § 13269; see, e.g., Order, Att. B, ¶ 1; see State NPS Policy, p. 5.) The benefit of having participant
7 names is lesser or equal to the benefit of having information for nonparticipating irrigators. Put
8 simply, by choosing not to submit participant lists, Sacramento Valley Coalition forces the
9 Regional Board to, if necessary, enforce the waiver conditions by dissolving the entire Coalition or
10 individual subwatershed groups. Such dissolution is one of many alternative enforcement
11 procedures and is completely lawful. (See State NPS Policy, p. 5.)

12 The State NPS Policy, the State Board 2004 Order, and the Superior Court Ruling allow
13 flexibility for the Regional Board to accept participant or nonparticipant lists. The State NPS
14 Policy, the State Board 2004 Order, and the Superior Court Ruling simply do not require the
15 Regional Board to stringently demand only participant lists. (See Transcript at pp. 112:8-113:3.)
16 Sacramento Valley Coalition firmly believes that the flexibility allowed by the State NPS Policy,
17 the State Board 2004 Order, and the Superior Court decision is a fundamental component of the
18 Irrigated Lands Program.

19 The Regional Board suggests that the exclusion of nonparticipant lists is necessary to enforce
20 the conditions of the section 13269 waiver of waste discharge requirements. (See e.g., Transcript at
21 pp. 249:1-250:4.) The State NPS Policy gives the Regional Board specific guidance as to how to
22 ensure that waiver conditions are enforceable. The State NPS Policy discusses whether collecting
23 participant information is necessary to enforce the conditions. Though the State NPS Policy
24 “encourage[s regional boards] to have an enrollment process for coverage under the waiver “ so
25 that the regional boards can identify” the actual dischargers, the State NPS Policy states that
26 “[t]here are many different ways for the [regional boards] to ensure compliance.” (State NPS
27 Policy, p. 5.) In fact, the State NPS Policy directly emphasizes that waiver conditions, whatever
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1 they may be, must not leave the dischargers guessing as to “how to comply with the waiver’s
2 conditions.” (State NPS Policy, p. 5.) Thus, the State NPS Policy requires that “[i]n order to be
3 enforceable, waiver conditions should be clearly specified.” (State NPS Policy, p. 5.)

4 Moreover, in 2004, the State Board directed the Regional Board away from its focus on
5 obtaining participant list information. The State Board 2004 Order establishes precedent to show
6 that the submittal of participant lists is *not* mandatory to ensure compliance with the wavier
7 conditions and in many ways could unwarrantedly divert resources away from the important
8 monitoring conditions of the Irrigated Lands Program. (State Board 2004 Order, p. 9.) The State
9 Board stated:

10 [I]n light of this number of operations, it is to the benefit of both the
11 regulators and the regulated community to encourage the formation of
12 Coalition Groups. Not only will communication and regulation be more
13 simple with a smaller number of regulated entities, but the monitoring
14 requirements for Groups are much greater and will provide much more
15 useful information. We much prefer to see the Groups’ resources used for
16 developing adequate plans and reports than to be used to ensure that each
17 Participant is fully named and described at this time. (State Board 2004
18 Order, p. 9.)

19 In 2004, the State Board made one clear distinction that Sacramento Valley Coalition wants to
20 stress here—“ [t]he idea that a Group would maintain a list of only those individuals who are not
21 in the [Coalition] Group frankly makes no sense.” (State Board 2004 Order, p. 8, fn. 22.)
22 Sacramento Valley Coalition and its subwatershed groups maintain separate lists to identify and
23 contact their participants and to identify and contact the irrigators that do not respond or refuse to
24 participate in Sacramento Valley Coalition watershed efforts. Sacramento Valley Coalition
25 understands the importance of maintaining participant lists and does so. Sacramento Valley
26 Coalition, however, does not support and cannot, in some subwatersheds, comply with a
27 requirement that requires submittal of the participant lists.

28 The Superior Court Ruling similarly stressed the importance of having the Coalition Groups
maintain participant lists. (See Superior Court Decision, pp. 58:18 – 59:7.) The Superior Court
was concerned, however, that the State Board’s reporting requirements could infringe upon
confidential information. (See Superior Court Decision, pp. 63-64.) Nothing within the Superior

1 Court Ruling suggests that mandatory submittal of participant lists is legally required or that the
2 submittal of nonparticipant lists is an unlawful or inappropriate alternative. (See Superior Court
3 Decision.)

4 The Regional Board has failed to support its decision to adopt the Participant List
5 Requirement without allowing an alternative option for submittal of nonparticipant lists. Under
6 California law, the Regional Board must support its decisions with specific findings based on
7 evidence in the record. In particular, the Regional Board must “set forth findings to bridge the
8 analytical gap between the raw evidence and the ultimate decision or order.” (*Topanga Assn. for a*
9 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see also *In Re Petition of*
10 *the City and County of San Francisco, et al.* (Sept. 21, 1995) SWRCB Order No. WQ 95-4 at
11 pp. 10, 13; 1995 Cal. ENV LEXIS 25 at pp. 13, 17.) Further, the findings must be supported by
12 evidence in the record. (*Topanga Assn. for a Scenic Community* at pp. 514-515.) Notably, the
13 Regional Board has adopted *no* findings to explain: (1) why the participant information is
14 necessary for the Irrigated Lands Program; (2) why the nonparticipant information submittals
15 currently provided to the Regional Board by certain subwatershed groups within the Sacramento
16 Valley Coalition are insufficient; and (3) that the burden imposed upon the subwatershed groups
17 is justified by the Regional Board’s need for actual participant lists. (See Order.)

18 The Regional Board has failed to “adequately consider[] *all relevant factors*” and
19 demonstrate “a rational connection between those factors, the choice made, and the purposes of the
20 enabling statute [Water Code sections 13267 and 13269].” (*California Hotel & Motel Assn. v.*
21 *Industrial Welfare Commission*, (1979) 25 Cal.3d 200, 212.) The Regional Board Staff contends
22 that direct enrollment of all individual farmers and ranchers within the Coalition Groups
23 “reinforces grower responsibility as a Discharger and provides accountability to the Program.”
24 (Staff Report, Orders Adopting Conditional Waivers of Waste Discharger Requirements for
25 Dischargers from Irrigated Lands (Nov. 28, 2005 Regional Board Meeting) at p. 3.) The
26 Executive Officer further believes that the participant lists are necessary to maintain a legally
27 defensible and “legitimate regulatory program.” (See Transcript at pp. 249:1-250:4.) However,
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1 there is simply no evidence before the Regional Board to suggest that the submittal of
2 nonparticipant lists is an insufficient requirement to reinforce grower responsibility and
3 accountability to the Irrigated Lands Program and that participant lists are necessary to maintain the
4 Irrigated Lands Program. In fact, the Participant List Requirement is unduly burdensome and does
5 not allow Sacramento Valley Coalition the flexibility required to sustain its subwatershed
6 monitoring and reporting activities and comply with the Irrigated Lands Program.

7 Sacramento Valley Coalition subwatershed group representatives presented substantial
8 evidence at the June 22, 2006 meeting to demonstrate the severe burden imposed by refusing to
9 accept the nonparticipant list submittals of several subwatershed groups that are now on file with
10 the Regional Board. Although the Regional Board staff points out third party lawsuits are not
11 allowed under Porter-Cologne, in the litigious society we live in, this is not the only possible legal
12 challenge. The majority of growers could not afford to defend themselves against this type of
13 litigation. (See Transcript at pp. 77:13-81:12; 115:15-117:23; 175:5-176:23; 180:25-182:25;
14 220:13-223:2.)

15 Additionally, farm information, unlike other businesses, is very likely personal information,
16 such as home and other personal phone numbers, addresses, etc. Landowners and growers who
17 deal with hazardous materials are uncomfortable with this information being made available to the
18 public. By requiring all Coalition Groups to provide personal and confidential participant
19 information to the Regional Board, the Regional Board is punishing those who are proactive and
20 cooperative. Conversely, those who are not proactive and not cooperative are rewarded. These
21 factors would result in a much lower Coalition participation rate. (See Transcript at pp. 77:13-
22 81:12; 115:15-117:23; 175:5-176:23; 180:25-182:25; 220:13-223:2.)

23 As demonstrated to the Regional Board Staff through Sacramento Valley Coalition's
24 submittals of participant and nonparticipant lists and to the Regional Board at the June 22, 2006
25 meeting, inclusion of a nonparticipant list option is not only legally defensible but also appropriate.
26 (See Transcript at pp. pp. 77:13-81:12; 115:15-117:23; 175:5-176:23; 180:25-182:25; 220:13-
27 223:2.) The Sacramento Valley Coalition covers twelve subwatersheds and includes ten different
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1 subwatershed groups. Participant lists were submitted for eight of the ten subwatershed groups,
2 but the remaining two subwatershed groups submitted non-responder lists instead of participant
3 lists. The two subwatersheds, Solano-Yolo and Glenn-Colusa, have the greatest signup percentage
4 of all the subwatershed groups and, coincidentally, non-responders in these two subwatersheds
5 have received the largest number of enforcement letters from the Regional Board. The Solano-
6 Yolo subwatershed group is fast approaching 100% participation. This high participant ratio within
7 the Solano-Yolo Subwatershed is fundamental to its success in implementing the Irrigated Lands
8 Program and the Regional Plan for Action.

9 For the Solano-Yolo Subwatershed, the ability to submit nonparticipant information has
10 allowed the subwatershed leaders to use the confidentiality of the personal information as an
11 incentive to convince initially nonparticipating irrigators to join the Coalition. By providing the
12 Regional Board with non-responder information, those who sign up are protected while those who
13 choose not to are not. This has a double benefit for the Irrigated Lands Program. Regional Board
14 Staff is spared the difficult, costly and time consuming task of identifying those who are not
15 participating and Coalition members have the protection they need from having their names made
16 available to the public. Also, the majority of the nonparticipating irrigators who received a Water
17 Code section 13267 letter from the Regional Board after submittal of the nonparticipant list
18 immediately joined the Coalition, creating a win/win situation for Sacramento Valley Coalition and
19 the Water Boards. Full participation also allows the Coalition to remain on the cutting edge in
20 efforts to address water quality issues. For example, monitoring throughout the Central Valley has
21 shown some high levels of E. coli. Although it involves a significant expense, the Solano-Yolo
22 subwatershed is willing to be a test site for conducting DNA analysis to determine the sources of
23 E. coli so the issue can be appropriately addressed. (Guy Decl. at ¶ 12.)

24 The nonparticipant list option is not for every Coalition or watershed. However, for a few of
25 the subwatershed groups within Sacramento Valley Coalition, their family farm constituents are
26 eager to fund and allow monitoring on their private property so long as they are assured that their
27 personal information (including in many instances their home addresses and telephone numbers)

1 are not released to the public. Additionally, due to the nature of their small rural communities,
2 these subwatershed groups are eager to submit names of nonparticipating irrigators to encourage
3 additional participation and to allow everyone in their watershed to share an equal burden to
4 address any water quality problems in the watershed they share. (See e.g., Transcript at
5 pp. 101:12-103:25.)

6 As demonstrated herein and at the Regional Board meeting, nonparticipant information allows
7 the Regional Board to contact non-cooperating irrigators to confirm that any discharges from
8 irrigated lands are regulated by the individual or coalition waiver programs while also providing the
9 Coalition Groups the requisite flexibility to encourage irrigators in their area to participate in the
10 Coalition watershed efforts. (See e.g., Transcript at pp. 115:15-117:23.) Thus, the State Board
11 should modify the Order to allow submittal of nonparticipant lists where necessary to sustain
12 Coalition participation in the Irrigated Lands Program.

- 13 b. The Portion Of The Participant List Requirement Within Paragraph 7 Of
14 Attachment B To The Order Authorizing The Executive Officer To
15 Additionally Demand Technical Maps Beyond Participant Lists Is
16 Unnecessarily Duplicative.

17 In crafting a new alternative to the noticed participant or nonparticipant language within the
18 Tentative Order after the close of public comment, the Regional Board also proposed duplicative
19 language that allows the Executive Officer to further require technical maps in addition to
20 submitting detailed participant information. (See Order, Att. B, ¶ 7.) The Regional Board failed to
21 adopt *any* findings to suggest that this authority is warranted and reasonable or that the additional
22 burden on the Coalition Groups is justified. (See Order; cf. *Topanga Assn. for a Scenic*
23 *Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 515; see also *In Re Petition of the*
24 *City and County of San Francisco, et al.*, SWRCB Order No. WQ 95-4, 1995 Cal. ENV LEXIS
25 25.) In fact, the Regional Board adopted *no* findings regarding this additional condition imposed
26 by paragraph 7 at the absolute last minute. Further, the Regional Board failed to consider all
27 factors related to the duplicative nature of this requirement because this provision was not
28 discussed until after the close of the public hearing. (See Order; cf. *California Hotel and Motel*

1 *Association v. Industrial Welfare Commission, supra*, 25 Cal.3d at p. 212.) The State Board itself
2 has historically struck down requests for technical reports by regional boards if, among other
3 things, the requests require information largely duplicative of other sources. (*In re Original*
4 *Sixteen to One Mine, Inc.* (April 30, 2003) SWRCB Order No. WQ 2003-0006 at pp. 11, 13;
5 2003 Cal. ENV LEXIS 9 at pp. 24, 27-28 [certain monitoring requirements were unreasonable
6 because pollutants in question were unlikely to be present at high levels, if at all; other monitoring
7 requirements were duplicative and therefore costs were unreasonable].)

8 Thus, the State Board should modify the Order to delete the duplicative provision set forth in
9 paragraph 7 of Attachment B to the Order.

10 c. The Coalition Groups Were Not Provided A Sufficient Opportunity To Submit
11 Evidence In Support Of The Nonparticipant List Option And To Respond To
Concerns Raised About Allowing Nonparticipant Lists.

12 The Regional Board's inappropriate action is in large part due to the failure to allow
13 sufficient opportunity for comment on this "participant v. nonparticipant" issue. The specific
14 amendments to the Participant List Requirement made during the Regional Board meeting were not
15 noticed with the April 2006 Tentative Order and not open to discussion or comment by the
16 interested and affected parties. (Transcript at pp. 249:1-249:25 [testimony of Executive Officer];
17 251:4-24; 253:21-256:16; 256:1-261:1; 277:7-278:22; 281:9-284:6; 307:3-311:17.) Further, the
18 Participant List Requirement is inconsistent with the Policy Working Group recommendations and
19 completely ignores the efforts that the Coalitions, in good faith and at the request of the Regional
20 Board during the November 2005 meeting, have been working for months to authorize, develop,
21 and implement. (See Tentative Order; cf. Order; see also Transcript at pp. 249:1-250:25.) Thus,
22 the State Board should conduct a hearing to allow adequate evidence, testimony, and discussion on
23 the Participant List Requirement and modify the Order to include a nonparticipant list option.

CONCLUSION

For the foregoing reasons, Sacramento Valley Coalition respectfully requests that the State Board grant this Petition to review the Regional Board Order No. R5-2006-0053 and issue an Order modifying Order No. R5-2006-0053 by: (1) allowing Coalition groups to submit non-participant lists in lieu of participant list; and (2) striking the authority granted to the Executive Officer to demand technical maps in addition to the participant or nonparticipant list submittal by the Coalition Groups.

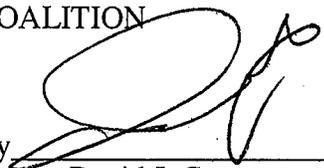
SOMACH, SIMMONS & DUNN
A Professional Corporation

Dated: July 21, 2006

By 
Jacqueline L. McDonald
Attorneys for Petitioner Northern California
Water Association

SACRAMENTO VALLEY WATER QUALITY
COALITION

Dated: July 21, 2006

By 
David J. Guy

1 PROOF OF SERVICE
2 (State)

3 I am employed in the County of Sacramento; my business address is 813 Sixth Street,
4 Third Floor, Sacramento, California; I am over the age of 18 years and not a party to the
5 foregoing action.

6 On July 21, 2006, I served the following document(s):

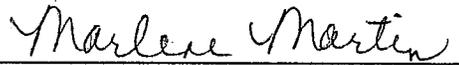
7 **PETITION FOR REVIEW; REQUEST FOR HEARING; REQUEST**
8 **FOR STAY; PRELIMINARY POINTS AND AUTHORITIES**
9 **[Wat. Code, § 13320]**

10 X (By Mail) on all parties in said action, in accordance with Code of Civil Procedure
11 §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid
12 thereon, in the designated area for outgoing mail, addressed as set forth below.

13 Central Valley Regional
14 Water Quality Control Board
15 3443 Routier Road, Suite A
16 Sacramento, CA 95827-3098

17 X (By Electronic Mail) Pursuant to section 2050(a)(8) of Title 23 of the California Code of
18 Regulations, a copy of this petition has been sent via e-mail to each of the coalition groups
19 covered under the Irrigated Lands Program

20 I declare under penalty of perjury that the foregoing is true and correct. Executed on
21 July 21, 2006, at Sacramento, California.

22 
23 Marlene Martin