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7 Attorneys for Petitioner Southern San
Joaquin Valley Water Quality Coalition
8

9 ALSO ON BEHALF OF:
California Farm Bureau Federation,
California Rice Commission, Northern
10 California Water Association on behalf of
the Sacramento Valley Water Quality
11 Coalition, San Joaquin County Resource
Conservation District on behalf of the San
12 Joaquin County and Delta Water Quality
Coalition, San Joaquin Valley Drainage
13 Authority on behalf of the Westside San
Joaquin River Watershed Coalition,
14 Arvin-Edison Water Storage District,
Wheeler Ridge-Maricopa Water Storage
15 District, and Semitropic Water Storage
District
16

17 BEFORE THE STATE WATER RESOURCES CONTROL BOARD
18

19 IN THE MATTER OF PETITION OF
SOUTHERN SAN JOAQUIN VALLEY
20 WATER QUALITY COALITION,
CALIFORNIA FARM BUREAU
21 FEDERATION, CALIFORNIA RICE
COMMISSION, NORTHERN
22 CALIFORNIA WATER ASSOCIATION
ON BEHALF OF THE SACRAMENTO
23 VALLEY WATER QUALITY
COALITION, SAN JOAQUIN COUNTY
24 RESOURCE CONSERVATION
DISTRICT ON BEHALF OF THE SAN
25 JOAQUIN COUNTY AND DELTA
WATER QUALITY COALITION, SAN
26 JOAQUIN VALLEY DRAINAGE
AUTHORITY ON BEHALF OF THE
27 WESTSIDE SAN JOAQUIN RIVER
WATERSHED COALITION, ARVIN-
28 EDISON WATER STORAGE DISTRICT,

SWRCB/OCC File No. _____

PETITION FOR REVIEW, OR
ALTERNATIVELY, REQUEST FOR OWN
MOTION REVIEW OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, CENTRAL VALLEY REGION,
RESOLUTIONS NO. R5-2011-0017 AND R5-
2011-0032 CERTIFYING THE FINAL
PROGRAM ENVIRONMENTAL IMPACT
REPORT FOR THE LONG-TERM
IRRIGATED LANDS REGULATORY
PROGRAM DATED APRIL 7, 2011 AND
FILING OF THE NOTICE OF
DETERMINATION

1 WHEELER RIDGE-MARICOPA WATER
2 STORAGE DISTRICT, AND
3 SEMITROPIC WATER STORAGE
4 DISTRICT FOR REVIEW OF ACTION
5 AND FAILURE TO ACT BY CENTRAL
6 VALLEY REGIONAL WATER
7 QUALITY CONTROL BOARD

8 vs.

9 CALIFORNIA REGIONAL WATER
10 QUALITY CONTROL BOARD,
11 CENTRAL VALLEY REGION
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1 Pursuant to Water Code section 13320, the Southern San Joaquin Valley Water Quality
2 Coalition, the California Farm Bureau Federation, the California Rice Commission, the Northern
3 California Water Association on behalf of the Sacramento Valley Water Quality Coalition, the
4 San Joaquin County Resource Conservation District on behalf of the San Joaquin County and
5 Delta Water Quality Coalition, the San Joaquin Valley Drainage Authority on behalf of the
6 Westside San Joaquin River Watershed Coalition, Arvin-Edison Water Storage District, Wheeler
7 Ridge-Maricopa Water Storage District, and Semitropic Water Storage District (collectively
8 “Petitioners”) hereby petition the State Water Resources Control Board (“State Board”) to review
9 the California Regional Water Quality Control Board, Central Valley Region’s (“Regional
10 Board”) actions and inactions related to its certification of the “Irrigated Lands Regulatory
11 Program – Program Environmental Impact Report” (“ILRP EIR”) in Resolution No. R5-2011-
12 0017, purporting to conduct analysis required by the California Environmental Quality Act
13 (“CEQA”) for regulating discharges from irrigated lands, for which a Notice of Determination
14 was filed in conjunction with Resolution No. R5-2011-0032, Short-Term Renewal of the
15 Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from
16 Irrigated Lands (“Coalition Group Waiver”).¹ As part of the Regional Board’s certification and
17 use of the ILRP EIR in conjunction with Resolution No. R5-2011-0032, the Regional Board
18 added additional conditions to the Coalition Group Waiver, which includes a Mitigation
19 Monitoring and Reporting Program. Petitioners also request review of the incorporation of the
20 Mitigation Monitoring and Reporting Program provisions to the Coalition Group Waiver.

21 Attached as **Exhibit A** to this Petition is a copy of Resolution No. R5-2011-0017.
22 Attached as **Exhibit B** to this Petition is a copy of Resolution No. R5-2011-0032. Attached as
23 **Exhibit C** to this Petition is a copy of the Notice of Determination filed by the Regional Board
24 with the State Clearinghouse in the Governor’s Office of Planning and Research (State
25 Clearinghouse). This Petition satisfies the requirements of title 23, section 2050 of the California

26 _____
27 ¹ Please note that Petitioners are not challenging the Regional Board’s adoption of the Short-Term Renewal in of
28 itself but the certification of the ILRP EIR for which the NOD was filed in conjunction with adoption of the Short-
Term Renewal as well as mitigation measures imposed as part of the Regional Board’s renewal of the Coalition
Group Waiver.

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1 Code of Regulations. Petitioners request the opportunity to file supplemental points and
2 authorities in support of this Petition once the administrative record becomes available.
3 Petitioners also reserve the right to submit additional argument and evidence in reply to Regional
4 Board or other interested parties' responses to this Petition filed in accordance with title 23,
5 section 2050.5(a) of the California Code of Regulations.

6
7 **I. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 Petitioners submit this Petition in compliance with Water Code sections 13320(a) and
9 13330(c). Section 13320(a) provides that an aggrieved person may petition the State Board to
10 review any action or inaction of a Regional Board under Water Code section 13260 *et seq.*,
11 including actions or inactions relating to waiver of waste discharge requirements. Section
12 13330(c) states that "the time for filing an action or proceeding subject to Section 21167 of the
13 Public Resources Code for a person who seeks review of the regional board's decision or order
14 under Section 13320, ..., shall commence upon the state board's completion of that review"
15 Based on this provision of the Water Code, Petitioners are required to submit a challenge to the
16 Regional Board's actions with respect to CEQA to the State Board for review prior to filing a writ
17 of mandate pursuant to Public Resources Code section 21167. Further, Petitioners are authorized
18 to represent their respective coalitions, sub-coalitions and participating agencies, districts, entities
19 and individuals, some or all of which are subject to regulation under the Coalition Group Waiver
20 and will in the future be subject to any regulatory program developed for the longer term.
21 Petitioners fully participated in the CEQA review process, as well as many meetings with the
22 Regional Board regarding the scope and breadth of CEQA alternatives, the economic analysis,
23 and many draft components of the program. Throughout the process, Petitioners challenged the
24 Regional Board's failure to comply with CEQA by, among other things, failing to identify the
25 "project" or timely include the recommended project alternative ("RPA") or additional associated
26 regulatory programs, such as the Long-Term Framework, in the environmental or economic
27 review, and subsequent failure to re-circulate the ILRP EIR prior to certification and use for
28 subsequent regulatory action.

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1 **II. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF**
2 **PETITIONERS**

3 Southern San Joaquin Valley Water Quality Coalition
4 Attention: David Orth, Steering Committee Chairman
4886 E. Jensen Avenue
5 Fresno, CA 93725
Phone: (559) 237-5567
6 Fax: (559) 237-5560
E-mail: dorth@krcd.org

7 California Farm Bureau Federation
8 Attention: Kari E. Fisher
2300 River Plaza Drive
9 Sacramento, CA 95833
Phone: (916) 561-5665
10 Fax: (916) 561-5691
E-mail: kfisher@cbbf.com; photz@cbbf.com

11 Northern California Water Association, on behalf of Sacramento Valley Water Quality
12 Coalition
13 Attention: David Guy & Bruce Houdesheldt
455 Capitol Mall, Suite 335
14 Sacramento, California 95814
Phone: (916) 442-8333
15 Email: bruceh@norcalwater.org
dguy@norcalwater.org

16 California Rice Commission
17 Attention: Timothy A. Johnson
8801 Folsom Blvd., Suite 172
18 Sacramento, CA 95826
Phone: (916) 704-6556
19 Email: TJohnson@calrice.org

20 San Joaquin Valley Drainage Authority
21 Attention: Joseph McGahan, Watershed Coordinator
Westside San Joaquin River Watershed Coalition
887 N. Irwin Street
22 P.O. Box 1122
Hanford, CA 93232

23 San Joaquin County Resource Conservation District on behalf of the San Joaquin County
and Delta Water Quality Coalition
24 Attention: John Brodie, Watershed Coordinator
3422 W. Hammer Lane, Suite A
25 Stockton, CA 95219
Phone: (209) 472, 7127, ext.125
26 Email: rvranglr@yahoo.com

27
28 In addition, Petitioners request that all materials in connection with the Petition and

1 administrative record be provided to Petitioners' respective counsel as identified on **Exhibit D** to
2 this Petition.

3
4 **III. THE PETITIONER PARTIES**

5 **A. Southern San Joaquin Valley Water Quality Coalition**

6 The Southern San Joaquin Valley Water Quality Coalition ("SSJWQC") is a coalition
7 comprised of four sub-coalitions representing the water districts within their individual respective
8 river watersheds and water delivery systems. The coalition encompasses in excess of 4,000,000
9 irrigated acres and is therefore the largest of the water quality coalitions. The SSJWQC has
10 been officially approved by the Regional Board as a certified coalition authorized to administer
11 the ILRP agricultural waiver. The Southern San Joaquin Valley Water Quality Coalition includes
12 the following sub-coalitions.

13 **1. The Kings River Sub-Coalition**

14 The Kings River Sub-Coalition of the SSJWQC is comprised of the Kings River
15 Conservation District and other water districts representing their farmer landowner members of
16 these water districts and operates through a joint powers agreement. The Kings River Sub-
17 Coalition administers the agricultural waiver in accordance with an approved monitoring and
18 reporting program.

19 **2. The Kaweah River Sub-Coalition**

20 The Kaweah River Sub-Coalition of the SSJWQC is comprised of the Kaweah River
21 water agencies representing farmer landowner members of those districts. The Kaweah River
22 Sub-Coalition administers the agricultural waiver in accordance with an approved monitoring and
23 reporting program.

24 **3. The Tule River Sub-Coalition**

25 The Tule River Sub-coalition of the SSJWQC is comprised of the Tule River water
26 agencies representing farmer landowner members of those districts. The Tule River Sub-
27 Coalition administers the agricultural waiver in accordance with an approved monitoring and
28

1 reporting program.

2 4. The Kern River Sub-Coalition

3 The Kern River Sub-coalition of the SSJWQC is comprised of the Kern County Water
4 Agency and their member water districts representing their farmer landowners. The Kern County
5 Water Agency (Agency) was created in 1961 by a special act of the State Legislature and serves as
6 the local contracting entity for the State Water Project. The Agency, which celebrates its 50th
7 anniversary this year, participates in a wide scope of management activities, including water
8 quality, flood control and groundwater operations to preserve and enhance Kern County's water
9 supply. The Kern River sub-coalition administers the agricultural waiver in accordance with an
10 approved monitoring and reporting program.

11 B. California Farm Bureau Federation

12 The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit,
13 voluntary membership California corporation whose purpose is to protect and promote agricultural
14 interests throughout the State of California and to find solutions to the problems of the farm, the farm
15 home, and the rural community. Farm Bureau is California's largest farm organization, comprised of
16 53 county Farm Bureaus currently representing over 76,500 agricultural and associate members in
17 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged
18 in production agriculture to provide a reliable supply of food and fiber through responsible stewardship
19 of California's resources. Farm Bureau aims to improve the ability of individuals engaged in
20 production agriculture to utilize California resources to produce food and fiber in the most
21 profitable, efficient, and, responsible manner possible guaranteeing our nation a domestic food
22 supply. To that end, Farm Bureau is involved in efforts to protect the resources of the state,
23 including water quality and the preservation of agricultural land.

24 Farm Bureau supports responsible farming and proper use and application of pest control
25 products, and respects the health and welfare of those throughout the State. Farm Bureau actively
26 participates in state and federal legislative and regulatory advocacy relating to water quality,
27 water use efficiency, and pesticide regulation, registration, labeling, and use on behalf of Farm
28 Bureau members.

1 Farm Bureau's membership includes a substantial number of farmers and ranchers who
2 grow food and fiber within the Regional Board's jurisdiction. As required by the Porter-Cologne
3 Water Quality Control Act, many Farm Bureau members are currently regulated under the
4 Regional Board's Conditional Waiver of Waste Discharge Requirements.

5 C. Northern California Water Association on behalf of the Sacramento Valley Water
6 Quality Coalition

7 The Northern California Water Association represents approximately 70 agricultural water
8 suppliers and individual landowners who irrigate more than 900,000 acres of Northern California
9 farmland, from the northern reaches of Tehama County to Sacramento County, and from the edge
10 of the Sierra Nevada Mountains in El Dorado County to Glenn County. The Northern California
11 Water Association and many of its members are active participants in the efforts undertaken by
12 the Sacramento Valley Water Quality Coalition. The Sacramento Valley Water Quality Coalition
13 is composed of more than 8,600 farmers and wetlands managers encompassing more than 1.3
14 million irrigated acres and supported by more than 200 agricultural representatives, natural
15 resource professionals, and local governments throughout the region to improve water quality for
16 Northern California farms, cities and the environment. The Coalition developed and submitted its
17 Regional Plan for Action to the State Water Resources Control Board and the Central Valley
18 Regional Water Quality Control Board (Water Board) in June 2003. The Coalition consists of 10
19 sub-watershed groups.

20 D. California Rice Commission

21 The California Rice Commission represents 2,500 rice farmers and handlers who cultivate
22 and process rice produced in California by engaging in a range of comprehensive regulatory,
23 research and education programs. The California Rice Commission provides California's rice
24 growers representation on issues that affect their industry and provides a voice for educating
25 decision makers about the California rice industry. Further, the California Rice Commission is
26 the only commodity-based organization that has been approved as a third-party by the Regional
27 Board to administer the Coalition Group Waiver on behalf of the rice growers in California.

28

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1 E. The San Joaquin Valley Drainage Authority

2 The San Joaquin Valley Drainage Authority, a joint powers agency formed under Section
3 6500, et seq., of the California Government Code and comprised of nine public agencies in
4 Fresno, Kern, Kings Madera, Merced, San Joaquin and Stanislaus Counties generally on the west
5 side of the San Joaquin Valley, is the umbrella agency for the West San Joaquin River Watershed
6 Coalition (“Westside Watershed Coalition”). The Westside Watershed Coalition was established
7 to serve as a regional watershed coalition for purposes of providing regulatory coverage through
8 the Regional Board’s Irrigated Lands Regulatory Program to member public water and drainage
9 districts, acting on behalf of their individual landowners and water users, and to individual
10 landowner participants located outside the boundaries of participating member agencies. The
11 Westside Watershed Coalition administers the agricultural waiver in accordance with an approved
12 watershed management plan including several geographically focused subwatershed plans and a
13 monitoring and reporting program. The San Joaquin Valley Drainage Authority is authorized by
14 law to commence and maintain this action on behalf of itself and on behalf of its member
15 agencies and its individual landowner participants.

16 F. San Joaquin County Resource Conservation District on behalf of the San Joaquin
17 County and Delta Water Quality Coalition

18 The San Joaquin County Resource Conservation District (SJCR Conservation District) is
19 a public entity and legal subdivision of the State of California, organized and existing under
20 Public Resources Code section 9001 *et seq.* The SJCR Conservation District acts as the lead
21 agency for and administers the San Joaquin County and Delta Water Quality Coalition
22 (SJCDWQC). The SJCDWQC was established to serve as a regional watershed coalition for
23 purposes of providing regulatory coverage through the Regional Board’s Irrigated Lands
24 Regulatory Program to its members. The SJCDWQC initiated water quality monitoring in July
25 2004 and the program continues to monitor surface waters during the summer irrigation seasons
26 and the storm water runoff season. The SJCDWQC represents farmers and ranchers within San
27 Joaquin, Calaveras, and Contra Costa counties. The SJCDWQC encompasses approximately
28 1,057,350 acres of which approximately 500,000 are irrigated acres, and consists of several site

1 subwatersheds containing various subwatersheds. The SJCDWQC has been officially approved
2 by the Regional Board as a certified coalition authorized to administer the Irrigated Lands
3 Regulatory Program agricultural waiver. The SJCDWQC developed and submitted a
4 Management Plan pursuant to the Irrigated Lands Regulatory Program, which was most recently
5 approved on January 23, 2009 and updated on April 1, 2011. The SJCR Conservation District is
6 authorized by law to commence and maintain this action on behalf of itself and its members,
7 including the SJCDWQC and its members and participants.

8 **G. Other Parties**

9 1. Arvin Edison Water Storage District

10 Arvin-Edison Water Storage District ("Arvin-Edison") is presently and has been at all
11 times relevant hereto, a California Water Storage District organized and existing under and
12 pursuant to California Water Storage District Law (Division 14 (commencing with Section
13 39000) of the California Water Code). Arvin-Edison's boundaries are located exclusively within
14 the boundaries of the County of Kern and the Kern County Water Agency, and consists of
15 approximately 132,000 acres, of which approximately 112,000 acres are irrigated. Arvin-Edison
16 has been involved in the Irrigated Lands Regulatory Program and related activities through its
17 participation in the Kern River Sub-Watershed and in turn Southern San Joaquin Valley Water
18 Quality Coalition, among other things. Arvin-Edison commences this action on behalf of itself
19 and its landowners.

20 2. Wheeler Ridge-Maricopa Water Storage District

21 Wheeler Ridge-Maricopa Water Storage District ("Wheeler Ridge") is presently and has
22 been at all times relevant hereto, a California Water Storage District organized and existing under
23 and pursuant to California Water Storage District Law (Division 14 (commencing with Section
24 39000) of the California Water Code). Wheeler Ridge's boundaries are located exclusively
25 within the boundaries of the County of Kern and the Kern County Water Agency, and consists of
26 approximately 147,700 acres, of which approximately 110,600 acres are irrigated. Wheeler
27 Ridge has been involved in the Irrigated Lands Regulatory Program and related activities through
28 its participation in the Kern River Sub-Watershed and in turn Southern San Joaquin Valley Water

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1 Quality Coalition, among other things. Wheeler Ridge commences this action on behalf of itself
2 and its landowners.

3 3. Semitropic Water Storage District

4 Semitropic Water Storage District (“Semitropic”) is presently and has been at all times
5 relevant hereto, a California Water Storage District organized and existing under and pursuant to
6 California Water Storage District Law (Division 14 (commencing with Section 39000) of the
7 California Water Code). Semitropic’s boundaries are located exclusively within the boundaries
8 of the County of Kern and the Kern County Water Agency, and consists of approximately
9 221,000 acres, of which approximately 150,000 acres are irrigated. Semitropic has been involved
10 in the Irrigated Lands Regulatory Program and related activities through its participation in the
11 Kern River Sub-Watershed and in turn Southern San Joaquin Valley Water Quality Coalition,
12 among other things. Semitropic commences this action on behalf of itself and its landowners.

13
14 **IV. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH
15 PETITIONERS REQUEST THE STATE BOARD TO REVIEW**

16 Petitioners seek review of the Regional Board’s adoption of Resolution No. R5-2011-
17 0017 certifying the ILRP EIR, the Notice of Determination (“NOD”) filed in conjunction with the
18 adoption of Resolution No. R5-2011-0032, and the incorporation of mitigation measures into the
19 Coalition Group Waiver through the adoption of Resolution No. R5-2011-0032. More
20 specifically, the Petitioners request that the State Board review the Regional Board’s failure to
21 proceed in a manner required by law with respect to complying with the substantive and
22 procedural requirements under the CEQA. The specific determinations with respect to CEQA
23 that the Petitioners request the State Board review include, but are not limited to, the following:
24 the ILRP EIR’s failure to include an adequate project description; the ILRP EIR’s failure to
25 adequately represent baseline conditions; the ILRP EIR’s failure to adequately address
26 cumulative impacts; the ILRP EIR’s failure to analyze the program’s potential inconsistencies
27 with applicable general plans, regional plans, regulations and zoning ordinances to protect
28 agricultural uses; the ILRP EIR’s failure to support several of its conclusions and thresholds with

1 substantial evidence; the ILRP EIR's failure to include a preferred alternative; the IRLP EIR's
2 inclusion of mitigation measures that may not be legally imposed; the Regional Board's failure to
3 re-circulate the ILRP EIR; and, the Regional Board's failure to include an adequate economic
4 analysis to comply with Water Code section 13141.

5
6 **V. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO
ACT**

7
8 The Regional Board certified the ILRP EIR on April 7, 2011; however, the Regional
9 Board did not file a Notice of Determination for the ILRP EIR until after June 9, 2011 when it
10 adopted Resolution No. R5-2011-0032. Action pursuant to Water Code section 13320 was not
11 proper until after the Regional Board took action to direct staff to prepare a Notice of
12 Determination, which occurred with the adoption of Resolution No. R5-2011-0032 on June 9,
13 2011. Accordingly, this Petition is timely filed pursuant to title 23, California Code of
14 Regulations, section 2050.

15
16 **VI. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS
INAPPROPRIATE OR IMPROPER**

17
18 As explained in more detail in the Statement of Points and Authorities herein, the
19 Regional Board's certification and subsequent use of the ILRP EIR constitutes a prejudicial abuse
20 of discretion in that the Regional Board failed to proceed in a manner required by law and its
21 decision is not supported by substantial evidence.

22
23 CEQA requires that an agency analyze the potential environmental impacts of its
24 proposed actions in an environmental impact report ("EIR") (except in certain limited
25 circumstances). (See, e.g., Pub. Resources Code, § 21100.) CEQA is designed to inform
26 decision makers and the public about potential, significant environmental effects of a project.
27 (Cal. Code Regs., tit. 14, § 15002(a)(1), ("CEQA Guidelines").) "Its purpose is to inform the
28 public and its responsible officials of the environmental consequences of their decisions before
they are made. Thus, the EIR 'protects not only the environment, but also informed self-

1 government.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.)

2 While the courts review an EIR using an “abuse of discretion” standard, ... ‘clearly
3 inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Keep Jets Over*
4 *the Bay v. Board of Port Comm’rs* (2001) 91 Cal. App. 4th 1344, 1355 (quoting *Laurel Heights*
5 *Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391, 409, n.
6 12).) “A prejudicial abuse of discretion occurs ‘if the failure to include relevant information
7 precludes informed decision-making and informed public participating, thereby thwarting the
8 statutory goals of the EIR process.’” (*Id.* at 1355.)

9 In general, the Regional Board failed to properly follow and comply with CEQA in that
10 the analysis in the ILRP EIR is superficial, and inadequate to analyze the environmental impacts
11 associated with the five alternatives contained in the ILRP EIR as well as the Recommended
12 Project Alternative (“RPA”), which was contained in an appendix to the Draft ILRP EIR.
13 Further, the ILRP EIR contains improper mitigation measures that have been incorporated into
14 the Coalition Group Waiver. Because the Regional Board failed to properly comply with CEQA,
15 the Regional Board’s actions to certify the ILRP EIR and file a Notice of Determination
16 constitute a prejudicial abuse of discretion. Moreover, while the Petitioners do not Petition or
17 request review of the Regional Board’s Short-Term Renewal of the Coalition Group Waiver,
18 Petitioners do request review of the Regional Board’s actions with respect to certification of the
19 ILRP EIR, the filing of Notice of Determination that followed therewith, and the Regional
20 Board’s incorporation of the Mitigation Monitoring and Reporting Program into the Coalition
21 Group Waiver.

22
23 **VII. THE MANNER IN WHICH PETITIONERS ARE AGGRIEVED**

24
25 Petitioners are subject to regulation under the Coalition Group Waiver and will in the
26 future be subject to regulatory requirements associated with the longer-term program. The
27 Regional Board considers the ILRP EIR to be its programmatic EIR for actions that will occur in
28 the future for the longer-term program, which may include the adoption of eight to twelve orders

1 for general waste discharge requirements. Because the Regional Board has certified and filed a
2 Notice of Determination with respect to the ILRP EIR in conjunction with its adoption of
3 Resolution No. R5-2011-0032, Petitioners must now challenge the Regional Board's failure to
4 comply with CEQA and the adequacy of the ILRP EIR even though its application to the longer-
5 term actions may not occur for sometime. Otherwise, Petitioners may forego their opportunity to
6 challenge the ILRP EIR in the future.

7 Further, Petitioners are aggrieved by the Regional Board's incorporation of the Mitigation
8 Monitoring and Reporting Program requirements into the Coalition Group Waiver. Such
9 incorporation imposes new requirements on those subject to the Coalition Group Waiver that are
10 inconsistent with and fail to comply with CEQA.

11 Petitioners are also aggrieved by the Regional Board's failure to properly analyze the
12 economic impacts associated with the alternatives contained in the ILRP EIR and the staff's
13 failure to properly analyze impacts associated with the staff's RPA.

14
15 **VIII. THE SPECIFIC ACTION REQUESTED BY PETITIONERS**

16 Based on the foregoing, and as supported by the Statement of Points and Authorities,
17 Petitioners request the State Board to order the Regional Board to (1) vacate its certification of
18 the ILRP EIR; (2) vacate the incorporation of the Mitigation Monitoring and Reporting Program
19 into the Coalition Group Waiver; and, (3) issue a new ILRP EIR curing each of flaws identified
20 herein in the existing ILRP EIR.
21

22
23 **IX. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL
ISSUES RAISED IN THIS PETITION**

24 As required by title 23, section 2050(a)(7) of the California Code of Regulations,
25 Petitioners include a Statement of Points and Authorities in support of this Petition beginning on
26 page 15.
27
28

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X. A STATEMENT THAT THIS PETITION WAS SENT TO THE REGIONAL WATER BOARD

In accordance with title 23, section 2050(a)(8) of the California Code of Regulations, Petitioners mailed true and correct copies of this Petition by First Class mail on July 11, 2011, to the Regional Board. The address to which Petitioners mailed the copies to the Regional Water Board is:

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Petitioners are the very dischargers subject to the Coalition Group Waiver. Therefore, Petitioners did not mail a separate copy of this Petition to the dischargers.

XI. A STATEMENT AS TO WHETHER THE PETITIONERS RAISED THE SUBSTANTIVE ISSUES OR OBJECTIONS IN THE PETITION TO THE REGIONAL BOARD

Petitioners individually and collectively raised the substantive issues and objections in this Petition before the Regional Board in written comment letters submitted in September 2010, March 2011 and June 2011, and in testimony provided to the Regional Board at the April 7, 2011 and June 9, 2011, public hearings.

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Dated: July 11, 2011

BEST BEST & KRIEGER LLP

By: 
WILLIAM J. THOMAS
HARRIET A. STEINER
KIMBERLY E. HOOD
Attorneys for Southern San Joaquin Valley
Water Quality Coalition

And also on behalf of:
California Farm Bureau Federation,
California Rice Commission, Northern
California Water Association on behalf of
the Sacramento Valley Water Quality
Coalition, San Joaquin County Resource
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Joaquin County and Delta Water Quality
Coalition, and San Joaquin Valley
Drainage Authority on behalf of the
Westside San Joaquin River Watershed
Coalition, Arvin-Edison Water Storage
District, Wheeler Ridge-Maricopa Water
Storage District, and Semitropic Water
Storage District

For a list of other counsel, see Exhibit D.

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1 **STATEMENT OF POINTS AND AUTHORITIES**

2 The Regional Board adopted Resolution No. R5-2011-0017, which certified the ILRP
3 EIR, on April 7, 2011. However, the Regional Board did not adopt a project associated with the
4 ILRP EIR at the April 7, 2011 hearing. Thus, no Notice of Determination was filed after
5 certification on April 7, 2011. The Regional Board then adopted Resolution No. R5-2011-0032
6 on June 9, 2011. Resolution No. R5-2011-0032 directed staff to prepare a Notice of
7 Determination within five working days of the June 9, 2011 action. The Regional Board’s action
8 on June 9, 2011 was the Short-Term Renewal of the Coalition Group Conditional Waiver of
9 Waste Discharge Requirements for Discharges From Irrigated Lands (“Coalition Group Waiver”).
10 (See Resolution No. R5-2011-0032.) The “short-term” renewal is intended to provide the
11 Regional Board with 24 months to develop proposed orders and other regulatory actions that will
12 establish the long-term irrigated lands program. (*Id.* at ¶¶ 5-6.) The Regional Board’s primary
13 purpose for developing the ILRP EIR was (and is) for the long-term irrigated lands program – not
14 the short-term renewal of the Coalition Group Waiver. However, because the Regional Board has
15 certified the ILRP EIR and subsequently filed a Notice of Determination associated with the
16 ILRP EIR, Petitioners must now challenge the Regional Board’s actions with respect to the ILRP
17 EIR. In certifying and filing a Notice of Determination for the ILRP EIR, the Regional Board has
18 failed to proceed in a manner required by law, and its decisions are not supported by substantial
19 evidence. Further, in conjunction with its adoption of the Short-Term Renewal, the Regional
20 Board also incorporated the Mitigation Monitoring and Reporting Program into the Coalition
21 Group Waiver. The Mitigation Monitoring and Reporting Program incorporated therein
22 replicates the same program identified in the ILRP EIR for the long-term irrigated lands program.
23 Thus, its incorporation into the Coalition Group Waiver is inappropriate for the same reasons as
24 to its inclusion for the long-term irrigated lands program.

25
26 **I. INTRODUCTION**

27 Since 1982, the Regional Board has regulated non-point source discharges from
28

1 agricultural lands through a waiver of waste discharge requirements (“WDRs”). In 2003, the
2 Regional Board adopted a Conditional Waiver of Waste Discharge Requirements for Discharges
3 from Irrigated Lands (“Conditional Waiver”), which included direction to the Regional Board
4 staff to prepare an Environmental Impact Report (“EIR”) for a long-term irrigated lands
5 regulatory program. In 2006, the Regional Board adopted the Coalition Group Conditional
6 Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group
7 Waiver) that continued the Conditional Waiver program until 2011, again indicating its intent to
8 develop a long-term irrigated lands regulatory program and EIR. (See Order No. R5-2006-0053.)

9 To facilitate the development of a long-term irrigated lands program for the Central
10 Valley, the Regional Board embarked on a two-year stakeholder process in an effort to identify a
11 full range of alternatives for the next ILRP agriculture waiver, and to identify alternatives for
12 consideration in the EIR for the long-term program. (Proposed Long-Term Irrigated Lands
13 Regulatory Program Alternatives (ILRP Alternatives) (December 2009) at p. 4.) Through this
14 process, the stakeholders, which included Regional Board staff and representatives from the
15 entities submitting this Petition, developed five alternatives for consideration and review as part
16 of the EIR for the long-term irrigated lands program. The five alternatives represented different
17 approaches to dealing with discharges from irrigated agriculture that may affect the quality of
18 agricultural surface and groundwater. Those alternatives were as follows: (1) no change
19 alternative (continuation of the current program; not a “no project alternative” as defined by
20 CEQA); (2) third party lead entity (surface water and groundwater); (3) individual farm water
21 quality management plan; (4) direct oversight with regional monitoring; and, (5) direct oversight
22 with farm monitoring. The Regional Board staff indicated that it was their intent to recommend a
23 Long-Term Irrigated Lands Program from among the alternatives being considered in the EIR.
24 (ILRP Alternatives at p. 5.) Further, the EIR was to evaluate each alternative equally. (*Ibid.*) By
25 conducting the CEQA review in this manner, the Regional Board could then ultimately choose to
26 adopt any of the approaches presented in the five alternatives.

27 Following the extensive scoping and stakeholder meetings, the Draft ILRP EIR analyzed
28 each of the five administrative regulatory alternative programs. The five long-term Irrigated

1 Lands Regulatory Program alternatives identified by the Regional Board for inclusion in the EIR
2 are as follows.

3 **Alternative 1** – Under this alternative the Regional Board would renew the current
4 program. According to the Regional Board, this was considered to be the “no project”
5 alternative. Further, this alternative would not have established any new Regional Board
6 requirements for discharges to groundwater. However, existing local and state programs already
7 in place would continue to protect groundwater resources. (ILRP Alternatives at p. 7.) As is
8 discussed further below, Petitioners have concerns with the Regional Board’s description of
9 Alternative 1 as the “no project” alternative because no action would have terminated the waiver
10 as by its terms and by statute it would expire at the end of its 5-year term.

11 **Alternative 2** – Under this alternative, the Regional Board would develop a single or
12 series of regulatory mechanism (e.g., conditional waivers, WDRs) for discharges from irrigated
13 lands to both surface water and groundwaters. These regulatory mechanisms would be designed
14 to provide flexibility in establishing requirements for growers. Also, third party groups (i.e.,
15 coalitions) would continue to function as the lead entities in representing growers. Regulation of
16 discharges to surface water would continue to be similar to the approach in the Coalition Group
17 Waiver, and third party groups would also need to monitor groundwater and develop groundwater
18 management plans. (*Id.* at p. 10.)

19 **Alternative 3** - Under this alternative, growers would need to develop a farm water
20 quality management plan. This alternative would abandon the coalition approach, and growers
21 would be required to individually apply for a conditional waiver or waste discharge requirements
22 (“WDRs”) directly from the Regional Board, and the Regional Board would have to approve of
23 their individual farm water quality management plan. The Regional Board would identify
24 problem areas and require monitoring in such areas. (*Id.* at p. 14.)

25 **Alternative 4** – Under this alternative, growers would be required to obtain WDRs and
26 develop farm water quality management plans. It would include various tiers, which would
27 trigger additional requirements for monitoring groundwater if high nitrates or pesticides were
28 used. This alternative would also require growers to complete education sessions (15 hours),

1 develop nutrient management plans, and certify as to any changes in their fertilizer or pesticide
2 use.

3 **Alternative 5** – Under this alternative, growers would be required to obtain WDRs and to
4 develop farm water quality management plans. It also would require growers to monitor at the
5 edge-of-field and to track pesticide and fertilizer use. The farm would be required to develop a
6 whole farm nitrate balance as part of its nutrient management plan. Growers would also be
7 required to install groundwater monitoring wells.

8 As indicated, the Regional Board staff then took these five alternatives to be reviewed
9 pursuant to CEQA as equal weight alternatives. Although repeatedly requested by all
10 stakeholders to identify the “project” and/or the Regional Board staff’s preferred alternative
11 among the five alternatives, Regional Board staff refused. (*See* Draft ILRP EIR, § 1.4 (“[The
12 ILRP EIR] does not identify a ‘preferred alternative.’”)). The five alternatives were also the basis
13 of the Regional Board’s economic analysis, which is required by Water Code section 13141.

14 The Draft ILRP EIR was released for public comment and review on July 28, 2010.
15 Comments were due on September 27, 2010. Petitioners individually and collectively submitted
16 comments on the Draft ILRP EIR. On March 8, 2011, the Regional Board issued a Notice of
17 Availability for the Final Environmental Impact Report. The Final ILRP EIR was adopted on
18 April 7, 2011. The Regional Board filed its Notice of Determination on June 13, 2011, and the
19 Notice of Determination was received and date stamped June 15, 2011 by the State
20 Clearinghouse.

21 Despite the continuous efforts of all stakeholders to identify the broad range of five
22 alternatives, which were to be the alternatives analyzed pursuant to CEQA and Water Code
23 section 13141, the Regional Board staff ultimately developed a Recommended Long-Term
24 Irrigated Lands Regulatory Program or Recommended Project Alternative (“RPA”), and
25 subsequent Long-Term Irrigated Lands Regulatory Framework (“Long-Term Framework”) that
26 differed from the original five alternatives. The RPA was first introduced in its entirety to the
27 stakeholders and the public only as part of Appendix A to the Draft ILRP EIR, which was the
28 Staff Report. (Draft ILRP EIR, Appendix A, at p. 142.) The Long-Term Framework, which

1 differs significantly from the RPA, was introduced in March 2011 as part of the Staff Report for
2 the Regional Board's April 7, 2011 hearing on the Draft ILRP EIR.

3 At the April 7, 2011 hearing, many stakeholders, including Petitioners, testified in
4 opposition to the Draft ILRP EIR due to its insufficiencies. Petitioners also testified in opposition
5 to portions of the Long-Term Framework as well as the process by which the Regional Board
6 took to put forward the Long-Term Framework. Despite the significant testimony addressing
7 concerns with the adequacy of the Draft ILRP EIR, the Regional Board decided to certify the
8 ILRP EIR. However, the Regional Board did determine that it was premature to take any action
9 on the Long-Term Framework as it was not an actual "project" under the ILRP EIR. Because the
10 Regional Board did not actually adopt any "project" on April 7, 2011, a Notice of Determination
11 was not filed.

12 At the June 9, 2011 hearing, the Regional Board took action to adopt the Short Term
13 Renewal in order to allow staff to pursue actions relative to the long-term program, which is to
14 consist of adoption of eight to twelve individual conditional waivers or general orders. Although
15 not necessary, the Regional Board used the certified ILRP EIR to support its Short Term
16 Renewal, and directed staff to file a Notice of Determination accordingly. As part of its action
17 with the Short-Term Renewal, the Regional Board also incorporated the Mitigation Monitoring
18 and Reporting Program into the Coalition Group Waiver.

19 As the state agency tasked to ensure the *reasonable* regulation of the state's water quality
20 given all the demands made upon the water, and the state agency tasked with reviewing a
21 Regional Board's action that is contrary to the law, it is imperative that the State Board decide the
22 issues set forth in this Petition.

23 More specifically, Petitioners challenge whether the Regional Board acted appropriately
24 and reasonably when it certified the inadequate ILRP EIR, incorporated the Mitigation
25 Monitoring and Reporting requirements into the Coalition Group Waiver, and filed the Notice of
26 Determination associated with the ILRP EIR. The Regional Board's actions cause Petitioners to
27 be prejudiced now and in the future with an inadequate EIR that fails to assess the environmental
28 impacts of the original five alternatives, the RPA and the Regional Board's Long-Term

1 Framework, which was not even part of the ILRP EIR.

2 Accordingly, Petitioners respectfully request that the State Board order the Regional
3 Board to vacate its certification of the ILRP EIR, vacate the incorporation of the Mitigation
4 Monitoring and Reporting Program from the Coalition Group Waiver and direct the Regional
5 Board to revise and re-circulate the ILRP EIR after curing the defects that are further discussed
6 herein.

7
8 **II. ARGUMENT**

9
10 **A. Staff's Belated Preferred Alternative Was Issued to Avoid Economic and
11 Environmental Review**

12 As indicated previously, the Regional Board issued the Draft ILRP EIR in July 2010 and
13 the Final ILRP EIR in March 2011. Only in the Staff Report attached as Appendix A to the Draft
14 ILRP EIR did the Regional Board staff advance what they then labeled as the "Recommended
15 Long-Term Irrigated Lands Program" ("RPA"). Even then it was not offered as a program
16 alternative (it was offered only as "the program"). Although the introduction to the RPA claims
17 that it was developed from elements of the five alternatives included in the ILRP EIR, the RPA
18 was not in and of itself evaluated to determine if it has significant environmental impacts.
19 Further, the Regional Board failed to adequately assess the economic impacts associated with the
20 RPA.

21 Because the RPA is actually a conglomeration of new requirements and select elements of
22 other project alternatives, the ILRP EIR does not truly analyze the proposed project. In the same
23 vein, without analyzing the RPA, it is impossible for the Draft Staff Report to analyze the true
24 economic impact of that project. The Draft Staff Report only attempts to select relevant pieces
25 from Alternatives 2 and 4 to produce an estimated economic impact and cost. (Draft ILRP EIR,
26 Appendix A, at pp. 169 – 171.) However, there is no indication that the independent economic
27 analysis on which those estimates are based is supported by using pieces of other alternatives.
28 Assumptions contained in the actual independent economic analysis may not remain true if

1 variant pieces of each alternative are selectively taken out and subsequently reassembled, as is the
2 case in the RPA. Taking isolated figures from an economic analysis that was designed to
3 summarize the ramifications of different alternatives in their entirety may not accurately reflect
4 the true economic impacts of the RPA. The ILRP EIR should have contained a full economic
5 impact analysis of the RPA not based exclusively on the estimated costs of pieces assembled from
6 the other alternatives. The ILRP EIR fails to do so, and therefore there is no basis on which to
7 accurately calculate the economic impact or costs of the RPA.

8 To everyone's subsequent surprise, after reviewing and commenting on the Draft ILRP
9 EIR, the Regional Board then released the Long-Term Framework with its Staff Report that
10 accompanied the Final ILRP EIR. According to the Staff Report, the Long-Term Framework
11 document is intended to interpret and actually direct the implementation of the staff
12 recommendation. Like with the RPA, the Long-Term Framework also was not environmentally
13 or economically reviewed. Further, the Long-Term Framework does not resemble any of the
14 alternatives analyzed as part of the Draft ILRP EIR. Nor is it related to any of the alternatives
15 analyzed as part of the economic analysis. The Long-Term Framework advances many new
16 provisions and extends the RPA beyond that included in the Draft ILRP EIR. Thus, both the
17 RPA and the Long-Term Framework include totally new regulatory provisions that are coupled
18 with a mix of various, cherry-picked elements, from the five alternatives analyzed in the Draft
19 ILRP EIR. However, neither the RPA or the Long-Term Framework, nor their combined
20 environmental impacts, were analyzed or subjected to the mandatory CEQA review. Thus, the
21 ILRP EIR is inadequate for it has failed to adequately assess the environmental impacts of the
22 Regional Board's preferred project.

23 Moreover, these two belated alternatives (RPA and Long-Term Framework) add many
24 new regulatory requirements not advanced or reviewed during the several years the Regional
25 Board was engaged in the stakeholder process and its review under the CEQA. The many new
26 regulatory requirements are identified in section B. below.

27 CEQA prohibits a lead agency from avoiding a CEQA analysis by belatedly developing a
28 "program" that arbitrarily mixes certain elements from proposed alternatives without an analysis

1 of the environmental effect of those combined elements. (See generally *Communities for a Better*
2 *Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 114; *Sierra Club v.*
3 *County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1319.) Such an approach circumvents the intent
4 and purpose of CEQA and violates the due process and public notice rights of landowners and
5 agricultural operations subject to the proposed program. Thus, the Regional Board's action to
6 develop the RPA and the Long-Term Framework *after* completion of the CEQA process is
7 unlawful. Both alternatives must be fully analyzed in the ILRP EIR pursuant to CEQA for them
8 to be viable options available to the Regional Board.

9 Accordingly, Petitioners request that the State Board vacate the Regional Board's
10 certification of the ILRP EIR and the filing of the Notice of Determination so that the Regional
11 Board may prepare a new ILRP EIR, which fully evaluates all of the alternatives' (including the
12 Long-Term Framework and RPA) respective environmental and economic impacts.

13
14 **B. The RPA and Long-Term Framework Include Entirely New Regulatory Provisions
15 That Have Not Been Analyzed In the ILRP EIR.**

16 Contrary to the Regional Board's assertion, the RPA and Long-Term Framework include
17 regulatory provisions that differ significantly from those identified and contained in the five
18 alternatives that were included in the ILRP EIR. Below is a partial list of new requirements that
19 were presented in the RPA and Long-Term Framework without regard to their inclusion in the
20 five alternatives.

21 1. The Long-Term Framework proposes a system of imposing a mix of General
22 Order WDRs, conditional waivers, and WDRs for different geographical areas and operations that
23 are not included in one of the five alternatives. (Long-Term Framework, p. A-9).

24 It would impose, for example, a General WDR for most of one coalition (the Southern San
25 Joaquin Coalition) with the exception of areas in the Tulare Lake Bottom and irrigated pasture
26 and foothill land and organic production which would all have separate individual waivers. The
27 a) Tulare Lake Bottom, b) the foothills, c) irrigated pastures and d) organic fields would
28 apparently have these new individual waivers as "islands" within the General Order. Also, if

1 areas can show that they will appropriately not generate a discharge of waste whatsoever, the area
2 in question will not be regulated. This mix of multiple WDRs and waivers is entirely new and
3 was not evaluated environmentally or economically. Furthermore, it appears that this approach
4 would be unworkable considering the nature of irrigated lands and the connection to each other.
5 A similar mix of regulatory programs would exist in the Sacramento Valley Water Quality
6 Coalition area and for other coalitions as well.

7 2. The RPA and Long-Term Framework include a new three-tiered regulatory
8 structure that was not previously included in the five alternatives that are in the IRLP EIR.
9 Specifically, they propose to have: a) Tier 1, low threat; b) Tier 2, unknown threat; and c) Tier 3,
10 high threat. High threat areas would be defined as those areas with any water quality
11 exceedances. For groundwater, high threat areas would be overlying aquifers which are merely
12 “vulnerable to pollution”, or have some evidence of nitrate problems in drinking wells. The new
13 Tier 2 lands would be those for which Regional Board staff believe lack “sufficient data” to
14 characterize water quality.

15 Based on the approach outlined in the RPA and Long-Term Framework, a single
16 exceedance could mean that an entire watershed draining to one monitoring location that has one
17 exceedance would be in Tier 3. Regional Board staff indicate that most lands will be in Tier 2
18 merely by alleging that there is “insufficient data” even though significant data exists due to the
19 previous 8 years of monitoring efforts by the Petitioners in accordance with approved monitoring
20 and reporting protocol. These tiering provisions and their impact on the environment were not
21 evaluated in the IRLP EIR. Further, the economic impacts associated with the tiering provisions
22 were also not evaluated.

23 3. The RPA and the Framework include a complex mix of multiple strategies and
24 multiple levels of responsibility. However, the bureaucratic maze of strategies and
25 responsibilities on the various coalitions and subcoalitions has not been analyzed as part of the
26 IRLP EIR. Using the Southern San Joaquin Valley Water Quality Coalition as an example, this
27 new document will demand the coalition and its four subcoalitions to manage a hopelessly
28 complex and manifold regulatory system.

1 a. There will be a General Order having lands in the four subcoalitions
2 divided into three overlapping tiers for each surface and groundwater. (This would result in 24
3 permeations.)

4 b. Some lands will not drain to surface water and some will not drain to
5 groundwater, and some to neither. Therefore, there will be three permeations of “exempt from
6 jurisdiction” lands. These lands would be covered by neither the General Order nor waivers, but
7 the coalition would have to “qualify them.” The inclusion of discharges to groundwater within
8 the proposed project is not supported by substantial evidence indicating virtually all irrigated
9 agricultural lands, including those that do not drain to surface waters of the state, drain to
10 groundwater, and moreover that those activities by irrigators result in a “discharge of waste” that
11 impacts water quality. This is a major issue not addressed in the CEQA analysis.

12 c. Each of the four sub-watersheds drain to the Tulare Lake bottom and the
13 lake bed portions of each coalition would therefore be covered by separate new waivers (4
14 permeations).

15 d. Foothill, organic farms/fields and irrigated pastures would each be covered
16 by separate new waivers (3 permeations). Some of the foothill lands will, however, not meet the
17 footnote 10 requirement (fence creeks) so these lands will “re-enter” from the waiver back to the
18 General Order presumptively in a special Tier 1 category (1 permeation).

19 On balance, each of our four subcoalitions could and likely would have a total of a couple
20 dozen different programs, which, across the entirety of the coalition, would total up to over 50
21 possible combinations. All of these would likely have to be administered separately and would
22 have differing monitoring and reporting obligations. Other coalitions would experience similar
23 complexity and the Regional Board would have to oversee this entire regulatory nightmare.
24 Many single farm operations will fall into several of these separate programs. The environmental
25 and economic impacts of this increased bureaucratic regulatory scheme was not analyzed in the
26 ILRP EIR.

27 4. The Long-Term Framework would further provide for a process for public input
28 on surface water quality management plans (SQMPs) and groundwater quality management plans

1 (GQMPs). It is unnecessary, and legally inappropriate, for this review process to include “other
2 interested parties.” The Regional Board represents the public interest and therefore it is
3 unnecessary for other stakeholders to participate in reviews at this level. Further, such a
4 requirement is unprecedented and has no legal basis. SQMPs/GQMPs are designed to identify
5 management practices that would be appropriate and applicable for the constituent of concern and
6 the watershed in question. Thus, Regional Board review on the sufficiency of SQMPs/GQMPs is
7 appropriate. While the SQMPs/GQMPs are public documents once submitted to the Regional
8 Board, they are not the type of documents that require Regional Board approval and therefore
9 they are not subject to formal public review and comment.

10 Although not specified in the RPA, we anticipate the development of SQMPs/GQMPs
11 would be required pursuant to the Regional Board’s authority under Water Code section 13267.
12 Section 13267 allows the Regional Board to require the submittal of technical and monitoring
13 reports as long as the burden of preparing the report bears a reasonable relationship to the need
14 for the report and the benefits to be obtained. Nothing in section 13267 requires that such reports
15 be subject to public review or comment, or be open for discussion with other interested parties.

16 In all of the Regional Board’s other programs, individual dischargers are not required to
17 have management plans reviewed periodically by other interested parties. Typically, when
18 dischargers are required to submit special studies or management plans, the plan is submitted to
19 the Regional Board staff for review and comment, revised based on Regional Board staff
20 comments, and then implemented. At most, the municipal stormwater program requires that
21 stormwater management plans be subject to public review, comment, and adoption by the
22 Regional Board. However, this requirement for municipal stormwater management plans stems
23 from federal NPDES permit requirements and is not applicable here. (See *Environmental*
24 *Defense Center v. EPA* (9th Cir. 2003) 344 F.3d 832, 856.)

25 Further, by allowing other interested parties to evaluate the sufficiency of SQMPs/
26 GQMPs, the process may be stalled with protracted negotiations between all of the parties to
27 determine what is sufficient. If other interested parties have concerns with the sufficiency of
28 SQMPs/GQMPs, they may express their concerns to the Regional Board at any time without

1 being a required entity in the periodic review process. The additional process for review of
2 SQMPs and GQMPs was not analyzed to determine if delay may cause environmental impacts.
3 Nor was the additional process requirement assessed to determine its economic impact on the
4 process and on the Petitioners.

5 5. Tier 3 lands in nitrate impact areas would be required to advance nutrient
6 management plans certified by a “certified crop advisor.” This report will have to track nutrient
7 inputs and outputs, which is supposed to identify nitrates filtering below the crop root zone.
8 (Long-Term Framework, ¶ 4, p. A-17; ¶ 10, p. A-16). Farmers should not have to make their
9 farm plans public or shared with other farm operations (i.e., coalitions) as suggested in the staff
10 preferred alternative. Further, information within the Nutrient Management Plans may contain
11 intellectual property, trade secrets, and proprietary information, much of which has no correlation
12 or nexus to the Regional Board’s authority to regulate water quality. Prior to any request for the
13 submittal of the entire farm plan, the Regional Board must make a finding showing the necessity
14 of the data and information being required and how such data is related to water quality. Such a
15 finding is not present here. The Porter-Cologne Act explicitly provides protection to growers for
16 intellectual property, trade secrets, and proprietary information that may be within a farm plan or
17 report. (Wat. Code, § 13267(b)(2).)

18 Moreover, the Regional Board staff and the general public are not qualified to assess the
19 adequacy of a farm fertilizer strategy put together by a professional crop advisor.

20 The Nutrient Management Plan language requires farmers to “track nutrient inputs and
21 outputs.” First, there are many nutrients other than nitrogen/nitrates. Secondly, the “outputs”
22 likely mean the nitrogen in the crop harvested, but most nitrogen is in crop residue and tied up in
23 the soil, which has considerable assimilative capacity. Consequently, all nitrates cannot be taken
24 away in harvest and most remaining nitrogen does not migrate to underlying aquifers. In respect
25 to field corn, cotton, grapes or oranges very little of the nitrate is in the corn kernel, cotton fiber,
26 the grape or the orange. Most of the nitrate is tied up in plant residue or the vine or tree. Like
27 with the other new requirements identified, the environmental and economic impacts associated
28 with nutrient management plans and management practices resulting from the nutrient

1 management plans were not analyzed.

2 6. The Long-Term Framework calls for an assessment and trend monitoring for
3 groundwater. Groundwater is not farm specific, and the groundwater underlying a farm or
4 underlying a monitoring point may be very old water sourced from many miles away. (Long-
5 Term Framework, ¶ 5, p. A-22.) Consequently, trend monitoring is likely not to show any results
6 for decades, if at all. (Long-Term Framework, ¶ 8, p. 31). Like with the others, this requirement
7 was not subject to environmental or economic analysis.

8 7. The Long-Term Framework has a new section (Section 4.5, Pages 8, 9) with
9 respect to identifying water quality threats. Two such factors are “extent of irrigated ag
10 operations” and “intensity of operations”. In general, the Regional Board should not be able to
11 more intensively regulate farms based on the “size of farm operations” as large farms generally
12 have the capacity to implement even greater water quality management than small farms. More
13 specifically, environmental impacts associated with extent and intensity of agricultural operations
14 were not analyzed in the ILRP EIR.

15 8. The provision for having separate waivers for irrigated pastures is limited by
16 Footnote #10, which states it is conditioned by “minimizing runoff” and “keeping cattle from
17 watercourses.” This is an unreasonable and unnecessary new regulation that calls for hundreds of
18 miles of watercourse fences throughout the mountains. The imposition of such a management
19 practice would likely have considerable environmental and economic consequences that were not
20 subject to review in the ILRP EIR.

21 9. With respect to compliance time schedules, the proposed 5-10 year time frame for
22 compliance with groundwater quality standards is unreasonable. Groundwater is complex and
23 monitoring may be irrelevant in places with a) very old water, b) natural impairment, or c) where
24 impacts are sourced many miles away. More importantly for purposes here, the proposed
25 compliance schedules were not analyzed per CEQA, and they are wholly inconsistent with
26 testimony of Dr. Thomas Harter provided to the Regional Board at its June 9, 2011 meeting.²

27 _____
28 ² Pursuant to title 23, of the California Code of Regulations, section 648.2, Petitioners hereby request that the State
Board take Official Notice of the information provided by Dr. Thomas Harter to the Regional Board, who is the State
82231.00007\6470341.2

1 In short, this new “Long-Term Framework” includes entirely new program elements and
2 elements in addition to those provisions “cherry-picked” from the original five alternatives that
3 were evaluated in the ILRP EIR. Because of the many new requirements contained within the
4 RPA and Long-Term Framework, further CEQA review is required.

5
6 **C. THE REGIONAL BOARD’S CERTIFICATION AND FILING OF A NOTICE OF**
7 **DETERMINATION FOR THE ILRP EIR CONSTITUTES A PREJUDICIAL**
8 **ABUSE OF DISCRETION**

9 In general, the ILRP EIR includes many deficiencies with respect to complying with
10 CEQA. The analysis for the original five alternatives is superficial, and the ILRP EIR fails to
11 include the Regional Board’s later developed RPA and Long-Term Framework. Specific
12 inadequacies with respect to CEQA, in addition to those expressed in section A above, are
13 discussed further herein.

14 **1. The ILRP EIR Fails to Include a Project Description.**

15
16 The ILRP EIR’s failure to identify a proposed project or a preferred alternative makes the
17 ILRP EIR unrecognizable as an EIR under CEQA. This shortcoming has plagued this ILRP EIR
18 effort throughout the many years it has been developing.

19 “An accurate, stable and finite project description is the *sine qua non* of an informative
20 and legally adequate EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185,
21 192; *Berkeley Jets, supra*, 91 Cal. App. 4th at 1342; *Sacramento Old City Assn. v. City Council*
22 (1991) 229 Cal. App. 3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus*
23 (1996) 48 Cal. App. 4th 182, 201.)

24 Here, the ILRP EIR does not have a project description at all. Instead, the ILRP EIR
25 consists of five proposed alternatives without identifying the project. (Draft ILRP EIR, “In this
26 document, ... no project or preferred alternative had been identified by the Lead Agency from
27

28 Board’s principal investigator for the State Board’s SBX2 1 Pilot Projects in the Tulare Lake Basin/Salinas Valley.
Dr. Thomas Harter’s presentation was a summary and status report on the SBX2 1 Pilot Project.

1 among the considered alternatives”). In addition, the Regional Board staff brought forward two
2 additional alternatives, the RPA and the Long-Term Framework, neither of which were analyzed
3 in the ILRP EIR or any subsequent CEQA document. The Long-Term Framework advances
4 many new provisions and apparently combines select elements from the five identified
5 alternatives and now appears as the proposed project, but it has never been analyzed and was not
6 even mentioned in the Draft ILRP EIR.

7 A “rigorous analysis” is required to dispose of an impact as insignificant. (*Kings County*
8 *Farm Bureau v. City of Hanford*, 2221 Cal. App. 3d 692 (1990).) Such a rigorous analysis is not
9 possible if the project description is inaccurate, inconsistent, misleading or, in the case of the
10 ILRP EIR, completely absent. Moreover, without a well-defined project or program at the
11 *beginning* of the CEQA process, the lead agency cannot compare the project to a reasonable
12 range of alternatives in order to determine the environmentally superior alternative as required by
13 CEQA Guidelines section 15126.6. Accordingly, the ILRP EIR must be revised to include the
14 appropriate project description. Without this, the ILRP EIR fails to satisfy CEQA’s fundamental
15 requirements.

16
17 **2. The Cumulative Impacts of the Preferred Alternative Are Not Accurately**
18 **Analyzed**

19 As noted above, the RPA represents “a conglomeration of elements presented” in the five
20 alternatives that are analyzed in the ILRP EIR, but the RPA and the Long-Term Framework were
21 not themselves analyzed in the ILRP EIR, and no attempt has been made to analyze the
22 components of this program (as they would be applied) in conjunction with each other.
23 Compounding this error, the ILRP EIR does not identify “any projects or programs adequately
24 similar in nature, location, and type to result in a meaningful comparative analysis.” “[A]
25 cumulative impact consists of an impact which is created as a result of the combination of the
26 project evaluated in the EIR together with other projects causing related impacts.” (CEQA
27 Guidelines, § 15130(a)(1).)

28 The Regional Board continues the charade relative to the staff recommended proposal

1 being evaluated in the ILRP EIR. In the July 2011 staff report regarding funding for the long
2 term irrigated lands program on page 3 they falsely characterize the staff proposal as alternative 6
3 and further falsely state that “the report evaluated six program alternatives, including alternative 6
4 that was the Board staff recommended alternative.”

5 The staff recommendation was not evaluated whatsoever. It was only released as an
6 appendix to the EIR.³

7 In contravention of CEQA Guidelines section 15130, the ILRP EIR employs neither a list
8 nor a summary of plans and projections approach to the cumulative impacts analysis. In fact, the
9 ILRP EIR does not identify a single program, policy, plan, or project to be included in the
10 cumulative impacts analysis. Instead of analyzing the cumulative effects of the project together
11 with other projects causing related impacts, the ILRP EIR blithely concludes that there are no
12 other projects—and purports to analyze the cumulative impacts of the project, standing alone.
13 This analysis cannot withstand scrutiny. Other programs and projects that have the potential to
14 affect water quality in the program area include U.S. EPA’s recent action banning pesticide
15 application in certain areas, numerous pending National Pollutant Discharge Elimination System
16 (“NPDES”) permits and other permit actions, and the Regional Board’s own Groundwater
17 Protection Strategy, which has been in development for several years. All of these similar
18 pending programs and projects have the potential to create cumulative impacts on agricultural and
19 other environmental resources, and, thus, require analysis along with the current project.

20 Moreover, even if it were deemed appropriate to disregard all the programs and projects
21 that have the potential to contribute to cumulative impacts and consider the “cumulative impacts”
22 of the program standing alone, the ILRP EIR has not done this. As explained above, the ILRP
23 EIR does not analyze the impacts associated with the RPA or the Long-Term Framework; it
24 makes no attempt to evaluate what effects will result if those program components are
25

26 ³ We request the State Water Board to take judicial notice of the July 2011 “Non-Regulatory Amendments
27 to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake
28 Basin to Provide a Cost Estimate and Potential Sources of Funding for a Long-Term Irrigated Lands Program”
prepared by Joe Karkoski.

1 implemented in conjunction with each other. Thus, even if it were sufficient to limit the scope of
2 the cumulative impacts analysis to the program alone, the ILRP EIR approach leads to a failure to
3 analyze—and a deliberate lack of understating of—the project’s cumulative impacts.
4

5 **3. Alternative 1 Does Not Accurately Represent the “No Project” Scenario;
6 Continuation of the Existing Irrigated Lands Program Would Be a Project
7 Subject to CEQA, Not the “No Project” Condition**

8 The ILRP EIR claims that Alternative 1 constitutes the “No Project” Alternative, which
9 the ILRP EIR defines as “full implementation of the present program.” This description of
10 Alternative 1 is misleading and incorrect. In actuality, the ILRP EIR does not include a true “No
11 Project” Alternative that represents what would happen absent any Regional Board action.

12 “The ‘no project’ analysis shall discuss the existing conditions at the time the notice of
13 preparation is published, . . . as well as what would be reasonably expected to occur in the
14 foreseeable future if the project were not approved, based on current plans and consistent with
15 available infrastructure and community services.” (CEQA Guidelines, § 15126.6(e)(2).) When
16 the existing conditions include implementation of a program or rule that will expire unless some
17 affirmative action is taken, the “No Project” scenario must consider the expiration of that program
18 or rule and its associated ramifications. (See, e.g., *Sherwin-Williams Co. v. S. Coast Air Quality
19 Management Dist.* (2001) 86 Cal.App.4th 1258, 1280 [SCAQMD properly defined the “No
20 Project” scenario as “not adopting the proposed amendments to Rule 1113, but instead allowing
21 the expiration of the current product variances for some of the coating categories, and maintaining
22 the current version of Rule 1113 as amended by a 1990 court order”].) In contrast, when an
23 agency must act affirmatively to extend an existing program or rule, that itself is a project that
24 must be analyzed under CEQA. (*Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009)
25 47 Cal.4th 902, 909 [county’s decision not to renew a conditional use permit that was expiring is
26 not a project under CEQA, but the renewal of the permit would be].)

27 Here, the “No Project” Alternative should reflect the expiration of the existing waiver
28 program, which was June 30, 2011, at the time of ILRP EIR development. (See Coalition Group

1 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands,
2 Order No. R5 2006 0053, at p. 17 (2006 Conditional Waiver).) Pursuant to Water Code section
3 13269, the 2006 Conditional Waiver remains in place only if it is affirmatively renewed by the
4 Regional Board. (Wat. Code, § 13269(b)(1).)

5 The lack of an accurate “No Project” Alternative constitutes a fatal flaw for the ILRP EIR.
6 The “No Project” Alternative is a mandatory component of an EIR. The purpose of this
7 requirement is “to allow decision makers to compare the impacts of approving the proposed
8 project with the impacts of not approving the proposed project.” (CEQA Guidelines, §
9 15126.6(e)(1).) In this case, no such comparison is possible because the “No Project” Alternative
10 is fundamentally inaccurate.

11
12 **4. The ILRP EIR Misrepresents the Baseline Conditions, So the Entire**
13 **Environmental Analysis Is Tainted**

14 The Environmental Setting fails to describe accurately the existing environmental
15 conditions, even at a programmatic level. “Knowledge of the regional setting [of the project] is
16 critical to the assessment of environmental impacts The EIR must demonstrate that the
17 significant environmental impacts of the proposed project were adequately investigated and
18 discussed and it must permit the significant effects of the project to be considered in the full
19 environmental context.” (CEQA Guidelines, § 15125(c).) Toward that end, the ILRP EIR “must
20 include a description of the physical environmental conditions in the vicinity of the project, . . .
21 from both a local and a regional perspective. This environmental setting will normally constitute
22 the baseline physical conditions by which a Lead Agency determines whether an impact is
23 significant.” (*Id.* at § 15125(a).)

24 First, the “Existing Setting” chapter is, by its own admission, incomplete. For example,
25 the description of the existing conditions related to surface water makes no mention whatsoever
26 of the amount of surface water currently being diverted or the amount being used for irrigation by
27 participants in the Irrigated Lands Program. Likewise, there is no indication of how much water
28 is returned to stream systems after agricultural use, and how much of that water is derived

1 originally from groundwater basins or surface water sources. Absent this information about the
2 existing physical conditions, it is not possible to determine whether the proposed new regulatory
3 program will cause significant impacts on water supplies, stream systems, or the fish, wildlife and
4 plants dependent on those systems.

5 The ILRP EIR attempts to overcome the gaps in the “Existing Setting” chapter by adding
6 a discussion of the environmental setting to each of the impact analyses. This is confusing to the
7 reader because these supplemental discussions of the “existing setting” are not entirely consistent
8 with the description provided in the “Existing Setting” chapter. Moreover, even the supplemental
9 discussions in the impact analyses are improperly truncated. For example, in the Vegetation and
10 Wildlife Section (section 5.7), the agricultural lands environmental setting consists of three
11 paragraphs for over 7 million acres of agricultural land in the Central Valley. Considering the
12 diversity and value of varying vegetation and wildlife throughout the Central Valley, a three
13 paragraph summary in no way can establish the existing environmental setting.

14 To the extent the ILRP EIR relies on the “No Program” Alternative to represent the
15 existing baseline conditions, this is improper in this case. As explained above, the “No Program”
16 Alternative misstates what will occur absent any Regional Board action. Because neither this nor
17 any of the other attempts in the ILRP EIR to describe the environmental setting is legally
18 adequate, the ILRP EIR lacks any accurate baseline against which to judge the environmental
19 impacts of the proposed program.

20
21 **5. The ILRP EIR Fails to Evaluate the Program’s Reasonably Foreseeable
22 Direct and Indirect Effects on the Environment**

23 “In evaluating the significance of the environmental effect of a project, the lead agency
24 shall consider direct physical changes in the environment which may be caused by the project and
25 reasonably foreseeable indirect physical changes in the environment which may be caused by the
26 project.” (CEQA Guidelines, § 15064(d).) “An indirect physical change in the environment is a
27 physical change in the environment which is not immediately related to the project, but which is
28 caused indirectly by the project. If a direct physical change in the environment in turn causes

1 another change in the environment, then the other change is an indirect physical change in the
2 environment.” (*Id.* at § 15064(d)(2).)

3 The ILRP EIR fails to achieve this charge. For example, the ILRP EIR acknowledges
4 that, under the alternatives analyzed, the higher cost of irrigation would result in less water being
5 used and some land going out of agricultural production. However, the ILRP EIR’s analysis
6 stops there. It does not consider what impacts will be caused by the reasonably foreseeable result
7 of less irrigation, such as less water returning to stream systems and diminished flows at certain
8 times of year, and less irrigation water reducing the amount of groundwater recharge that would
9 otherwise occur, particularly in the San Joaquin Valley where many of the surface water delivery
10 systems were built with the very intent to increase local groundwater basin recharge. In many
11 groundwater basins within the Central Valley, flood irrigation is responsible for a significant
12 portion of the groundwater recharge to those basins. Numerous entities rely on that recharged
13 groundwater to meet their water supply needs, including urban agencies, private domestic users,
14 industry and agriculture. Less irrigation could result in significant environmental impacts, and a
15 discussion of those potential impacts is completely absent from the ILRP EIR. (See e.g., *Protect*
16 *the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111
17 [recognizing that seasonal reduction of surface flow in local streams constitutes an effect on the
18 environment within the meaning of CEQA, as the stream flows are part of the physical conditions
19 which exist within the area which will be affected by the proposed project, and the reduction in
20 stream flow is a change in those conditions, thus the lead agency must determine whether change
21 significant].) In addition to direct groundwater impacts, discharge to waterways from the
22 groundwater basin could also decrease, potentially resulting in reduced flows that may constitute
23 a direct change in the environment. (See *id.*) This possibility is also not analyzed by the ILRP
24 EIR. It is also reasonably foreseeable that reduced irrigation could have other indirect
25 environmental impacts. Reduced groundwater availability may require the installation of
26 dedicated recharge basins or injection wells, or force third parties who rely on groundwater
27 recharge to procure alternative supplies in the absence of the previously available groundwater.
28 Finally, there is also no analysis of whether mitigation of such effects is even possible throughout

1 the broad region subjected to the ILRP EIR, especially given the scarcity and intensive use of
2 California's limited water supplies and the potential economic effects on individual farmers and
3 within specific regions, or of the effects on minority or disadvantaged communities. Such
4 reasonably foreseeable consequences are not considered in the ILRP EIR, rendering the analysis
5 wholly deficient.

6 In addition to the potential reduction in irrigated acreage, changes in irrigation practices,
7 and specifically the use of pressurized systems, can have a whole host of environmental impacts
8 that were not considered in the ILRP EIR. For example, the ILRP EIR indicates that field
9 preparation activities would not substantially increase as a result of changes in management
10 practices. (See Draft ILRP EIR, Table 5 5 1.) In reality, the installation of pressurized systems
11 would result in a significant increase in fieldwork, which includes but is not limited to the
12 construction of pumping facilities, filtering equipment, and trenching and laying of pipes. These
13 changes could have direct impacts on air quality and other environmental impacts not discussed
14 in the ILRP EIR. In addition, pressurized systems require additional energy to operate, which
15 would similarly result in potential impacts to air quality and energy resources. (See Pub.
16 Resources Code, § 21100(b)(3) [environmental impact reports must include a detailed statement
17 setting forth mitigation measures proposed to minimize significant effects on the environment,
18 including, but not limited to, "measures to reduce the wasteful, inefficient, and unnecessary
19 consumption of energy."]; CEQA Guidelines, Appendix F ["In order to ensure the energy
20 implications are considered in project decisions, [CEQA] requires that EIRs include a discussion
21 of the potential energy impacts of proposed projects, with particular emphasis on avoiding or
22 reducing inefficient, wasteful and unnecessary consumption of energy."].) The failure of the
23 ILRP EIR to include these foreseeable direct and indirect environmental impacts renders it fatally
24 flawed.

25 Similarly, the ILRP EIR acknowledges that the program will result in the conversion of
26 agricultural lands to other uses, but it fails to analyze the reasonably foreseeable impacts
27 associated with that conversion, such as increased valley temperatures (see Climate Change
28 comments, *infra*), and conflicts with existing land use regulations and zoning (see Land Use

1 comments, *infra*). All of these direct and indirect impacts resulting from the implementation of
2 the program must be analyzed in the ILRP EIR.

3
4 **6. The ILRP EIR Grossly Understates the Program's Potential Impacts on Land**
5 **Use**

6 An EIR must “discuss any inconsistencies between the proposed project and applicable
7 general plans and regional plans,” including habitat conservation plans and natural communities
8 conservation plans. (CEQA Guidelines, § 15125(d).) While the ILRP EIR acknowledges the
9 requirement to evaluate its consistency with General Plans and Habitat Conservation Plans
10 (“HCPs”), it makes no attempt to analyze these impacts even in a qualitative manner. Its
11 characterization as a programmatic document does not wholly excuse undertaking the required
12 environmental analysis. The ILRP EIR should evaluate the extent to which adopted General
13 Plans within the program area designate agricultural land uses that would be undermined by the
14 increased irrigation costs imposed by the program and the resulting loss of agriculture. Likewise,
15 the ILRP EIR must discuss whether and how adopted HCPs in the program area rely on
16 agricultural land uses and how the increased irrigation costs imposed by the program, and the
17 resulting loss of agriculture, would affect those plans.

18 Even more egregiously, the ILRP EIR utterly fails to analyze the program's land use
19 impacts. The ILRP EIR acknowledges that agricultural lands are a resource that must be
20 analyzed under CEQA, and it also admits that many jurisdictions have adopted land use plans,
21 regulations, and zoning ordinances to protect agricultural uses. Yet the ILRP EIR completely
22 fails to analyze, even at a programmatic level, whether the program will conflict with any of these
23 land use plans, regulations, or zoning ordinances.

24 Additionally, the ILRP EIR totally ignores any analysis of possible impacts on
25 groundwater banking programs or groundwater recharge projects important to both urban and
26 agricultural communities.

27 The ILRP EIR's status as a programmatic document is not an excuse to omit any
28 discussion of these potentially severe impacts—which is the faulty path taken by the ILRP EIR.

1 **7. The ILRP EIR's Conclusions Regarding Global Warming Are Not Supported**
2 **by Substantial Evidence**

3 The conclusions drawn in an EIR must be supported by substantial evidence. (See Pub.
4 Resources Code, § 21081.5.) The ILRP EIR's climate change analysis fails to meet this standard,
5 as it relies on argument and speculation rather than the best available evidence. While this is an
6 evolving area of science, and there may not be much evidence available, the lead agency must use
7 the best evidence available to it to inform its analysis. If there is any substantial evidence to
8 support the ILRP EIR's conclusion that irrigating agricultural lands causes climate change—
9 which seems doubtful—the ILRP EIR does not contain or cite it.

10 Here, the best available evidence is a 2007 study, which indicates that agricultural
11 irrigation practices in the Sacramento/San Joaquin Valley cause the mean temperature in summer
12 months to drop, even as greenhouse gas emissions drive temperatures upward. (Irrigation cooling
13 effect: Regional climate forcing by land-use change, Geophysical Research Letters, Vol. 34,
14 L03703 (Feb. 7, 2007).) As noted by Professor Lara Kueppers, one of the authors of the study,
15 "activities related to agriculture, forestry and development do matter to the climate." As
16 Professor Kueppers states, "If we don't consider what we're doing to the area by urbanizing,
17 which removes farmland that has a cooling effect, we could very well end up with a much hotter
18 Central Valley." (See
19 http://www.ucmerced.edu/news_articles/02082007_professor_s_research_shows.asp.) This
20 evidence suggests that any program such as the long-term irrigated lands program, which the
21 ILRP EIR concedes will have the effect of removing some land from agricultural production and
22 irrigation, will cause increased climate change impacts in the Central Valley. While it may not be
23 possible to precisely quantify those impacts at this time, they must be disclosed, at least at a
24 qualitative level.

25 In addition, the ILRP EIR fails to account for the effects of new management practices on
26 energy demand, which would in turn affect air quality, greenhouse gas emissions and ultimately
27 climate change. As noted in our comments regarding the ILRP EIR's failure to adequately assess
28 the true impact of the long-term irrigated lands program on the environment, the installation of

1 pressurized systems would result in a significant increase in construction activities in the short
2 term and increased energy consumption in the long term, both of which could contribute to an
3 increase in greenhouse gas emissions. This increase could have a direct impact on climate
4 change, yet it was not discussed or analyzed in the ILRP EIR, even in a qualitative fashion.

5 The ILRP EIR also had no opportunity to either economically or environmentally evaluate
6 the cumulative impacts of any of the new provisions advanced in the RPA/Framework as they
7 were not available during the EIR process. A single example would be the Framework footnote
8 10 referenced above on page 24 which would require extensive livestock fencing to keep cattle
9 off foothill water courses. Such fencing is not only economically prohibitive, it raises substantial
10 impact to resident and migrating deer and bird species in their foraging and strutting grounds.

11
12 **8. The ILRP EIR Arbitrarily Imposes Mitigation Measures That May Not Be**
13 **Legally Imposed**

14 Mitigation measures that cannot be legally imposed need not be proposed or analyzed.
15 (CEQA Guidelines, § 15126.4(a)(5).) The “Mitigation and Improvement Measures” for
16 vegetation and wildlife resources identified in section 5.7.6 (p. 5.7 50) propose mitigation
17 measures that would require avoidance of sensitive biological resources, additional CEQA review
18 if such resources cannot be avoided, and would force agricultural landowners to conduct a
19 delineation of affected wetlands “prior to implementing any management practice that will result
20 in the permanent loss of wetlands.” In delineating wetlands, the mitigation requires it to be
21 conducted in accordance with current U.S. Army Corps of Engineer (“Corps”) methods. The
22 mitigation measures proposed here cannot be legally imposed in all cases.

23 First, we question the requirement to undertake additional CEQA review when an adverse
24 effect on a sensitive biological resource cannot be avoided. While we agree that impacts to such
25 sensitive areas should be avoided, we are concerned that, as proposed, the mitigation measure
26 imposes a new CEQA requirement on agricultural landowners and operators when no
27 discretionary project may actually be triggered by the action. For example, in some jurisdictions,
28 and depending on the construction activity, grading permits may be required for installation of

1 certain management practices (e.g., detention basins). However, in many jurisdictions, the act of
2 constructing a management practice may not rise to the level of activity subject to a grading
3 permit. Further, the implementation of management practices at the farm level, which would be
4 encouraged in area-wide waste discharge requirements (“WDRs”), is not subject to a
5 discretionary approval by the Regional Board. Thus, there is no universal trigger for additional
6 CEQA review. At most, such review may be necessary if the construction activity constitutes a
7 discretionary project under the local jurisdiction’s authority. To avoid confusion, ILRP EIR must
8 be revised to clarify that additional CEQA review may only be necessary if a discretionary project
9 for approval has been triggered by the construction activity.

10 Next, the mitigation measure for wetland loss is too broad and fails to recognize that
11 implementation of management practices is most likely to occur on irrigated agricultural land
12 currently in production. The Regional Board does not have the authority to order the delineation
13 of affected wetland areas identified as converted croplands because such agricultural areas do not
14 fall within the jurisdiction of the Corps. The Clean Water Act (“CWA”) and the authority of the
15 Corps to perform operations under the CWA apply only to “waters of the United States.” The
16 regulatory definition of waters of the United States specifically states that, “Waters of the United
17 States do not include prior converted cropland” (33 C.F.R. § 328.3(a)(8).) Furthermore,
18 guidance issued by the U.S. EPA in 2008 clarifying CWA jurisdiction following the Supreme
19 Court case of *Rapanos v. United States* (2006) 547 U.S. 715, made no mention of and had no
20 effect on this exemption for ongoing agricultural operations. As such, cropland continues to be
21 exempt from the Corps’ CWA jurisdiction. If it is not within the authority of the Corps to
22 conduct a delineation because the area to be examined is not a water of the United States as
23 defined by federal law or regulation, then it follows that it is not within the authority of the
24 Regional Board to order individual agricultural operations to undertake such an action as a
25 mitigation measure as part of a Mitigation Monitoring and Reporting Program in the ILRP EIR.

26 A further flaw is the failure to even consider the extent to which the proposed regulatory
27 program, as compared to ongoing individual farming activities entered into for other reasons, will
28 trigger such changed conditions that would then trigger the need for mitigation measures. For

1 example, a farmer's conversion to higher efficiency forms of irrigation may be based on crop
2 selection (e.g., because many canneries only issue contracts where tomatoes are planted using
3 drip irrigation), to address changes in water supply availability, or for other economic reasons,
4 whether or not such changes also meet requirements of the Regional Board's regulatory program.
5 By incorporating a suite of mitigation measures for the short-term irrigated lands program without
6 any analysis tailored for the effects of the specific program as distinct from ongoing actions of
7 third parties within a watershed (much less within all watersheds within the scope of the
8 program), the Regional Board has improperly bootstrapped presumed effects into mitigation
9 requirements for the Coalition Group Waiver. Moreover, the Short-Term Renewal onto itself,
10 which applies only for two years, does not trigger significant environmental impacts necessitating
11 the need for mitigation measures.

12 Considering the unlawful inclusion of the mitigation provisions contained in the ILRP
13 EIR, the Regional Board's incorporation thereof into the Coalition Group Waiver is also
14 unlawful. Further, the Short-Term Renewal does not trigger significant environmental impacts.
15 Accordingly, the State Board must direct the Regional Board to vacate the incorporation of the
16 Mitigation Monitoring and Reporting Program into the Coalition Group Waiver via Resolution
17 No. R5-2011-0032

18
19 **9. The ILRP EIR Fails to Identify a Preferred Alternative.**

20
21 Choosing not to identify a project is compounded by the fact that the ILRP EIR does not
22 identify a preferred alternative.

23
24 **10. The ILRP EIR Must be Recirculated Following an Adequate Analysis of All
25 Proposed Alternatives – Including the RPA and the Long-Term Framework –
26 Which Were Never Analyzed in the ILRP EIR.**

27 A lead agency is required to re-circulate an EIR "when significant new information is
28 added to the EIR after public notice is given of the availability of the Draft EIR for public review

1 under Section 15087 but before certification.” (CEQA Guidelines, § 15088.5(a).) Significant
2 new information requiring re-circulation includes, but is not limited to, any new significant
3 environmental impact that would result from the project and/or any new mitigation measure
4 proposed to be implemented. (*Id.*)

5 The RPA and its associated Long-Term Framework are likely to result in the imposition
6 of new burdens on irrigated agricultural operations that would have a significant and cumulatively
7 considerable impact on the environment. The Long-Term Framework does not represent merely
8 a “variation” on the alternatives in the Draft ILRP EIR and the Final ILRP EIR, as Regional
9 Board staff implied, but rather includes several new elements, the impacts of which have not been
10 analyzed at all. For example, the Long-Term Framework would require a new complex tiering
11 structure, and would require that all the 35,000 plus irrigated agricultural operations in all tiered
12 areas must complete a farm-specific evaluation and identification of management practices for
13 Regional Board inspection. It would also require development of a restrictive nutrient
14 management plan for specified operations. Each of these changes could have significant and
15 identifiable environmental impacts, including but not limited to, direct, indirect, and cumulative
16 impacts on agricultural resources in the form of increased costs and greater potential for loss of
17 agricultural land, and decreased irrigation return flow availability of irrigation water for
18 groundwater recharge. These additional requirements in the RPA and the Long-Term Framework
19 were not included in the ILRP EIR, and therefore the public was not provided with a meaningful
20 opportunity to comment on the potentially substantial adverse environmental effects of the
21 proposed project. The Regional Board is required to analyze the potential impacts of the
22 proposed project and to re-circulate the ILRP EIR, including the Long-Term Framework, for
23 public review and comment.

24 Moreover, as noted in previous comments, the ILRP EIR did not analyze the
25 environmental impacts of the actual project. In evaluating the significance of the environmental
26 effect of a project, the lead agency must consider direct physical changes in the environment and
27 reasonably foreseeable indirect physical changes in the environment, which may be caused by the
28 project. (CEQA Guidelines, § 15064(d).) The RPA and Long-Term Framework that are now

1 being proposed as the project were derived, in part, from components of the alternatives that were
2 analyzed, but not collectively. Further, they have been significantly augmented with many new
3 provisions. However, the ILRP EIR did not analyze the project that is now proposed (i.e., the
4 RPA and Long-Term Framework). While the ILRP EIR did analyze the environmental impacts
5 associated with some of the proposed project's components, no CEQA document has ever
6 analyzed the environmental effects of these elements combined with each other, as is now
7 proposed under the Long-Term Framework.⁴ Now, the Framework proposes the addition of
8 previously unanalyzed requirements that will add new significant environmental impacts to a
9 program that was never analyzed properly in the first place. Specifically, the Long-Term
10 Framework includes the new requirements identified above that have the potential to significantly
11 increase costs for irrigated agricultural operations and result in foreseeable impacts to agricultural
12 resources and other indirect effects stemming from such changes in land use. Yet, there is no
13 consideration of the actual impact of those changes in the Long-Term Framework, the ILRP EIR,
14 or the accompanying staff reports. For example, the Regional Board Staff Report concerning the
15 Framework states that "staff believe that a requirement for farm-specific certified nutrient
16 management plans in Tier 3 groundwater areas is reasonable and will catalyze reductions in
17 nitrate inputs from irrigated agriculture." (Staff Report at p. 5.) Similarly, that same Staff Report
18 asserts that "[t]he only potential impact associated with nutrient management is additional
19 planning and management costs, which may be largely offset by savings to fertilizer material and
20 operations." (*Id.* at p. 14.) There is no support cited for either of these statements, nor any
21 support for the assessment that the costs of complying with this new requirement can be offset by
22 purported savings. In short, the record lacks any substantial evidence to support these
23 conclusions. The staff "analysis" is nothing more than a conclusory assertion, which is
24 insufficient to satisfy the requirements of CEQA. The ILRP EIR is required to look at the whole
25 of the project-related effects – direct, indirect, and cumulative – in order to give the public and
26 decision makers an accurate picture of the true impacts of the proposed project. The Regional
27

28 ⁴ The same argument also applies to the proposed RPA that was included as Appendix A to the Draft ILRP EIR.

1 Board cannot satisfy this requirement by failing to analyze the actual project in the ILRP EIR and
2 subsequently adding new elements into the Long-Term Framework, which essentially created a
3 completely new project, that will result in significant environmental impacts.

4
5 **11. The Regional Board's Assumption that All Irrigation Constitutes a Discharge**
6 **of Waste thereby Degrading Groundwater or Surface Water Regardless of**
7 **Soil and/or Climatic Conditions Lacks Substantial Evidentiary Support.**

8 The RPA assumes that the act of irrigating a crop is a discharge of waste to groundwater
9 thus causing the degradation of groundwater. (See Draft Staff Report at 143.) That assumption,
10 however, is not supported by substantial evidence, and indeed, is neither provable nor plausible in
11 many areas of the state. (See CEQA Guidelines, § 15064(f)(5) [“[a]rgument, speculation,
12 unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or
13 evidence that is not credible, shall not constitute substantial evidence[.]”]) Many areas throughout
14 the State are irrigated and do not cause a degradation of groundwater or transport constituents of
15 concern to the groundwater. Simply presuming, without substantial evidentiary support, that all
16 irrigated agriculture creates a discharge of waste improperly expands the Regional Board's
17 authority to regulate only those irrigation practices that result in a “discharge of waste.”
18 Moreover, it improperly shifts the burden to the landowner or operator to disprove the
19 presumption. The Regional Board, however, is authorized under Water Code section 13267 to
20 require reports from those who discharge waste only after providing the discharger with a written
21 explanation with regard to the need for the reports that identifies the evidence that supports
22 requiring the reports. The RPA's broad assumption that all irrigated agriculture creates a
23 discharge of waste is not supported by substantial evidence.

24 **12. The Regional Board Employed an Improper Threshold Definition of**
25 **Groundwater for Purposes of Determining whether Groundwater Impacts**
26 **May Be Considered Significant.**

27 The ILRP EIR and RPA define groundwater subject to regulation under the program as
28 the first encountered groundwater. Thus, groundwater, as defined by the Regional Board,

1 essentially constitutes a threshold of significance under CEQA. (See CEQA Guidelines, §
2 15064.7(a) [defining threshold of significance as an identifiable quantitative, qualitative, or
3 performance level of a particular environmental effect...].) Neither the ILRP EIR nor the RPA,
4 however, acknowledge that most beneficial uses of groundwater do not actually occur in the first
5 encountered groundwater. In other words, in many areas throughout the State the first
6 encountered groundwater does not have any true beneficial use. Without such beneficial use, any
7 impacts to first encountered groundwater would be by definition insignificant, and the Regional
8 Board abused its discretion in so adopting the groundwater threshold. Moreover, the Regional
9 Board's assumption that if a constituent is detected at first encountered groundwater then that
10 constituent will move downward into the other stratus of groundwater is not based on any
11 scientific evidence of how groundwater moves through the aquifer. The absence of any scientific
12 or factual basis renders the assumption without substantial evidentiary support as required by
13 CEQA.

14
15 **D. The Regional Board's Economic Analysis is Substantially Deficient and Fails to**
16 **Comply with Water Code § 13141.**

17 Where an EIR identifies significant environmental impacts, the related economic and
18 social impacts are relevant. (CEQA Guidelines, §§ 15131(a); 15382.) The requirement to
19 consider secondary and indirect environmental effects is mandatory. (*Citizens Association for*
20 *Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170.) When
21 non-environmental factors are determined to be significant, the EIR must explain the reasoning
22 used to reach its conclusions. Similarly, the Porter-Cologne Water Quality Control Act ("Porter-
23 Cologne") requires the Regional Board to estimate the total costs of an agricultural water quality
24 control program and the potential sources of financing. (Wat. Code, § 13141.)

25 The ILRP EIR, the RPA, and the Long-Term Framework all fail to satisfy either CEQA or
26 Porter-Cologne because they do not contain an accurate or detailed discussion of the economic
27 impacts of the program. First, Water Code section 13141 requires that "prior to implementation
28 of any agricultural water quality control program, an estimate of the total cost of such a program,

1 together with an identification of potential sources of financing, shall be indicated in any regional
2 water quality control plan.” (Wat. Code, § 13141 (emphasis added).) The Long-Term
3 Framework represents the beginning of implementation of an agricultural water quality control
4 program, and the Regional Board has not yet provided (in the relevant regional water quality
5 control plans) an estimate of the total cost of the program, or identified potential sources of
6 funding for the program. The Staff Report indicates that “[t]he estimated total cost and potential
7 sources of financing will be incorporated into the Basin Plans *after* approval of the ILRP
8 Framework.” (Staff Report at p. 26, emphasis added.) The Long-Term Framework represents the
9 initial stage of implementation of an agricultural water quality control program. Although the
10 program will be subject to further development as the specific requirements are imposed in future
11 orders, the Long-Term Framework is in essence the ILRP as it will serve as the basis for future
12 action and a foundational element of the overall ILRP. The Staff Report itself seems to
13 acknowledge this, indicating that “if the Board adheres to the Framework in its subsequent
14 Orders” additional environmental analysis would not be necessary. It is inconsistent for staff to
15 take the position that, on the one hand, the Long-Term Framework serves as a tool to avoid future
16 analysis of environmental impacts, but, on the other hand, that the Long-Term Framework is not
17 part of the implementation of the overall agricultural water quality control program: if the Long-
18 Term Framework constitutes the “program” for purposes of CEQA review, it also constitutes the
19 program for purposes of the Porter-Cologne requirements.

20 Second, the Long-Term Framework Staff Report includes only a cursory examination of
21 the costs of the program and potential sources of financing. (Staff Report at pp. 30-34.) This
22 analysis is not sufficiently detailed to give the affected community a real sense of the costs of the
23 program, nor has it been “indicated in any regional water quality control plan” as required under
24 the Water Code. Moreover, this cost examination is admittedly based on different assumptions
25 than those analyzed in the economic analysis contained in the ILRP EIR. According to the Staff
26 Report, “[a]n estimated total cost of the recommended ILRP Framework also has been developed
27 and differs from the estimation approach used for the six alternatives. . . .” (*Id.* at p. 30.) The
28 Long-Term Framework contains potentially costly and time-consuming additional requirements,

1 such as the requirement that all irrigated agricultural operations in all tiered areas complete a
2 farm-specific evaluation and identification of management practices for Regional Board
3 inspection. The costs of such requirements were not analyzed in the ILRP EIR and
4 accompanying economic analysis, and are not described in sufficient detail in the Staff Report or
5 the Long-Term Framework to give irrigated agricultural operations a true sense of the costs of the
6 program.

7 Finally, the economic impacts analysis contained within the ILRP EIR and referred to in
8 the Long-Term Framework is flawed and does not form a sufficient basis for estimating the true
9 costs of this program. Specifically, the ILRP EIR's economic analysis fails to address a number
10 of the costs that will be incurred as a result of implementation of the ILRP and the proposed
11 alternative. These costs include, but are not necessarily limited to, nutrient management,
12 irrigation practices, and the installation and operation of monitoring wells. The cost of
13 compliance could be in the range of hundreds of millions of dollars, yet these costs are not
14 substantially addressed by the economic analysis. Furthermore, the economic analysis contains
15 numerous generalities and understated assumptions that prevent the reader from attaining a
16 genuine picture of the actual costs and economic impacts of the various alternatives. In sum, the
17 economic analysis purportedly supporting the Framework, including the brief cost estimates
18 contained in the Staff Report and the flawed economic analysis contained in the ILRP EIR, are
19 insufficient to meet the statutory requirements of Water Code section 13141 and fail to convey
20 the true costs of the program.

21
22 **E. The ILRP EIR Cannot be Relied Upon as a Program EIR During Adoption of the**
23 **Eight to Twelve Waste Discharge Requirements in the Future Because the ILRP EIR**
24 **Does Not Contain a Thorough Analysis of the Relevant Environmental Issues and**
25 **the Effects of the Entire Program in a Specific and Comprehensive Manner, Nor**
26 **Analyzes the Individual Programs That Will be Subsequently Created.**

27 The Regional Board staff has indicated that they will commence to discuss and develop
28 the anticipated individual General Orders, waste discharge permits, or conditional waivers over
the next two years. They have further indicated that they intend to "refer back" to ILRP EIR as

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1 the environmental and economic evaluation of those specific orders.

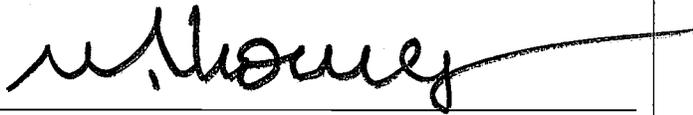
2 Taking such an approach will, at that time, be entirely improper as 1) the ILRP EIR has
3 not analyzed the environmental or economic issues of the preferred alternative/Framework in a
4 specific and comprehensive manner, and 2) clearly has not evaluated the actual program or mix of
5 programs (WDR, General Orders, Waivers) which have not yet been created.

6
7 **III. CONCLUSION**

8
9 Based on this Petition and the evidence in the record, Petitioners respectfully request that
10 the State Board direct the Regional Board to vacate its certification and use of the ILRP EIR,
11 including the Regional Board's incorporation of the Mitigation Monitoring and Reporting
12 Program into the Coalition Group Waiver. Further, the State Board should direct the Regional
13 Board to revise and re-circulate the ILRP EIR after curing the defects identified herein.

14 Dated: July 11, 2011

BEST BEST & KRIEGER LLP

15
16 By: 

17 WILLIAM J. THOMAS
18 HARRIET A. STEINER
19 KIMBERLY E. HOOD
Attorneys for Southern San Joaquin Valley Water
Quality Coalition

20 And also on behalf of:
21 California Farm Bureau Federation, California
22 Rice Commission, Northern California Water
23 Association on behalf of the Sacramento Valley
24 Water Quality Coalition, San Joaquin County
25 Resource Conservation District on behalf of the
26 San Joaquin County and Delta Water Quality
27 Coalition, and San Joaquin Valley Drainage
28 Authority on behalf of the Westside San Joaquin
River Watershed Coalition, Arvin-Edison Water
Storage District, Wheeler Ridge-Maricopa Water
Storage District, and Semitropic Water Storage
District.

For a list of other counsel, see Exhibit D.

EXHIBIT A

3

8

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

RESOLUTION NO. R5-2011-0017

CERTIFICATION OF THE FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT
FOR
THE LONG-TERM IRRIGATED LANDS REGULATORY PROGRAM

WHEREAS:

1. Resolutions R5-2006-0053 and R5-2006-0054 adopted by the Central Valley Water Board approved two conditional waivers applicable to discharges from irrigated agriculture to surface waters. The waivers were to serve as an interim regulatory program until a long-term program was developed. When the Board approved the conditional waivers, it directed staff to begin developing a long-term irrigated lands regulatory program (ILRP) and also to continue preparation of an environmental impact report pursuant to the California Environmental Quality Act (CEQA) that would evaluate alternatives for the ILRP.
2. In 2007, the California Sportfishing Protection Alliance and San Francisco Baykeeper filed a petition for writ of mandate challenging the Central Valley Water Board's issuance of the waivers. (*California Sportfishing Protection Alliance v. California Regional Water Quality Control Board, Central Valley Region*, Case No. 07CS00807, Sacramento County Superior Court). Without any admission of liability, the Central Valley Water Board consented to the entry of a stipulated action to resolve all of the claims of the action. One of the conditions to the stipulated judgment is that the Regional Board staff shall, by April 8, 2011,¹ present and recommend that the Regional Board certify a final environmental impact report addressing any impacts associated with any action that the Regional Board may take to implement a long-term ILRP.
3. The Central Valley Water Board served as the lead agency under the California Environmental Quality Act (CEQA) for the preparation of the Final Program Environmental Impact Report (Final Program EIR) for a waste discharge regulatory program for irrigated lands within the jurisdictional boundaries of the Central Valley Region.
4. A Notice of Availability (NOA) was circulated that notified interested parties of a 60-day public review and comment period (from 28 July 2010 until 27 September 2010) for the "Irrigated Lands Regulatory Program" Draft Program Environmental Impact Report (Draft Program EIR). Copies of the NOA were transmitted to or made available to all agencies and persons known to be interested in these matters.
5. During the public comment period, the Central Valley Water Board received written comments on the Draft Program EIR. It also received informal feedback at four public workshops held in Chico, Modesto, Rancho Cordova, and Tulare during the public comment period and received additional informal feedback at a September 22 Board

¹ The original deadline was March 31, 2011. However, the parties to the action established a new deadline of April 8, 2011 pursuant to the terms of the stipulated judgment.

Meeting. The Central Valley Water Board has considered the written comments and the informal feedback. It has provided written responses to the written comments received on the Draft Program EIR and has prepared a Final Program EIR.

THEREFORE BE IT RESOLVED, that:

1. Pursuant to § 21080, et seq. of the California Public Resources Code, the Central Valley Water Board, after considering the entire record, including written and oral testimony at the hearing, certifies that:
 - a. The Final Program EIR has been completed in compliance with CEQA.
 - b. The Central Valley Water Board has reviewed and considered the information in the Final Program EIR.
 - c. The Final Program EIR reflects the independent judgment and analysis of the Central Valley Water Board.

CERTIFICATION

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region on 7 April 2011.

original signed by

PAMELA C. CREEDON, Executive Officer

EXHIBIT B

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2011-0032

SHORT-TERM RENEWAL OF THE COALITION GROUP
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

The Central Valley Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. On 22 June 2006, the Central Valley Water Board adopted Order No. R5-2006-0053, which is a Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver). This Order became effective on 1 July 2006 and expires on 30 June 2011 unless rescinded or renewed.
2. The Conditional Waiver, which is included as Attachment A, has been amended by Resolutions No. R5-2006-0077 and R5-2008-0052. Resolution No. R5-2006-0077 established a deadline for irrigated lands operations to join water quality coalition groups and required submittal of a management plan when more than one exceedance of a water quality objective occurs. R5-2008-0052 rescinded the deadline established by Resolution No. R5-2006-0077 to join water quality coalitions; however, Executive Officer approval was required and the application required submittal of fees established by the State Water Resources Control Board.
3. California Water Code Section 13269 states that waivers of waste discharge requirements adopted by Regional Boards may not exceed five years in duration, but may be renewed.
4. The Central Valley Water Board has been working with stakeholders to develop a long-term program for addressing discharges from irrigated lands. As part of this process, on 7 April 2011 the Board adopted Resolution No. R5-2011-0017 certifying the *Irrigated Lands Regulatory Program, Program Environmental Impact Report* (Final Program EIR).
5. Staff has begun an effort to develop proposed orders and other regulatory actions that will establish the long-term irrigated lands regulatory program (long-term program). Renewal of the Conditional Waiver beyond 30 June 2011 would allow the existing water quality efforts to continue while the Board develops proposed orders that will comprise the long-term program. This would minimize disruption of the

ongoing regulatory effort and allow the Board to devote the maximum staff effort toward implementing the new program.

6. Staff has developed a proposed schedule to draft all Orders for Board consideration within twenty-one (21) months. Despite the good faith efforts of staff and the Central Valley Water Board to complete issuance of all long-term program Orders within twenty-one months, it is reasonable to include an additional three month buffer within the waiver renewal to accommodate necessary schedule changes due to factors outside of the control of the Central Valley Water Board.
7. When considering whether to renew the waiver, the Board must determine that the waiver is consistent with applicable water quality control plans and is in the public interest. The waiver must be conditional and must include monitoring except where it is determined that the discharge does not pose a significant threat to water quality. Prior to renewing any waiver for a specific type of discharge the Board must review the terms of the waiver at a public hearing and determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements. The conditions of the waiver must include the performance of individual, group, or watershed-based monitoring, unless waived.
8. At this time, it is appropriate to approve a 24 month renewal of the Conditional Waiver for discharges from agricultural lands because: 1) the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced chemical use, holding times, cover crops, etc.); 2) the Coalition Groups and agencies have been collecting water quality and management practice data in the region and additional assessment information continues to be collected; and 3) staff anticipates requiring twenty-one to twenty-four months beyond the expiration date to bring all new proposed orders establishing the long-term irrigated lands regulatory program to the Board for consideration.
9. During the term of the renewal, it is appropriate to regulate discharges of waste from irrigated lands under a Conditional Waiver rather than individual waste discharge requirements (WDRs) in order to simplify and streamline the regulatory process. It is not appropriate at this time to adopt individual WDRs to regulate discharges of waste from irrigated lands because there are estimated to be more than 25,000 individual owners and/or operators of irrigated lands who discharge waste from irrigated lands and it is neither feasible nor practicable due to limitations of Central Valley Water Board resources to adopt WDRs within a

reasonable time. It is not appropriate on this date to adopt general WDRs because staff needs additional time to develop draft orders and other regulatory actions for the Board's consideration during the next twenty-four months.

10. This Resolution renews the Coalition Group Conditional Waiver in its entirety and adds conditions that require the implementation of mitigation measures identified in the Program EIR. The Coalition Group Conditional Waiver contains findings required by law, and those findings are incorporated by reference into this Resolution, to the extent that they are consistent with the findings in this Resolution.
11. The conditions of the Conditional Waiver require actions to protect and improve the quality of the waters of the State within the Central Valley Region. The Conditional Waiver sets forth conditions that require Coalition Groups and/or Dischargers to 1) conduct activities required by monitoring and reporting programs issued by the Board or the Executive Officer; 2) implement and evaluate management practices that will result in achieving compliance with applicable water quality standards in surface waters of the State; 3) at the request of the Executive Officer or after more than one exceedance of a water quality objective within a three-year period, develop and implement Management Plans when discharges are causing or contributing to exceedances of applicable water quality standards; and 4) conduct activities in a manner to prevent nuisance. The conditions of the Conditional Waiver may be enforced in a manner similar to enforcement of WDRs. Coverage under the Conditional Waiver may be terminated at any time and the Executive Officer may require any person to submit a Report of Waste Discharge and comply with the Water Code pursuant to individual or general WDRs.
12. The Water Board finds that a 24 month renewal of the Conditional Waiver for dischargers of waste from irrigated lands is in the public interest because it would allow the existing water quality efforts to continue while the Board develops the details of the long-term program. This would minimize disruption of the ongoing regulatory effort and allow the Board to devote the maximum effort toward establishing the new program. The renewal of the Conditional Waiver is also in the public interest because: 1) it complies with Water Code Section 13269 and other applicable law; 2) it requires compliance with water quality standards for discharges to surface water, 3) it includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of surface waters of the State; 4) it contains conditions that include evaluation and implementation of management practices to meet applicable water quality standards; 5) Coalitions are

evaluating water quality conditions in accordance with Board issued monitoring and reporting program orders; 6) given the magnitude of the discharges and number of persons who discharge waste from irrigated lands, it provides for an efficient and effective use of limited Central Valley Water Board resources; and 7) it provides reasonable flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with the Water Code through participation in Coalition Groups.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

13. For purposes of adoption of this Resolution, the Central Valley Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). The Final Program EIR certified by the Board lists potential environmental impacts associated with implementation of a long-term irrigated lands regulatory program.
14. One of the alternatives analyzed in the Final Program EIR is the long-term continuation of the existing regulatory program for irrigated lands. The existing regulatory program consists primarily of Resolution R5-2006-0053, which is a conditional waiver applicable to Coalition Groups.
15. The Final Program EIR concludes that the long-term continuation of the existing regulatory program for irrigated lands has the potential to cause significant adverse environmental impacts. Those impacts are associated with the practices growers may implement in response to the regulatory requirements. The types of practices, and, therefore, the potentially significant adverse environmental impacts associated with those practices, will be similar for a short-term renewal of the Coalition Group Waiver as the impacts expected from long-term reliance on the Coalition Group Waiver. However, the extent of practice implementation will be less in the short-term than the long-term. A listing of those impacts, the written findings regarding those impacts consistent with § 15091 of the CEQA Guidelines, and the explanation for each finding are contained in a separate Findings of Fact and Statement of Overriding Considerations document (Attachment C), which is incorporated by reference in this resolution and made a part of this record.
16. In the Final Program EIR, the Central Valley Water Board has identified mitigation measures that reduce potentially significant effects to a less than significant level. Additional conditions have been added to the Coalition Group Waiver to address potential adverse environmental impacts that could occur resulting from the continued implementation of

the Coalition Group Waiver by Coalitions and Dischargers. Pursuant to §§ 15091(d) and 15097 of the CEQA Guidelines, a Mitigation Monitoring and Reporting Program has been incorporated into the Coalition Group Waiver.

THEREFORE, BE IT RESOLVED that:

1. The Coalition Group Conditional Waiver (Resolution No. R5-2006-0053), as amended by Resolutions No. R5-2006-0077 and R5-2008-0052 (Attachment A), is hereby renewed with additional conditions specified in Attachment B. The term of the renewal is 24 months beyond its current expiration date. The Coalition Group Conditional Waiver expires on 30 June 2013 unless rescinded or renewed by the Central Valley Water Board.
2. The Central Valley Water Board makes the Findings of Fact and Statement of Overriding Considerations described in Attachment C.
3. As part of the Coalition Group Conditional Waiver, Dischargers shall implement the Mitigation Monitoring and Reporting Program required by this Coalition Group Conditional Waiver as additional conditions specified in Attachment B and submit the Mitigation Monitoring Report by 1 April 2013. A Coalition Group representing the Discharger may submit the report in lieu of the Discharger.
4. Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State. Compliance is required until such time that this waiver is renewed or superseded by WDRs or a conditional waiver of WDRs applicable to the Coalition Group and Dischargers within the area described by the subsequently issued WDRs or conditional waiver of WDRs.
5. The Executive Officer shall ensure that the Coalition Groups, the Dischargers who are participants in Coalition Groups and other interested parties are informed of the renewal of the Conditional Waiver.
6. Staff is directed to prepare within five working days a Notice of Determination in regards to the renewal of the Coalition Group Conditional Waiver.

Resolution No. R5-2011-0032
SHORT-TERM RENEWAL OF THE COALITION GROUP
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

-6-

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region on 9 June 2011.

Original signed by

PAMELA C. CREEDON, Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2006-0053

COALITION GROUP
CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. The Central Valley Region has more than seven million acres of cropland under irrigation and thousands of individuals and operations generating wastewater that falls into the category of "discharges of waste from irrigated lands," as defined in Attachment A of Order No. R5-2006-0053 (hereafter "Order" or "Conditional Waiver").
2. The Central Valley Region has thousands of miles of surface waters that are, or may be, affected by discharges of waste from irrigated lands. These discharges may adversely affect the quality of the "waters of the State," as defined in Attachment A of this Order.
3. Irrigated lands are lands where water is applied to produce crops including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements (WDRs), National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
4. Regional water quality data from the Surface Water Ambient Monitoring Program, the Stormwater Monitoring Program, NPDES Receiving Water Monitoring Reports, and other monitoring programs identify waters of the State with impaired water quality that appears attributable to or influenced by agriculture in areas of irrigated lands.
5. Some water bodies within the Central Valley Region have been listed as impaired pursuant to Clean Water Act Section 303(d). The 303(d) list of impaired water bodies identifies agriculture as a potential source of constituents that impair beneficial uses of some waters within the Central Valley Region and threaten the quality of waters of the State.

LEGAL AND REGULATORY CONSIDERATIONS

6. California Water Code (Water Code) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (RWD)

containing such information and data as may be required by the Central Valley Water Board, unless the Central Valley Water Board waives such requirement.

7. Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the State depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors. These individual discharges may also have a cumulative effect on waters of the State. Waste discharges from some irrigated lands have impaired and will likely continue to impair the quality of the waters of the State within the Central Valley Region if not subject to regulation pursuant to the Porter-Cologne Water Quality Control Act (codified in Water Code Division 7).
8. Water Code Section 13263 requires the Central Valley Water Board to prescribe WDRs, or waive WDRs, for the discharge. The WDRs must implement relevant water quality control plans and the Water Code.
9. Water Code Section 13269(a) provides that the Central Valley Water Board may waive the requirements to submit a RWD and to obtain WDRs for a specific discharge or specific type of discharge, if the Central Valley Water Board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. Water Code Section 13269 further provides that any such waiver of WDRs shall be conditional, must include monitoring requirements unless waived, may not exceed five years in duration, and may be terminated at any time by the Central Valley Water Board.
10. As authorized by Water Code Section 13269, this Order conditionally waives the requirement to file RWDs and obtain WDRs for Dischargers, as defined in Attachment A, who are participants in a Coalition Group that complies with the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*. Some Dischargers will seek coverage under the Individual Discharger Conditional Waiver, and some Dischargers will seek coverage under the Coalition Group Conditional Waiver by joining a Coalition Group.
11. For the purposes of the Conditional Waiver, Water Districts, as defined in Attachment A, may join a Coalition Group for coverage under the Water Code for their discharges from operational spills, discharges resulting from facility maintenance activities, and discharges from drainage and stormwater facilities containing tailwater and/or stormwater from irrigated lands.
12. Attachment A to this Order identifies plans and policies, which contain regulatory requirements that apply to the discharge of waste from irrigated lands. Attachment A also provides definitions of terms for purposes of this Order and an Information Sheet that clarifies the "tributary rule."

13. The Conditional Waiver is for owners and/or operators of irrigated lands who have knowingly elected to participate in a Coalition Group approved by the Central Valley Water Board that complies with the Conditional Waiver and formed on their behalf to comply with the Water Code and the Central Valley Water Board's plans and policies.
14. To implement the Conditional Waiver and to provide accountability, the Central Valley Water Board must receive sufficient information to identify Dischargers who have complied with the Water Code by knowingly electing to participate in a Coalition Group that complies with the Conditional Waiver. Attachment B requires that Coalition Groups maintain and annually submit an electronic list with specific information about the landowners and/or operators of irrigated lands that discharge waste to waters of the State who are knowingly participating in the Coalition Group. In addition, if directed by the Executive Officer, each Coalition Group must submit an electronic map, in GIS format specified by the Executive Officer, showing both participants and non-participants of the Coalition Group. The Central Valley Water Board acknowledges that the Coalition Groups are not responsible for enforcing the Water Code. The Central Valley Water Board acknowledges that the California Rice Commission (CRC) has formed a commodity specific Coalition Group under the Program. The CRC may not provide a list of participants that includes the names and addresses of members of the CRC because Food and Agricultural Code Sections 71089 and 71124(a)¹ specifically identify the names and addresses of members of the CRC as confidential and specifically prohibit the disclosure of such information except by court order. All rice growers in the Sacramento Valley region are mandated to participate in the CRC. The CRC may provide area maps that clearly delineate the rice acreage in the Sacramento Valley that is within the CRC's Coalition Group. Attachment B provides that participant information may be provided by submitting an electronic map(s).
15. Consistent with Water Code sections 13267 and 13269, this Conditional Waiver requires the implementation of a monitoring and reporting program (MRP) as set forth in MRP Order No. R5-2005-0833 for Coalition Groups that is intended to determine the effects of irrigated lands on water quality, to support the development and implementation of the Conditional Waiver, to verify the adequacy and effectiveness of the Conditional Waiver's conditions, and to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver. A Coalition Group that is covered under the Conditional Waiver must comply with MRP Order No. R5-2005-0833, including future revisions.
16. Water Code Section 13267(b)(1) states: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged,*

¹ Food and Agricultural Code §71089 states, in part: [The Rice Commission} "shall keep confidential and shall not disclose, except when required by court order after hearing in a judicial proceeding, . . . names and addresses of handlers, producers, [and] processors." Food and Agricultural Code §71124(a) states, in part: "All proprietary information obtained or developed pursuant to this article by the commission or the secretary from any source, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding."

discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

17. Technical reports are necessary to evaluate each Coalition Group's compliance with the terms and conditions of the Conditional Waiver and to assure protection of waters of the State.
18. Water Code Section 13269(a)(4)(A) authorizes the Central Valley Water Board to include as a condition of a conditional waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). On 16 June 2005, the State Water Board adopted Order No. 2005-0049 *Adopting Emergency Regulation Revisions to the Fee Schedules Contained in Title 23, Division 3, Chapter 9, Article 1, Section 2200.3 of the CCR*, approving a fee schedule for agricultural waivers. This Conditional Waiver requires each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its participants, to pay an annual fee to the State Water Board in compliance with the fee schedule in Title 23 of the California Code of Regulations.
19. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* and the *Water Quality Control Plan for the Tulare Lake Basin, Second Edition* (hereafter Basin Plans) designate beneficial uses, establish water quality objectives, contain programs of implementation needed to achieve water quality objectives, and reference the plans and policies adopted by the State Water Board. The water quality objectives are developed to protect the beneficial uses of waters of the State. Compliance with water quality objectives will protect the beneficial uses listed in Finding 21 below.
20. The Conditional Waiver is consistent with applicable Basin Plans because it requires compliance with applicable water quality standards, as defined in Attachment A, and requires the prevention of nuisance. It requires implementation of a monitoring and reporting program to determine effects on water quality and implementation of management practices to comply with applicable water quality standards.
21. Pursuant to the Basin Plans and State Water Board plans and policies, including State Water Board Resolution No. 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of waters in the Central Valley Region include one or more of the following:

ORDER NO. R5-2006-0053
COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

- 5 -

- a. Municipal and Domestic Supply
 - b. Agricultural Supply
 - c. Industrial Service Supply
 - d. Hydropower Generation
 - e. Water Contact Recreation
 - f. Non-Contact Water Recreation
 - g. Warm Freshwater Habitat
 - h. Cold Freshwater Habitat
 - i. Migration of Aquatic Organisms
 - j. Spawning, Reproduction and Development
 - k. Wildlife Habitat
 - l. Estuarine Habitat
 - m. Preservation of Biological Habitats of Special Significance
 - n. Shellfish Harvesting
 - o. Navigation
 - p. Rare, Threatened, and Endangered Species
 - q. Freshwater Replenishment
 - r. Groundwater Recharge
 - s. Industrial Process Supply
 - t. Aquaculture
 - u. Commercial and Sportfishing
22. In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy). The purpose of the NPS Policy is to improve the State's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy provides a bridge between the State Water Board's January 2000 *NPS Program Plan* and its 2002 *Water Quality Enforcement Policy*. NPS Policy requires, among other key elements, that an NPS control implementation program's ultimate purpose shall be explicitly stated, and that the implementation program 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. The Conditional Waiver is consistent with the NPS Policy.
23. State Water Board Resolution No. 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the State until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Board's policies (e.g., quality that exceeds applicable water quality standards). Resolution No. 68-16 also states, in part:

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 best practicable treatment and 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.

The Central Valley Water Board has information in its records that has been collected by the Central Valley Water Board, dischargers, educational institutions, and others that demonstrates that many water bodies within the Central Valley Region are impaired for various constituents, including pesticides such as Diazinon and Chlorpyrifos, salt, boron, and others. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). Such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution No. 68-16 and it is not necessary for the Central Valley Water Board to conduct an anti-degradation analysis. This Order does not authorize further degradation of such waters.

The Order requires persons who obtain coverage under the Conditional Waiver to comply with applicable water quality standards, protect beneficial uses, and prevent nuisance by implementing MRPs, evaluating the effectiveness of management practices, and where water quality exceeds applicable water quality standards, by identifying and implementing additional management practices to comply with applicable water quality standards. The Conditional Waiver requires management practices to be implemented to achieve applicable water quality standards and to prevent nuisance. These conditions are enforceable and the Conditional Waiver may be terminated at any time.

Where water bodies within the Central Valley Region are of high quality, this Order is consistent with Resolution No. 68-16. This Order prohibits persons from discharging additional wastes not previously discharged. As described above, persons who obtain coverage under this Order are conducting water quality monitoring. The Central Valley Water Board will continue to evaluate the data collected pursuant to monitoring to determine if discharges from irrigated lands are causing degradation of those water bodies. This Order does not authorize further degradation of such water bodies. The Water Board is in the process of preparing an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). Through the preparation of the EIR, the Central Valley Water Board is evaluating management practices and will require implementation of practices to achieve best practicable treatment or control of discharges.

24. Neither the Water Code nor Resolution No. 68-16 requires instantaneous compliance with applicable water quality standards. Discharges from irrigated lands can and/or do contain wastes, as defined in Water Code section 13050, that could affect the quality of the waters of the State. The Conditional Waiver requires Coalition Groups and/or Dischargers to implement management practices to achieve best practicable

treatment or control of the discharge that will reduce wastes in the discharges to achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and to prevent nuisance. Upon notice by the Executive Officer, the Coalition Group and/or Dischargers must submit a Management Plan, as set forth in Attachment B to this Order, to evaluate existing management practices and identify and implement new actions to protect waters of the State. Changes in water quality that may occur as a result of the Conditional Waiver will be to improve, over time, the quality of the waters, not to cause further degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the State and will not unreasonably affect beneficial uses.

25. The United States Environmental Protection Agency adopted the National Toxics Rule (NTR) on 5 February 1993 and the California Toxics Rule (CTR) on 18 May 2000, which was modified on 13 February 2001. The NTR and CTR contain water quality criteria which, when combined with beneficial use designations in the Basin Plans, constitute enforceable water quality standards for priority toxic pollutants in California surface waters. In March 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (known as the State Implementation Plan or SIP), which contains guidance on implementation of the NTR and the CTR. The SIP, which was amended on 12 August 2005, states that implementation of the NTR and the CTR for agricultural nonpoint sources of pollution shall be consistent with the State's NPS Policy.
26. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). This Order and Attachments require compliance with applicable water quality standards, including water quality objectives set forth in the applicable water quality control plans and federal water quality criteria set forth in federal regulations. Compliance with such objectives will result in protection of the beneficial uses of waters of the State. Attachment B sets forth a condition that requires compliance with the Endangered Species Acts. If a "take" will result from any action authorized under this Order, the dischargers shall obtain authorization for an incidental take prior to construction or operation of the project. The dischargers shall be responsible for meeting all requirements of the applicable Endangered Species Act.

**RATIONALE FOR CONDITIONAL WAIVER OF WASTE DISCHARGE
REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS**

27. In 1982, the Central Valley Water Board adopted Resolution No. 82-036 that conditionally waived WDRs for 23 categories of discharges, including irrigation return water and storm water runoff (1982 Waiver). Pursuant to Water Code Section 13269, these waivers terminated on 1 January 2003. On 5 December 2002, prior to the termination of the 1982 Waiver, the Central Valley Water Board adopted Resolution No. R5-2002-0201 establishing a new *Conditional Waiver of Waste*

Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region (2002 Conditional Waiver). On 11 July 2003, the Central Valley Water Board adopted Resolution No. R5-2003-0105 replacing the 2002 Conditional Waiver and establishing a new *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region (2003 Conditional Waiver).*

28. The Central Valley Water Board has reviewed the 2003 Conditional Waiver and has determined that additional conditions are required to implement amendments to Water Code section 13269 that have occurred since adoption of the 2003 Conditional Waiver and to assure protection of water quality.
29. The goal of the Conditional Waiver is to improve and protect water quality by reducing discharges of waste and by providing an interim program to regulate discharges of waste from irrigated lands that cause or contribute to conditions of pollution or nuisance (as defined in Water Code Section 13050) or that cause or contribute to exceedances of applicable water quality standards until a long-term water quality regulatory program can be developed for Dischargers covered by this Conditional Waiver.
30. The Conditional Waiver sets forth conditions that will require Coalition Groups and/or Dischargers to 1) conduct activities required by MRP Order No. R5-2005-0833 and any revisions thereto; 2) implement and evaluate management practices that will result in achieving compliance with applicable water quality standards in the waters of the State; 3) at the request of the Executive Officer, develop and implement Management Plans, as described in Attachment B, when discharges are causing or contributing to exceedances of applicable water quality standards; and 4) conduct activities in a manner to prevent nuisance.
31. At this time, it is appropriate to adopt a waiver of RWDs and WDRs for this category of discharges because: 1) the discharges have the same or similar waste from the same or similar operations and use the same or similar treatment methods and management practices (e.g., source control, reduced chemical use, holding times, cover crops, etc.); 2) the Central Valley Water Board has limited facility-specific information and limited water quality data on facility-specific discharges; 3) during the past two years, the Coalition Groups and agencies have been collecting water quality and management practice data in the region; and 4) additional assessment information continues to be collected.
32. In addition, it is appropriate to regulate discharges of waste from irrigated lands under a Conditional Waiver rather than individual WDRs in order to simplify and streamline the regulatory process. During this process, additional facility activity and water quality information will be collected during the term of the Conditional Waiver. An EIR is being prepared pursuant to the CEQA to assess alternatives for a long-term water quality regulatory program to ensure the protection of water quality from discharges of waste from irrigated lands to waters of the State.

33. It is not appropriate at this time to adopt individual WDRs to regulate discharges of waste from irrigated lands because there are estimated to be more than 25,000 individual owners and/or operators of irrigated lands who discharge waste from irrigated lands and it is neither feasible nor practicable due to limitations of Central Valley Water Board resources to adopt WDRs within a reasonable time. The Central Valley Water Board supports the approach of allowing Dischargers to be represented by Coalition Groups in that it can provide a more efficient means to comply with many of the conditions contained in the Conditional Waiver.
34. It is not appropriate at this time to adopt individual WDRs because although there is information that discharges of waste from irrigated lands have impaired waters of the State, information is not generally available concerning the specific locations of impairments, specific causes, specific types of waste, and specific management practices that could reduce impairments and improve and protect water quality. The conditions of the Conditional Waiver will result in the development of new and additional information on which to base the adoption of individual or general WDRs, if appropriate. The conditions of the Conditional Waiver require actions to protect and improve the quality of the waters of the State within the Central Valley Region. The conditions of the Conditional Waiver may be enforced in a manner similar to enforcement of WDRs. Coverage under the Conditional Waiver may be terminated at any time and the Executive Officer may require any person to submit a RWD and comply with the Water Code pursuant to individual or general WDRs.
35. Water Code section 13269 requires that the Water Board determine that any waiver of waste discharge requirements is in the public interest. The Water Board has considered all the comments of the public and finds that this Order waiving waste discharge requirements for dischargers of waste from irrigated lands is in the public interest as further described. The Water Board has many options to regulate discharges of waste, including through individual and general waste discharge requirements, prohibitions in the Basin Plan, and individual and general conditional waivers of waste discharge requirements. Due to the large numbers of dischargers within the scope of the Board's jurisdiction, the lack of direct regulation in the past, the lack of information about the specific sources of discharges of waste from such lands, and the unprecedented scope of the program, it is reasonable to establish an interim conditional waiver that sets forth a process to collect the necessary information and require management plans to control the sources of discharges of waste as that information is developed. The Central Valley Water Board finds that allowing the use of Coalition Groups provides a reasonable way to coordinate the efforts of large groups of dischargers that are not readily identified by the Central Valley Water Board and, if such Coalition Groups adequately comply with the conditions of the Conditional Waiver, the use of Coalition Groups will continue to be a reasonable manner of regulation. The adoption of this Conditional Waiver is also in the public interest because: 1) it was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law; 2) it requires compliance with water quality standards, 3) it includes conditions that are intended to reduce and

prevent pollution and nuisance and protect the beneficial uses of the waters of the State; 4) it contains more specific and more stringent conditions for protection of water quality compared to the 2003 Conditional Waiver; 5) it contains conditions that are similar to the conditions of municipal stormwater NPDES permits, including evaluation and implementation of management practices to meet applicable water quality standards and a more specific MRP; 6) given the magnitude of the discharges and number of persons who discharge waste from irrigated lands, it provides for an efficient and effective use of limited Central Valley Water Board resources; and 7) it provides reasonable flexibility for the Dischargers who seek coverage under the Conditional Waiver by providing them with the option of complying with the Water Code through participation in Coalition Groups.

36. This action to waive the requirement to submit RWDs and to obtain WDRs for discharges of waste from irrigated lands: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits that may be required by other State or local government agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
37. As part of the Central Valley Water Board's irrigated lands program strategy, the Central Valley Water Board has directed staff to prepare an EIR to evaluate alternatives for a comprehensive, long-term water quality regulatory program to regulate discharges of waste from irrigated lands. The long-term program will enable the Central Valley Water Board to track progress in reducing the amount of waste discharged to waters of the State and measure the effectiveness of management practices implemented in order to meet the goal of compliance with applicable water quality standards. The preparation of an EIR to evaluate currently available and new information will identify and assess alternatives to achieve compliance with applicable water quality standards. The Central Valley Water Board has hired a contractor to prepare the EIR. On 6 March 2006, a draft Existing Conditions Report prepared by the contractor was provided for a 60-day public comment period. During the public comment period, staff of the Central Valley Water Board and the contractor conducted seven public outreach meetings to introduce and discuss the draft Existing Conditions Report.
38. Resolution No. R5-2003-0105 implemented conditional waivers, which are provided for as the regulatory process under California's NPS Policy to meet the requirements of the Water Code. WDRs, including individual WDRs or general WDRs, may be adopted in the future for one or more types of discharges of waste from irrigated lands covered by the Conditional Waiver if, for example, it is determined that the Conditional Waiver is not effective at ensuring that water quality is protected.
39. As time and resources allow, the Central Valley Water Board will further evaluate discharges of waste from irrigated lands to determine if the Conditional Waiver is adequate to improve and/or protect water quality and the beneficial uses of waters of the State. This evaluation will characterize these discharges, evaluate the effects of these discharges on waters of the State, and assess the effectiveness of management

practices implemented to address impairments of waters of the State.

40. Where other State agencies have a regulatory role for activities or pollution addressed by the conditions of the Conditional Waiver, the Central Valley Water Board will work cooperatively with other State agencies in order to effectively regulate discharges of waste from irrigated lands.

SCOPE AND DESCRIPTION OF COALITION GROUP CONDITIONAL WAIVER

41. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters, which are waters of the State. The Conditional Waiver is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. The Conditional Waiver is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land.
42. Since the adoption of the 2003 Conditional Waiver, there has been some uncertainty in determining whether or not a particular parcel of irrigated land discharges waste to waters of the State, and if there may be discharges, whether such discharges are intended to be covered within the scope of the Conditional Waiver. This Order provides clarification for Dischargers to determine whether a particular parcel of land discharges waste and provides clarification of the intended scope of the Conditional Waiver with respect to stormwater discharges.
43. The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters of the State, as described by the scope of the Conditional Waiver. A discharge of waste to surface water subject to the Conditional Waiver is one that could directly or indirectly reach surface waters of the State, which include natural streams, constructed agricultural drains, agricultural dominated waterways, and other non-stream tributaries (see Attachment A, Information Sheet), or to other waters which may be hydrologically connected to such waters of the State. Direct discharges may include, for example, discharges directly from piping, tile drains, ditches or sheet flow to surface waters of the State. Indirect discharges may include, for example, discharges from one parcel to another parcel and then to surface waters of the State. This Conditional Waiver applies to discharges of waste to surface waters of the State as a result of irrigation activities, certain water district operations, and stormwater runoff.
44. This Conditional Waiver is not intended to apply to those lands that discharge waste to waters of the State only on rare occasions during large storm events. Whether or not an individual parcel will discharge waste to surface waters of the State depends on a number of factors that vary significantly from site to site. These factors include the amount and timing of rainfall, land topography, soil type, and proximity to a surface water body. It is the responsibility of the potential discharger to determine whether or not they discharge waste to waters of the State. The Executive Officer will provide a

Fact Sheet to assist owners and operators of irrigated lands in determining whether or not there is a discharge of waste from their lands that is within the scope of this Conditional Waiver.

45. The Conditional Waiver does not cover discharges of waste from irrigated lands that receive liquid waste from sources such as dairy operations and food processors. Owners and/or operators of facilities that receive such liquid waste must obtain WDRs or a separate conditional waiver, as directed by the Central Valley Water Board.
46. The Conditional Waiver is not intended to cover discharges of waste from irrigated lands used for gardens, vineyards, small orchards, small pastures, and small greenhouses that are used for the purpose of producing crops and/or animals for personal consumption or use, and the product or service is not sold commercially. Owners and operators of irrigated lands described in this finding are not required to submit a RWD or obtain WDRs unless directed by the Executive Officer or Central Valley Water Board.
47. The Conditional Waiver does not apply to discharges that are subject to the NPDES permit program under the Clean Water Act. Discharges of waste from irrigated lands that constitute agricultural return flows as defined in the Clean Water Act are exempt from regulation under the NPDES permit program.
48. The Conditional Waiver does not apply to discharges of waste that are regulated under another Conditional Waiver, individual WDRs or general WDRs. This Order does not supercede the Central Valley Water Board's Basin Plans and policies, including prohibitions (e.g., pesticides) and implementation plans (e.g., Total Maximum Daily Loads), or the State Water Board's plans and policies.
49. The Conditional Waiver provides an alternative regulatory option to WDRs. Coalition Groups, on behalf of their participants, may seek coverage under the Conditional Waiver.
50. The formation, operation, and funding of Coalition Groups is the responsibility of the local entities and/or participants of the Coalition Group.
51. Dischargers are required to comply with the Water Code, but are not required to participate in a Coalition Group. Dischargers may comply with the Water Code by participating in a Coalition Group, by filing for coverage under the Individual Discharger Conditional Waiver, by filing a RWD to obtain individual or general WDRs, or by ceasing to discharge.
52. The Central Valley Water Board does not expect that all applicable water quality standards will be achieved in all waters of the State in the Central Valley Region within the term of this Order. The conditions of the Conditional Waiver, however, require actions that will lead to achieving applicable water quality standards. To

satisfy the conditions of the Conditional Waiver, Coalition Groups and/or Dischargers must submit technical reports, conduct monitoring of surface waters, implement management practices, evaluate the effectiveness of management practices, refine management practices to improve their effectiveness where necessary, protect against pollution and nuisance, and protect the quality of the waters of the State. MRPs must be submitted to the Central Valley Water Board as required by Water Code Section 13269. Technical reports must be submitted to the Central Valley Water Board in accordance with Water Code Section 13267. The technical reports must document the results of water quality and management practice monitoring, as defined in Attachment A, describe actions taken to correct water quality impairments and nuisance conditions, and identify future actions necessary to improve and protect water quality. The management practices must be designed and implemented to achieve improvements in water quality, achieve compliance with applicable water quality standards and demonstrate compliance with the conditions in the Conditional Waiver and with State and Central Valley Water Board plans and policies. As described in Attachment B, Coalition Groups are required, if requested by the Executive Officer, to develop and implement a Management Plan when a discharge is causing or contributing to an exceedance of an applicable water quality standard.

53. To apply for coverage under the Conditional Waiver, a Coalition Group must submit a complete Notice of Intent (NOI) to comply with the conditions of the Conditional Waiver for approval by the Executive Officer. Upon submittal of a complete NOI, the Executive Officer may issue a Notice of Applicability (NOA), after which the Coalition Group will be considered approved and its participants covered under the Conditional Waiver. Those Coalition Groups that submitted an NOI pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.
54. Attachment B of the Conditional Waiver describes the terms and conditions that apply to Coalition Groups that represent Dischargers as a common group.
55. Pursuant to Water Code Section 13263(g), discharge of waste to waters of the State is a privilege, not a right, and adoption of this Conditional Waiver and the receipt of an NOA from the Executive Officer do not create a vested right to continue the discharge.
56. This Conditional Waiver may be terminated at any time by the Central Valley Water Board and may be revised by the Central Valley Water Board after a public hearing. The Executive Officer may terminate the applicability of the Conditional Waiver with respect to a specific Discharger or Coalition Group upon notice to the Discharger or Coalition Group.
57. Interested persons were notified that the Central Valley Water Board will consider the adoption of a Conditional Waiver, which conditionally waive WDRs for discharges of waste from irrigated lands to surface waters, as described in this Order, and were

provided an opportunity for a public hearing and an opportunity to submit written comments.

58. In a public hearing, all comments pertaining to this Order were heard and considered.
59. The administrative record for this matter includes the administrative record for the 2003 Conditional Waivers and the Central Valley Water Board records since that time.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

60. For purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to the CEQA (Public Resources Code Sections 21100 et seq.). On 5 December 2002, the Central Valley Water Board approved an Initial Study and Negative Declaration in Resolution No. R5-2002-0201. Resolution No. R5-2003-0105 modified the Conditional Waivers contained in Resolution No. R5-2002-0201, but did not substantially change the project considered in the Initial Study and Negative Declaration. Additional documents that clarify the basis for the Conditional Waiver are attached to Resolution No. R5-2003-0103, which approved the Initial Study and adopted a Negative Declaration with the clarifications.
61. This Order is not a new project that requires preparation of any new environmental documents to comply with CEQA. It is a renewal of an existing project, with modifications. These findings, nevertheless, evaluate whether a subsequent environmental document is required. Public Resource Code section 21166 and Title 14 California Code of Regulations section 15162 (CEQA Guidelines) specify that when the lead agency has adopted a negative declaration for a project, the agency is not required to prepare a subsequent environmental document unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that, in summary: 1) substantial changes are proposed in the project that involve new significant environmental impacts; 2) substantial changes occur with respect to the circumstances of the project; or 3) new information of substantial importance which was not previously known shows that the project will have significant effects. None of the circumstances requiring preparation of subsequent environmental document has occurred.
62. The project is the renewal of Conditional Waivers originally adopted in 2003; it is not a new project. Substantial changes are not proposed in the project or with respect to the circumstances of the project that would involve new significant environmental effects or a substantial increase in environmental effects. This Order will require actions to protect water quality as compared to Resolution No. R5-2003-0105. These actions include annual submittal of participant information, development, implementation of management practices, and implementation of Management Plans as requested by the Executive Officer, and enhanced reporting and communications with regard to exceedances of applicable water quality standards.

63. Since the adoption of Resolution No. R5-2003-0105 and the Negative Declaration, new information has become available to the lead agency. Central Valley Water Board staff has compiled two years of water quality monitoring data from Central Valley Water Board sources, Coalition Groups, Water Districts and others within the Sacramento River, San Joaquin River, and Tulare Lake Basins. Additional information has been provided by contract with the University of California (UC). Water quality monitoring data from Coalition Groups and Individual Dischargers identified exceedances of applicable water quality standards. Monitoring conducted through a contract with the University of California and monitoring from Coalition Groups and individual dischargers have identified problem sites in many water bodies since 2004. Information from about 110 monitoring sites through UC monitoring, about 90 monitoring sites from Coalitions, and 24 monitoring sites with Irrigation Districts is providing data that will prove invaluable in characterizing the effects of irrigated agriculture on water bodies in the Central Valley. About 1,758 samples were collected by all of the Irrigated Lands Coalitions, and approximately 739 through the UC contract.

Coalition monitoring consisted primarily of toxicity testing (Phase I) and represents approximately 20 percent of the water bodies within most individual coalition boundaries at this time. Coalitions are required to expand their monitoring sites each year to be able to assess all water bodies within their boundaries, as well as to expand into Phase II monitoring which will include pesticides, nutrients and general water quality parameters.

Much of the existing data provides information about agricultural monitoring sites that were tested for various parameters for the first time, in particular with respect to water column and sediment toxicity. The toxicity evaluates the overall quality of the water or sediment, and accounts for the cumulative effect of multiple stressors, such as combinations of pesticides that individually may not exceed water quality standards.

From the Coalition data, it is now known that sediment and water column toxicity exists throughout the Central Valley. Water column toxicity averages from 5.9 to 13 percent, and sediment toxicity ranges from 21 to 29 percent. Pesticide monitoring data, primarily through the UC contract also provides the information that approximately 92 percent of the water bodies tested indicated detectable levels, with approximately 64 percent exceeding water quality standards.

The UC monitoring data already provides information about toxicity in concert with pesticides, nutrients and other water quality parameters. With the commencement of Phase II monitoring by the Coalitions, the monitoring results will provide more data on additional monitoring sites that will attempt to explain the toxicity detected during Phase I.

Some water quality parameters and chemicals were tested for the first time in these water bodies. This information helps to substantiate that waters within the Central Valley Region are impacted by discharges of waste from irrigated lands but does not indicate that there are new impacts not already known at the time of the adoption of the

Negative Declaration that shows that this project has significant environmental effects. The Conditional Waivers require compliance with applicable water quality standards and require prevention of pollution and nuisance; they do not allow violation of water quality objectives or degradation of waters of the State. The Conditional Waiver establishes an iterative process that requires Dischargers to evaluate and then implement and/or improve management practices where it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards. In addition, when it is determined that discharges of waste from irrigated lands have caused or contributed to exceedances of applicable water quality standards, the Executive Officer may request a Management Plan, which will identify the management practices that may be implemented, evaluate the effectiveness of existing management practices in achieving applicable water quality standards, and identify additional actions, including, but not limited to, different or additional management practice implementation or education outreach to achieve applicable water quality standards. The Management Plan will also include a schedule to implement the management practices and the means of assessing and evaluating their effectiveness. These conditions are consistent with the Water Code and the Basin Plans.

64. The new data and information were considered in this Order. The new data and information confirm the effects of discharges of waste from irrigated lands on water quality that were previously discussed in the Initial Study and Negative Declaration. The new data and information do not show that there are any new effects of the project that were not discussed in the Initial Study and Negative Declaration, nor do they show that the effects discussed would be more severe than discussed in the Initial Study and Negative Declaration. The project is the conditional waiver of waste discharge requirements. This Conditional Waiver does not allow dischargers to degrade waters of the State and does require dischargers to comply with water quality standards, protect beneficial uses, and protect against pollution and nuisance. The project, therefore, does not cause effects that are more severe than discussed in the Initial Study and Negative Declaration. The conditions of the waiver, if complied with, will protect the waters of the State. Therefore, no subsequent environmental document is required for this Order.

IT IS HEREBY ORDERED that:

1. Pursuant to Water Code Sections 13263, 13267, and 13269, each Coalition Group, as defined in Attachment A, that is covered under the Conditional Waiver, in order to meet the provisions contained in Water Code Division 7 and regulations and plans and policies adopted thereunder, shall comply with the terms and conditions contained in Attachment B.
2. Dischargers may not discharge any waste not specifically regulated by the Conditional Waiver except in compliance with the Water Code.
3. Dischargers who are participants in a Coalition Group shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance

with applicable water quality standards.

4. Pursuant to Water Code Section 13269, the Central Valley Water Board waives the requirement for Dischargers to submit a RWD and to obtain WDRs for discharges of waste from irrigated lands if the Discharger is a participant in a Coalition Group that complies with the Conditional Waiver and Monitoring and Reporting Program Order No. R5-2005-0833 and any revisions thereto.
5. Pursuant to Water Code Section 13269, this action waiving the issuance of WDRs for certain specific types of discharges: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other local or governmental agencies; and 5) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
6. Coalition Groups and the Dischargers who are participants in Coalition Groups shall comply with the terms and conditions of the Conditional Waiver and take action to improve and protect waters of the State.
7. The Conditional Waiver shall not create a vested right, and all such discharges of waste shall be considered a privilege, as provided for in Water Code Section 13263.
8. A waiver of WDRs for a type of discharge may be superceded if the State Water Board or Central Valley Water Board adopts specific WDRs or general WDRs for this type of discharge.
9. The Central Valley Water Board may review this Conditional Waiver at any time and may modify or terminate the Conditional Waiver in its entirety. The Executive Officer may terminate applicability of the Conditional Waiver with respect to a Coalition Group or a Discharger who is a participant in a Coalition Group upon notice to the Coalition Group or Discharger.
10. This Order becomes effective on **1 July 2006** and expires on **30 June 2011** unless rescinded or renewed by the Central Valley Water Board. Upon completion of the EIR, the Central Valley Water Board may reopen this Order to reconsider the expiration date.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order and Attachments adopted by the California Regional Water Quality Control Board, Central Valley Region, on 22 June 2006.

PAMELA C. CREEDON, Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2006-0053
APPLICABLE WATER QUALITY CONTROL PLANS,
DEFINITIONS AND INFORMATION SHEET
FOR

COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS

Order No. R5-2006-0053 requires the Coalition Groups and individual Dischargers to comply with applicable state plans and policies and applicable state and federal water quality standards and to take actions to prevent nuisance. The water quality standards are set forth in state and federal plans, policies and regulations. The California Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board) Water Quality Control Plans (Basin Plans) contain specific water quality objectives, beneficial uses, and implementation plans that are applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The State Water Resources Control Board (State Water Board) has adopted plans and policies that may be applicable to discharges of waste and/or water bodies that receive discharges of waste from irrigated lands. The United States Environmental Protection Agency has adopted the National Toxics Rule and the California Toxics Rule, which constitute water quality criteria that apply to waters of the United States. The specific waste constituents to be monitored within each Coalition Group boundaries and the applicable water quality standards that protect identified beneficial uses for the receiving water will be set forth in the monitoring and reporting program.

This Attachment A lists the relevant plans, policies, and regulations, contains definitions of terms used in Order No. R5-2006-0053, and includes an Information Sheet to clarify the "tributary rule" in the Basin Plans.

WATER QUALITY CONTROL PLANS

The following Basin Plans have been adopted by the Central Valley Water Board and are available on the Central Valley Water Board's website at www.waterboards.ca.gov/centralvalley or by contacting the Central Valley Water Board at (916) 464-3291. Basin Plans are revised periodically.

Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition, revised September 2004

Water Quality Control Plan for the Tulare Lake Basin, Second Edition, revised January 2004

OTHER RELEVANT PLANS AND POLICIES

State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*

State Water Board Water Quality Control Plan for Temperature in Coastal and Interstate Waters and Enclosed Bays and Estuaries in California, June 1972

State Water Board Resolution No. 74-43, Water Quality Control Policy for the Enclosed Bays and Estuaries of California, May 1974

State Water Board Resolution No. 88-63, Sources of Drinking Water Policy, May 1988

State Water Board Water Quality Control Plan for the San Francisco Bay/Sacramento San Joaquin Delta Estuary, May 1995

Consolidated Toxic Hot Spots Cleanup Plan, June 1999

Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, May 2004

National Toxics Rule, 40 CFR 131.36

California Toxics Rule, 40 CFR 131.38

DEFINITIONS

The following definitions apply to the Conditional Waiver and Monitoring and Reporting Program as related to discharges of waste from irrigated lands. All other terms shall have the same definitions as prescribed by the Porter-Cologne Water Quality Control Act (California Water Code Division 7), unless specified otherwise.

1. Coalition Group - Any group of Dischargers, participants, and/or organizations that form to comply with the Conditional Waiver. Coalition Groups can be organized on a geographic basis or can be groups with other factors in common such as commodity groups.
2. Discharger - The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State and could affect the quality of the waters of the State.
3. Discharges of waste from irrigated lands – Surface discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, and/or operational spills containing waste.
4. Exceedance - For the purposes of the Conditional Waiver, an exceedance is a reading using a field instrument or a detection by a California State-certified analytical laboratory where the detected result is above an applicable water quality standard for the parameter or constituent. For toxicity tests, an exceedance is a result that is statistically different from the control sample test result.

5. Irrigated lands – Lands where water is applied to produce crops, including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements, National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.
6. Irrigation return flow – Surface and subsurface water which leaves the field following application of irrigation water.
7. Liquid waste - Any waste materials, which are not spadable.
8. Monitoring - All types of monitoring undertaken in connection with determining effects on water quality, water quality conditions, and factors that may affect water quality conditions. Monitoring includes, but is not limited to, in-stream water quality monitoring undertaken in connection with agricultural activities, monitoring to identify short and long-term trends in water quality, active inspections of operations, and management practice implementation and effectiveness monitoring. The purposes of monitoring include, but are not limited to, supporting the development and implementation of the Conditional Waiver, verifying the adequacy and effectiveness of the Conditional Waiver's conditions, and evaluating each Coalition Group's compliance with the terms and conditions of the Conditional Waiver.
9. Operational spill – Irrigation water that is diverted from a source such as a river, but is discharged without being delivered to or used on an individual field.
10. Receiving waters - Surface waters that receive or have the potential to receive discharges of waste from irrigated lands.
11. Requirements of applicable water quality control plans - Water quality objectives, prohibitions, Total Maximum Daily Load Implementation Plans, or other requirements contained in water quality control plans adopted by the Central Valley Water Board and approved according to applicable law.
12. Stormwater runoff – The runoff of precipitation from irrigated lands.
13. Subsurface drainage – Water generated by installing and operating drainage systems to lower the water table below irrigated lands. Subsurface drainage systems, deep open drainage ditches, or drainage wells can generate this drainage.
14. Tailwater – The runoff of irrigation water from an irrigated field.
15. Waste – As defined in California Water Code (Water Code) Section 13050. Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purposes

ATTACHMENT A
ORDER NO. R5-2006-0053
COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

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of disposal. Waste specifically regulated by the Conditional Waiver includes: earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen; and organic materials, such as pesticides that enter or have the potential to enter waters of the State. Examples of waste not specifically regulated by the Conditional Waiver include hazardous and human wastes.

16. Water District – California law defines a water district. For purposes of the Conditional Waiver, a water district is any district or other political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. (Water Code Section 20200.) Such districts include, but are not limited to, irrigation districts, county water districts, California water districts, water storage districts, reclamation districts, county waterworks districts, drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, community services districts, water management districts, flood control districts, flood control and floodwater conservation districts, flood control and water conservation districts, water management agencies, and water agencies. Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands, and discharges or threatens to discharge irrigation return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains) and/or stormwater runoff flowing from irrigated lands to other waters of the State.
17. Waters of the State – As defined in Water Code Section 13050. Any surface water or groundwater, including saline waters, within the boundaries of the State. The Conditional Waiver regulates discharges of waste from irrigated lands to surface waters.
18. Water Quality Standards – Water quality objectives in the Central Valley Water Board’s Basin Plans, water quality criteria in the California Toxics Rule and National Toxics Rule adopted by U.S. EPA, and/or water quality objectives in other applicable State Water Board plans and policies.

INFORMATION SHEET*

In July 2003, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) adopted *Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands Within the Central Valley Region* (Conditional Waivers or Waiver) (Resolution No. R5-2003-0105). Various parties filed petitions with the State Water Resources Control Board (State Water Board) and filed petitions for writ of mandate in the Sacramento County Superior Court. On 10 May 2005, the Sacramento County Superior Court issued a ruling in the matter of *Deltakeeper, et al. v. California Regional Water Quality Control Board, Central Valley Region, et al.*, No. 04CS00235, and *California Farm Bureau Federation v. State Water Resources Control Board, et al.* No. 04CS00264 (Court Order). In that ruling, the Court remanded:

"this action so that Respondents may clarify in its findings the extent to which the Waiver is intended to apply to agricultural dominated waterways and constructed agricultural drains and other non-stream tributaries; the extent to which the Waiver purports to impose receiving water limitations upon such waterbodies; and, in light of the foregoing, the extent to which the Waiver may rely on application of the Tributary Rule for these purposes." (Court Order at 77).

In response to the Court's three questions:

1. The Conditional Waivers apply to all waters of the state within the Central Valley Region, including agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries.
2. The Conditional Waivers impose receiving water limitations upon agricultural dominated waterways, constructed agricultural drains, and other non-stream tributaries to the same extent as the Basin Plans.
3. The Central Valley Water Board has designated beneficial uses for listed water bodies, including uses for certain agricultural drains in its Water Quality Control Plans. See Chapter II of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Basin. To address water bodies that are not separately listed in the Water Quality Control Plans, the Regional Board set forth the so-called "tributary rule". The Regional Board generally does not use the tributary rule to determine beneficial uses for constructed agricultural drains and other non-stream tributaries. The tributary rule generally does apply to agricultural dominated water bodies. Even if a water body is not listed and the tributary rule does not apply, beneficial uses of water bodies may be designated pursuant to other laws or policies. For example, designated uses may be based on the United States Environmental Protection Agency's water quality standards regulations. See State Water Board Order WQO 2002-0016 at 6.

*This Information sheet was added to the 2003 Conditional Waiver by Resolution R5-2005-0137 on 20 October 2005 to address the Court Order.

AMENDED ATTACHMENT B

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

ORDER NO. R5-2006-0053

TERMS AND CONDITIONS

**COALITION GROUP CONDITIONAL WAIVER
OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS**

Attachment B to Order No. R5-2006-0053 contains the terms and conditions of the *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands* (Conditional Waiver). The Conditional Waiver conditionally waives waste discharge requirements (WDRs) and reports of waste discharge for discharges of waste from irrigated lands to surface waters within the Central Valley Region. The Conditional Waiver establishes terms and conditions with which Coalition Groups must comply to obtain coverage under and to be considered in compliance with the Conditional Waiver. Order No. R5-2006-0053 defines "discharges of waste from irrigated lands" as including surface discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge of waste from irrigated lands, and/or operational spills containing waste.

The Coalition Groups and/or Dischargers shall comply with the following conditions:

A. General

1. The Coalition Group and/or Dischargers shall comply with all conditions of the Conditional Waiver, including timely submittal of all technical reports specified in **Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (Water Code), including Central Valley Regional Water Quality Control Board (Central Valley Water Board) orders, or termination of coverage under the Conditional Waiver for Coalition Groups or for individual Dischargers who are participating in Coalition Groups.
2. The reports submitted to comply with the Conditional Waiver shall be signed by a representative authorized by the Coalition Group.
3. Any person signing a report submitted as required by the Coalition Group Conditional Waiver shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

4. Coalition Groups shall comply with Coalition Group Monitoring and Reporting Program (MRP) Order No. R5-2005-0833, which is required by the Conditional Waiver, or as revised by the Executive Officer.
5. The Coalition Group shall maintain a Participant List with information concerning each Participant who is knowingly participating in the Coalition Group. The Participant List shall include, at a minimum, (a) an assessor parcel number, (b) parcel size, (c) parcel owner or operator name, and (d) parcel owner or operator mailing address.
6. Each Coalition Group shall submit an electronic list of the landowners and/or operators of irrigated lands that discharge waste to waters of the State who are knowingly participating in the Coalition Group. The list shall include: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner or operator name, and (d) parcel owner or operator mailing address. To the extent information required by this section may not be 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 Records Act.
7. If required by the Executive Officer, each Coalition Group shall submit an electronic map, in GIS format specified by the Executive Officer, showing both participants and non-participants. The electronic map shall include the following information: (a) assessor parcel number; (b) parcel size; (c) parcel owner or operator name; (d) parcel owner or operator mailing address, and (e) whether the owner or operator of the parcel is knowingly participating in the Coalition Group. To the extent information required by this section may not be 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 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 Records Act.
8. Coalition Groups and/or Dischargers shall comply with applicable Total Maximum Daily Loads and implementation plans in the Basin Plans.

9. After **31 December 2006** no new participants may join a Coalition Group unless approved by the Executive Officer.

10. The Executive Officer may approve a new participant to join a Coalition Group, if one or more of the following conditions exists. Unless otherwise required by the fee schedules set forth in Title 23 California Code of Regulations, payment of a fee for the application to join a Coalition Group shall not be required:
 - A. The subject owner and/or property were not a "discharger" qualifying for coverage under the Coalition Group Conditional Waiver prior to 31 December 2006, but management or physical changes on the subject property, or on properties between the subject property and receiving surface waters to which the wastewater drains, have been modified such that the subject owner and property are now a "discharger" and qualify for Coalition Group membership.
 - B. The owner/property were participants in a Coalition Group under the Coalition Group Conditional Waiver, or covered under the Individual Discharger Conditional Waiver (Order No. R5-2006-0054), prior to 31 December 2006, but are transferring their participation to another Coalition Group.
 - C. Coalition Group boundaries change or a new Coalition Group is formed, such that an area not previously covered by any Coalition Group now is covered, so growers in those areas should be able to join the new or revised Coalition Group.
 - D. The property was transferred to a new owner after 31 December 2006.
11. The Executive Officer may approve a new participant to join a Coalition Group if the participant requests to join a Coalition Group, but does not meet one of the four conditions in Condition A.10. After 30 June 2008, the new participant shall submit the applicable fee (if any) with the application to join a Coalition Group, as set forth under the fee schedules contained in Title 23 California Code of Regulations.
12. Dischargers who are participating in a Coalition Group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance.

13. Dischargers who are participating in a Coalition Group shall not discharge any waste not specifically regulated by the Conditional Waiver, cause new discharges of wastes from irrigated lands that impair surface water quality, or increase discharges of waste or add new wastes that impair surface water quality not previously discharged by the Discharger. Waste specifically regulated by the Conditional Waiver includes earthen materials, such as soil, silt, sand, clay, and rock; inorganic materials, such as metals, salts, boron, selenium, potassium, and nitrogen; and organic materials, such as organic pesticides, that enter or have the potential to enter into waters of the State. Examples of waste not regulated by the Conditional Waiver include hazardous waste and human waste.
14. The Central Valley Water Board staff may investigate the property of persons subject to the Conditional Waiver pursuant to Water Code Section 13267(c) to ascertain whether the purposes of the Porter-Cologne Water Quality Control Act are being met and whether the conditions of the Conditional Waiver are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with Section 1822.50). In the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.
15. The Coalition Group and/or Dischargers shall take all reasonable steps to prevent any discharge in violation of the Conditional Waiver.
16. The Coalition Group and/or Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system, including management practices and monitoring devices installed or used to achieve compliance with the Conditional Waiver.
17. The discharge of any waste not specifically regulated by the Conditional Waiver is prohibited unless the Discharger complies with Water Code Section 13260(a) and the Central Valley Water Board either issues WDRs pursuant to Water Code Section 13263 or an individual waiver pursuant to Water Code Section 13269 or the time frames specified in Water Code Section 13264(a) have elapsed.
18. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the dischargers shall obtain authorization for an incidental take prior to construction or operation of the project. The dischargers shall be responsible for meeting all requirements of the applicable Endangered Species Act.

B. Technical Reports

1. A Coalition Group, on behalf of its Participants who are seeking to be covered under the Conditional Waiver, shall submit a completed Notice of Intent (NOI), which shall contain all of the information requested in the NOI form, which is included at the end of this Attachment B, in a format as approved by the Executive Officer.
 - a. The NOI shall identify the representative(s) authorized to sign reports submitted on behalf of the Coalition Group.
 - b. The NOI shall contain an electronic list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. This Participant List shall include: (1) assessor parcel number; (2) parcel size; (3) parcel owner or operator name; and (4) parcel owner or operator mailing address.
2. A Coalition Group that submits an NOI shall, concurrently, submit a General Report.
 - a. The General Report shall identify the lead agencies and/or organizations that will develop a watershed or sub-watershed program, the key contact(s), a description of the watershed, and a commitment to work with the Central Valley Water Board to satisfy the conditions of this Conditional Waiver.
 - b. The General Report shall provide a detailed map of the area included within the Coalition Group. The General Report and the map shall identify individual parcels and/or districts that are participating in the Coalition Group.
 - c. The General Report shall identify the funding mechanisms that will support the Coalition Group administrative costs, water quality monitoring, management practice evaluation and development, and other costs necessary to ensure compliance with the Conditional Waiver.
3. Upon submittal of a complete NOI and approval of the NOI, the Executive Officer may issue a Notice of Applicability (NOA) to extend coverage to the Coalition Group under the Conditional Waiver. Those Coalition Groups that submitted an NOI and received an NOA pursuant to Resolution No. R5-2003-0105 are not required to submit a new NOI unless so requested by the Executive Officer.
4. Each Coalition Group that receives an NOA shall submit and implement a Monitoring and Reporting Program (MRP) Plan as specified in Coalition Group MRP Order No. R5-2005-0833, or as revised by the Executive Officer, which is required by the Conditional Waiver. The purposes of the MRP Plan include, but are not limited to, the following: 1) to determine whether the discharge of waste from irrigated lands within the Coalition Group boundaries causes or contributes to exceedances of applicable water quality standards or causes nuisance; 2) to provide information about the Coalition Group area characteristics, including but not limited to, land use, crops grown, and chemicals used; 3) to monitor the effectiveness of management practices implemented to address exceedances of applicable water quality standards; 4) to determine which management

practices are most effective in reducing wastes discharged to surface waters from irrigated lands, 5) to specify details about monitoring periods, parameters, protocols, and quality assurance, 6) to support the development and implementation of the Conditional Waiver, 7) to verify the adequacy and effectiveness of the Conditional Waiver's conditions, and 8) to evaluate the Coalition Group's compliance with the terms and conditions of the Conditional Waiver.

5. If the Coalition Group wishes to terminate coverage under the Conditional Waiver, the Coalition Group shall submit a complete Notice of Termination (NOT). The NOT form is included at the end of this Attachment B. Termination from coverage will occur on the date specified in the NOT, unless specified otherwise. All discharges shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of the Conditional Waiver, unless other Waivers of WDRs, General WDRs, or individual WDRs cover the discharge.
6. Upon a determination by either the Coalition Group or Dischargers that a discharge is causing or contributing to an exceedance of an applicable water quality standard, the Coalition Group or Discharger shall promptly notify the Central Valley Water Board in writing. Based on this information or other information available to the Central Valley Water Board, the Coalition Group or Discharger shall, upon written notice by the Central Valley Water Board Executive Officer, submit a technical report called a Management Plan to the Central Valley Water Board as follows:
 - a. The Management Plan shall evaluate the effectiveness of existing management practices in achieving applicable water quality standards, identify additional actions, including different or additional management practices or education outreach that the Coalition Group and/or its Participants propose to implement to achieve applicable water quality standards, and identify how the effectiveness of those additional actions will be evaluated.
 - b. The Management Plan shall include a waste specific monitoring plan and a schedule to implement additional management practices to achieve applicable water quality standards.
 - c. The Management Plan shall designate the person(s) who will implement, assess and evaluate the Management Plan and each person's area(s) of responsibility.
 - d. The Coalition Group and/or its Participants shall submit any modifications to the Management Plan required by the Central Valley Water Board and address the Central Valley Water Board's comments within 30 days of written notification, unless otherwise directed by the Executive Officer.
 - e. The Coalition Group and/or its Participants shall make Management Plan available to the public upon written request. The Central Valley Water Board may provide the public an opportunity to review and comment on submitted Management Plans.
 - f. The Management Plan may be incorporated into the Monitoring and Reporting Program Plan, unless the Central Valley Water Board Executive Officer directs an earlier submittal.

7. The Coalition Group shall submit a management plan when there has been more than one exceedance of a water quality standard in three years, unless the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.
8. All reports submitted pursuant to the Conditional Waiver shall be available for public inspection at the Central Valley Water Board offices, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under Water Code Section 13267(b)(2), and the Public Records Act. NOIs shall generally not be considered confidential. If the Discharger asserts that all or a portion of a report is subject to an exemption from public disclosure, the Discharger must clearly indicate on the cover of the Report that the Discharger asserts that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately-bound unredacted pages (to be maintained separately by staff), and provide an explanation of how those portions of the reports are exempt from public disclosure. The Central Valley Water Board staff shall determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If the Central Valley Water Board staff disagrees with the asserted exemption from public disclosure, the Central Valley Water Board staff shall notify the Discharger prior to making such report or portions of such report available for public inspection.
9. All technical reports submitted pursuant to the Conditional Waiver are required pursuant to Water Code Section 13267. Failure to submit technical reports in accordance with schedules established by the Conditional Waiver and/or its attachments, or failure to submit a complete technical report (i.e., of sufficient technical quality to be acceptable to the Executive Officer), may subject the Discharger to enforcement action pursuant to Water Code Section 13268.

C. Water Quality Standards

1. Coalition Groups and Dischargers must comply with applicable water quality standards, as defined in Attachment A. The specific waste constituents to be monitored within each Coalition Group boundary and the applicable water quality objectives that protect identified beneficial uses for the receiving water will be set forth in the MRP. Dischargers shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Coalition Groups and/or Dischargers shall implement management practices to achieve best practicable treatment or control of the discharge that will reduce wastes in the discharges to the extent feasible and that will achieve compliance with applicable water quality standards, protect the beneficial uses of waters of the State, and prevent nuisance.

D. Time Schedule

Pursuant to Water Code Section 13267, the following technical reports are required to be submitted to the Central Valley Water Board, as directed by the Executive Officer, as a condition of the Conditional Waiver.

AMENDED ATTACHMENT B
ORDER NO. R5-2006-0053
COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES FROM IRRIGATED LANDS

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Task

Compliance Date

Coalition Group Participant List

30 September 2006

Discharger Knowingly Elects to Join Coalition Group

No later than 31 December 2006

Discharger Must Apply for Executive Officer
Approval to Join a Coalition Group

1 January 2007

MRP Plan

30-150 days after filing of NOI

Revised MRP Plan following revision of MRP

As directed by the Executive Officer

Wet Season Monitoring Report as required by the
Coalition Group MRP Order No. R5-2005-0833

30 June of each year*

Updated Coalition Group Participant List

31 July of each year

Irrigation Season Monitoring Report as required by the
Coalition Group MRP Order No. R5-2005-0833

31 December of each year*

Management Plan

As required by the Executive Officer

*Or as otherwise directed by the Executive Officer

E. Fees

Each Discharger who participates in a Coalition Group, or the Coalition Group on behalf of its Participants, shall pay a fee to the State Water Resources Control Board in compliance with the fee schedule contained in Title 23 California Code of Regulations.

Amended by Resolution No. R5-2006-0077 and Resolution No. R5-2008-0052.

NOTICE OF INTENT

TO COMPLY WITH
ORDER NO. R5-2006-0053

**COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS**

1. COALITION GROUP INFORMATION

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

The Coalition Group representative's information shall be included in the above information box.

The NOI shall contain an electronic list of landowners and/or operators of irrigated lands that discharge waste to waters of the State, who are knowingly participating in the Coalition Group. This Participant List shall include: (1) assessor parcel number; (2) parcel size; (3) parcel owner or operator name; and (4) parcel owner or operator mailing address.

The Central Valley Water Board may further specify the information to be included. This information shall be provided to the Central Valley Water Board upon request, within the time specified by the Central Valley Water Board, which time shall not exceed 30 days.

2. REASON(S) FOR FILING

<input type="checkbox"/> New Discharge or Coalition Group	<input type="checkbox"/> Changes in Ownership/Operator or addition of Discharger(s) to Coalition Group
<input type="checkbox"/> Existing Coalition Group	
<input type="checkbox"/> Change of Coalition Group boundary	<input type="checkbox"/> Other:

3. ADDITIONAL INFORMATION

Please attach the following information to this NOI:

1. A site map, which shows the geographic boundaries of the Coalition Group and identifies the surface watercourses within these boundaries.
2. Use the space below, or attach additional sheets, to explain any response that needs clarification.

NOTICE OF TERMINATION

TO COMPLY WITH
ORDER NO. R5-2006-0053

**COALITION GROUP CONDITIONAL WAIVER OF
WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES FROM IRRIGATED LANDS**

This document is only to be used for Coalition Groups that have been issued a Notice of Applicability by the Executive Officer. Submission of this Notice of Termination constitutes official notification to the Central Valley Water Board that the Coalition Group identified below elects not be covered under Order No. R5-2006-0053, *Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*.

1. COALITION GROUP INFORMATION¹

Coalition Group Name:				
Coalition Group Representative:				
Mailing Address:				
City/Locale:	County:	State:	Zip:	Telephone Number:

¹ The Coalition Group representative's information shall be included in the above information box.

2. REASON FOR TERMINATION

<input type="checkbox"/> Coalition Group is no longer functioning under the Conditional Waiver for Coalition Groups	<input type="checkbox"/> Other: Provide Comments <hr/>
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3. CERTIFICATION

I certify under penalty of law that (1) I am not required to be covered under the Coalition Group Conditional Waiver of Waste Discharge Requirements For Discharges From Irrigated Lands, and (2) this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I also understand that submittal of this Notice of Termination does not release a facility from liability for any violations of the Coalition Group Conditional Waiver.

Print Name: _____ Title: _____

Signature: _____ Date: _____

SHORT-TERM RENEWAL OF THE COALITION GROUP
 CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
 FOR DISCHARGES FROM IRRIGATED LANDS

Amended Attachment B to Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands is amended as described below (underline indicates additions).

B. Technical Reports

8. Dischargers shall submit a Mitigation Monitoring Report by 1 April 2013 to the Central Valley Water Board. The Mitigation Monitoring Report shall include information on the implementation of CEQA Mitigation Measures described in section F below, including the mitigation measure implemented, identified potential impact the mitigation measure addressed, location of the mitigation measure [parcel number, county], any steps taken to monitor the ongoing success of the measure. In lieu of submitting a Mitigation Monitoring Report to the Central Valley Water Board by 1 April 2013, the discharger may submit the information to the discharger's applicable coalition group, if any, by 1 February 2013, and the Coalition Group shall then report the information to the Central Valley Water Board by 1 April 2013. A coalition group is not responsible for submitting information that is not sent to them directly by the 1 February 2013 deadline.

[NOTE – paragraphs “8” and “9” in this section will be renumbered “9” and “10”, respectively.]

D. Time Schedule

Pursuant to Water Code Section 13267, the following technical reports are required to be submitted to the Central Valley Water Board, as directed by the Executive Officer, as a condition of the Conditional Waiver.

Task	Compliance Date
.....
<u>Mitigation Monitoring Report</u>	<u>1 April 2013</u>

F. CEQA Mitigation Measures

Coalition Groups and/or Dischargers shall not implement management practices at a location or in a manner that could cause an adverse environmental impact as identified in the *Irrigated Lands Regulatory Program, Final Program Environmental Impact Report* (Program EIR) unless such impact has been

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mitigated in accordance with the following mitigation measures, which are organized according to the resource potentially affected.

1. Cultural Resources

a. Mitigation Measure CUL-MM-1: Avoid Impacts to Cultural Resources

The measure described below will reduce the severity of impacts on significant cultural resources, as defined and described in Sections 5.3.1 and 5.3.3 of the Draft PEIR. Avoidance of such impacts also can be achieved when growers choose the least impactful management practices that will meet the ILRP water quality improvement goals and objectives. Note that these mitigation measures may not be necessary in cases where no ground-disturbing activities would be undertaken as a result of implementation of the ILRP.

Although cultural resource inventories and evaluations typically are conducted prior to preparation of a CEQA document, the size of the project area and the lack of specificity regarding the location and type of management practices that would be implemented following adoption of this waiver render conducting inventories prior to adoption untenable. Therefore, where this waiver's water quality improvement goals cannot be achieved without modifying or disturbing an area of land or existing structure to a greater degree than through previously employed farming practices, individual farmers, coalitions, or third-party representatives shall implement the following measures to reduce potential impacts to less-than-significant levels.

- Where construction within areas that may contain cultural resources cannot be avoided through the use of alternative management practices, conduct an assessment of the potential for damage to cultural resources prior to construction; this may include the hiring of a qualified cultural resources specialist to determine the presence of significant cultural resources.
- Where the assessment indicates that damage may occur, submit a non-confidential records search request to the appropriate CHRIS information center(s).
- Implement the recommendations provided by the CHRIS information center(s) in response to the records search request.
- Where adverse effects to cultural resources cannot be avoided, undertake additional CEQA review and develop appropriate mitigation to avoid or minimize the potential impact.

In addition, California state law provides for the protection of interred human remains from vandalism and destruction. According to the California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and the disturbance of Native American cemeteries is a felony

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(Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of the discovered human remains until the County Coroner has been notified, according to PRC Section 5097.98, and can determine whether the remains are those of Native American origin. If the coroner determines that the remains are of Native American origin, the coroner must contact the Native American Heritage Commission (NAHC) within 24 hours (Health and Safety Code Section 7050(c)). The NAHC will identify and notify the most likely descendant (MLD) of the interred individual(s), who will then make a recommendation for means of treating or removing, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.

PRC Section 5097.9 identifies the responsibilities of the project proponent upon notification of a discovery of Native American burial remains. The project proponent shall work with the MLD (determined by the NAHC) and a professional archaeologist with specialized human osteological experience to develop and implement an appropriate treatment plan for avoidance and preservation of, or recovery and removal of, the remains.

Growers implementing management practices should be aware of the following protocols for identifying cultural resources.

- If built environment resources or archaeological resources, including chipped stone (often obsidian, basalt, or chert), ground stone (often in the form of a bowl mortar or pestle), stone tools such as projectile points or scrapers, unusual amounts of shell or bone, historic debris (such as concentrations of cans or bottles), building foundations, or structures are inadvertently discovered during ground-disturbing activities, the land owner must stop work in the vicinity of the find and retain a qualified cultural resources specialist to assess the significance of the resources. If necessary, the cultural resource specialist also will develop appropriate treatment measures for the find.
- If human bone is found as a result of ground disturbance, the land owner must notify the County Coroner in accordance with the instructions described above. If Native American remains are identified and descendants are found, the descendants may—with the permission of the owner of the land or his or her authorized representative—inspect the site of the discovery of the Native American remains. The descendants may recommend to the owner or the person responsible for the excavation work means for treating or disposing of the human remains and any associated grave goods, with appropriate dignity. The descendants will make their recommendation within 48 hours of inspection of the remains. If the NAHC is unable to identify a descendant, if the descendants identified fail to make a recommendation, or if the landowner rejects the recommendation of the descendants, the landowner shall inter the

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human remains and associated grave goods with appropriate dignity on the property in a location not subject to further and future subsurface disturbance.

2. Vegetation and Wildlife

a. Mitigation Measure BIO-MM-1: Avoid and Minimize Impacts on Sensitive Biological Resources

Implementation of the following avoidance and minimization measures would ensure that the construction activities related to implementation of management practices on irrigated lands would minimize effects on sensitive vegetation communities (such as riparian habitat and wetlands adjacent to the construction area) and special-status plants and wildlife species as defined and listed in Section 5.7.3 of the Draft PEIR. In each instance where particular management practices could result in impacts on the biological resources listed above, growers must use the least impactful effective management practice to avoid such impacts. Where this waiver's water quality improvement goals cannot be achieved without incurring potential impacts, individual farmers, coalitions, or third-party representatives shall implement the following measures to reduce potential impacts to less-than-significant levels.

- Where detention basins are to be abandoned, retain the basin in its existing condition or ensure that sensitive biological resources are not present before modification.
- Where construction in areas that may contain sensitive biological resources cannot be avoided through the use of alternative management practices, conduct an assessment of habitat conditions and the potential for presence of sensitive vegetation communities or special-status plant and animal species prior to construction. This may include the hiring of a qualified biologist to identify riparian and other sensitive vegetation communities and/or habitat for special-status plant and animal species.
- Avoid and minimize disturbance of riparian and other sensitive vegetation communities.
- Avoid and minimize disturbance to areas containing special-status plant or animal species.
- Where adverse effects on sensitive biological resources cannot be avoided, undertake additional CEQA review and develop a restoration or compensation plan to mitigate the loss of the resources.

b. Mitigation Measure BIO-MM-2: Determine Extent of Wetland Loss and Compensate for Permanent Loss of Wetlands

Prior to implementing any management practice that will result in the permanent loss of wetlands, conduct a delineation of affected wetland areas to determine

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the acreage of loss in accordance with current U.S. Army Corps of Engineers (USACE) methods. For compliance with the federal Clean Water Act Section 404 permit and WDRs protecting State waters from unauthorized fill, compensate for the permanent loss (fill) of wetlands and ensure no net loss of habitat functions and values. Compensation ratios will be determined through coordination with the Central Valley Water Board and USACE as part of the permitting process. Such process will include additional compliance with CEQA, as necessary. Compensation may be a combination of mitigation bank credits and restoration/creation of habitat, as described below:

- Purchase credits for the affected wetland type (e.g., perennial marsh, seasonal wetland) at a locally approved mitigation bank and provide written evidence to the resource agencies (USFWS, NMFS) that compensation has been established through the purchase of mitigation credits.
- Develop and ensure implementation of a wetland restoration plan that involves creating or enhancing the affected wetland type.

3. Fisheries

a. Mitigation Measure FISH-MM-1: Avoid and Minimize Impacts to Fish and Fish Habitat

This mitigation measure incorporates all measures identified in Mitigation Measure BIO-MM-1: Avoid and Minimize Impacts on Sensitive Biological Resources. In each instance where particular management practices could result in impacts to special-status fish species (see "Regulatory Classification of Special-Status Species" in Section 5.8.2 of the Draft PEIR), growers must use the least impactful effective management practice to avoid such impacts. Where this waiver's water quality improvement goals cannot be achieved without incurring potential impacts, individual farmers, coalitions, or third-party representatives shall implement the following measures to reduce potential impacts to less-than-significant levels. Note that these measures may not be necessary in many cases and are dependent on the location of construction in relation to water bodies containing special-status fish.

- Where construction in areas that may contain special-status fish species cannot be avoided through the use of alternative management practices, conduct an assessment of habitat conditions and the potential for presence of special-status fish species prior to construction; this may include the hiring of a qualified fisheries biologist to determine the presence of special status fish species.
- Based on the species present in adjacent water bodies and the likely extent of construction work that may affect fish, limit construction to periods that avoid or minimize impacts to special-status fish species.

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- Where construction periods cannot be altered to minimize or avoid effects on special-status fish, undertake additional CEQA review and develop a restoration or compensation plan to mitigate the loss of the resources.

b. Mitigation Measure FISH-MM-2: Educate Growers on the Use of Polyacrylamides (PAMs) for Sediment Control

The Central Valley Water Board will provide information on the potential risks to aquatic life, including special-status fish, that may result from the use of cationic or neutral PAMs during water management activities. Information in the form of leaflets and website information will be provided to grower coalitions, encouraging the use of anionic PAMs. Application of anionic PAMs at prescribed rates will be emphasized in the information provided to growers. Adoption of the United States Department of Agriculture National Conservation Practice Standard 450 also will be recommended in the information.

4. Agriculture Resources

a. Mitigation Measure AG-MM-1: Assist the Agricultural Community in Identifying Sources of Financial Assistance that would Allow Growers to Keep Important Farmland in Production

The Central Valley Water Board will assist the agricultural community in identifying sources of financial assistance from existing federal, state, or local programs that promote water conservation and water quality through improved management practices. Funding received from grants, cost-sharing, or low-interest loans would offset some of the local growers' expenditures for compliance with and implementation of the waiver, and likely would reduce the estimated losses in irrigated acreage. Potential funding sources for this mitigation measure are discussed below. The programs described below are illustrative and are not intended to constitute a comprehensive list of funding sources.

Federal Farm Bill

Title II of the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, in effect through 2012) authorizes funding for conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program. Both of these programs provide financial and technical assistance for activities that improve water quality on agricultural lands.

State Water Resources Control Board

The Division of Financial Assistance administers water quality improvement programs for the State Water Resources Control Board (State Water Board). The programs provide grant and loan funding to reduce non-point-source pollution discharge to surface waters.

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The Division of Financial Assistance currently administers two programs that improve water quality associated with agriculture—the Agricultural Drainage Management Loan Program and the Agricultural Drainage Loan Program. Both of these programs were implemented to address the management of agricultural drainage into surface water. The Agricultural Water Quality Grant Program provides funding to reduce or eliminate the discharge of non-point-source pollution from agricultural lands into surface water and groundwater. It currently is funded through bonds authorized by Proposition 84.

The State Water Board's Clean Water State Revolving Fund also has funding authorized through Proposition 84. It provides loan funds to a wide variety of point-source and non-point-source water quality control activities.

Potential Funding Provided by the Safe, Clean, and Reliable Drinking Water Supply Act of 2010

This act was placed on the ballot by the Legislature as SBX 7-2 and was scheduled for voter approval in November 2010. In August of 2010, the Legislature removed this issue from the 2010 ballot and intends to re-introduce it in November of 2012. If approved by the public, the new water bond would provide grant and loan funding for a wide range of water-related activities, including agricultural water quality improvement, watershed protection, and groundwater quality protection. The actual amount and timing of funding availability will depend on its passage, on the issuance of bonds and the release of funds, and on the kinds of programs and projects proposed and approved for funding.

Other Funding Programs

Other state and federal funding programs have been available in recent years to address agricultural water quality improvements. Integrated Regional Water Management grants were authorized and funded by Proposition 50 and now by Proposition 84. These are administered jointly by the State Water Board and the California Department of Water Resources. Proposals can include agricultural water quality improvement projects. The Bureau of Reclamation also can provide assistance and cost-sharing for water conservation projects that help reduce discharges.

5. Mitigation Measure CC-MM-2: Apply Applicable California Attorney General Mitigation Measures to Reduce Construction and Operational GHG Emissions

A recent report by the California Attorney General's office entitled *The California Environmental Quality Act: Addressing Global Warming at the Local Agency Level* identifies various example measures to reduce GHG emissions at the project level (California Department of Justice 2008). The following mitigation

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measures and project design features were compiled from the California Attorney General's Office report. They are not meant to be exhaustive but to provide a sample list of measures that should be incorporated into future project design. Only those measures applicable to the Coalition Group Waiver are included.

Solid Waste Measures

- Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).
- Provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers.
- Recover by-product methane to generate electricity.

Transportation and Motor Vehicles

- Limit idling time for commercial vehicles, including delivery and construction vehicles.
- Use low- or zero-emission vehicles, including construction vehicles.

ATTACHMENT C

SHORT-TERM RENEWAL OF THE COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

RESOLUTION No. R5-2011-0032

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May 2011



ICF International. 2011. Findings of Fact and Statement of Overriding Considerations.
Attachment C to the Short-term Renewal of the Coalition Group Conditional Waiver of Waste
Discharge Requirements for Discharges from Irrigated Lands. May, 2011 Resolution No. R5-
2011-0032. (ICF 05508.05.) Sacramento, CA. Prepared for Central Valley Regional Water
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Acronyms and Abbreviations

2008 Farm Bill	Food, Conservation, and Energy Act of 2008
CACs	county agricultural commissioners
CCR	California Code of Regulations
Central Valley Water Board	California Regional Water Quality Control Board, Central Valley Region
CEQA	California Environmental Quality Act
CRHR	California Register of Historic Resources
CV-SALTS	Central Valley Salinity Alternatives for Long-Term Sustainability
DO	dissolved oxygen
DPH	California Department of Public Health
DPM	diesel particulate matter
DPR	California Department of Pesticide Regulation
EIR	environmental impact report
EPA	U.S. Environmental Protection Agency
EQIP	Environmental Quality Incentives Program
ESA	federal Endangered Species Act
Final PEIR <i>or</i> Program EIR	Long-Term Irrigated Lands Regulatory Program Final Program EIR (Certified by Resolution No. R5-2011-0017)
FWQMP	Farm Water Quality Management Plans
GQMPs	groundwater quality management plans
HAPs	hazardous air pollutants
ILRP	Long-Term Irrigated Lands Regulatory Program
MLD	most likely descendant
MMRP	Mitigation Monitoring and Reporting Program
NAHC	Native American Heritage Commission
NMFS	National Marine Fisheries Service
NOA	naturally occurring asbestos
NPS	nonpoint source
NPS Policy	State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program
NRHP	National Register of Historic Places
PAMs	polyacrylamides
PRC	California Public Resources Code
SB	Senate Bill
State Water Board	State Water Resources Control Board
TACs	toxic air contaminants
TMDLs	total maximum daily loads
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
WDRs	waste discharge requirements

SHORT-TERM RENEWAL OF THE COALITION GROUP CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS FINDINGS OF FACT

Introduction

The California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] Sections 21002, 21002.1, 21081, 21081.5, 21100) and State CEQA Guidelines Section 15091(a) provide that no public agency shall approve or carry out a project for which an environmental impact report (EIR) has been certified when one or more significant environmental effects of the project have been identified, unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. These findings explain the disposition of each of the significant effects, including those that will be less than significant with mitigation. The findings must be supported by substantial evidence in the record.

There are three possible findings under Section 15091(a). The public agency must make one or more of these findings for each significant effect. The Section 15091(a) findings are:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the *Long-Term Irrigated Lands Regulatory Program Final Program Environmental Impact Report* (ICF International 2011) (Program EIR or Final PEIR).
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Program EIR.

Findings

The following findings discuss the significant direct, indirect, and cumulative effects of the project to be adopted, which is referred to throughout as the Short-term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group Waiver). Continuation of the Coalition Group Waiver was described and considered in the Final PEIR as "Alternative 1" or the "No Project" alternative. The short-term renewal of the Coalition Group Waiver is not being selected by the Board as the long-term approach for regulating discharges from irrigated agriculture. However, the potential adverse

environmental impacts of the short-term renewal of the Coalition Group Waiver are likely to be the same as, although less significant in extent, as the impacts identified in the Final PEIR for Alternative 1. The primary difference between the evaluation of Alternative 1 and the short-term renewal is Alternative 1 contemplated implementation of practices to address all identified surface water quality problems, which would occur over the long-term. A short-term renewal will result in additional implementation of practices, but not to the degree that would result in meeting all surface water quality objectives within two years.

The renewal of the Coalition Group Waiver contains only changes necessary to incorporate the mitigation measures identified in the certified Final PEIR, and does not trigger the need to prepare a subsequent EIR under State CEQA Guidelines Section 15162.

The findings adopted by the Central Valley Water Board address each of the Coalition Group Waiver's significant effects in their order of appearance in the Final PEIR certified for the Long-term ILRP.

For the purposes of Section 15091, the documents and other materials that constitute the record of proceedings upon which the Central Valley Water Board based its decision are held by the Central Valley Water Board.

For findings made under Section 15091(a)(1), a number of discrete mitigation measures are incorporated into the Coalition Group Waiver as discussed in the Final PEIR. The Mitigation Monitoring and Reporting Program (MMRP) is incorporated into the Coalition Group Waiver through Attachment B to Resolution No. R5-2011-0032.

Where mitigation measures are within the responsibility and jurisdiction of another public agency, the finding in Section 15091(a)(2) should be made by the lead agency. In order to make the finding, the lead agency must find that the mitigation measures have been adopted by the other public agency or can and should be adopted by the other public agency.

Where the finding is made under Section 15091(a)(3) regarding the infeasibility of mitigation measures or alternatives, the specific economic, legal, social, technological, or other considerations are described in a subsequent section.

Each of these findings must be supported by substantial evidence in the record.

Impact Findings

Cultural Resources

Impact CUL-1. Physical destruction, alteration, or damage of cultural resources from implementation of management practices (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

Upon implementation of the Coalition Group Waiver, growers may implement a variety of management practices that include physical and operational changes to agricultural land in the Program area. Such management practices may occur near cultural resources that are historically significant and eligible for listing in the California Register of Historic Resources (CRHR) or the National Register of Historic Places (NRHP). Implementation of these practices may lead to physical demolition, destruction, relocation, or alteration of cultural resources.

The location, timing, and specific suite of management practices to be chosen by growers to improve water quality are not known at this time. This impact is considered significant.

Mitigation Measure CUL-MM-1: Avoid Impacts to Cultural Resources has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Noise

Impact NOI-1. Exposure of Sensitive Land Uses to Noise from Construction Activities in Excess of Applicable Standards (Responsibility of Other Agencies)

Finding

As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of the mitigation measures for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measures.

Rationale for Finding

Under the Coalition Group Waiver, construction noise impacts would result from implementation of management practices that require the use of heavy-duty construction equipment. Because management practices are a function of crop type and economics, it cannot be determined whether the management practices selected under this alternative would change relative to existing conditions. Accordingly, it is not possible to determine construction-related effects based on a quantitative analysis. However, as existing management plans are implemented and new management plans are required, the Coalition Group Waiver will result in selection and implementation of more management practices to protect surface water quality.

Noise levels from anticipated heavy-duty construction equipment are expected to range from approximately 55 to 88 A-weighted decibels (dBA) at 50 feet. These levels would be short term and would attenuate as a function of distance from the source. Noise from construction equipment operated within several hundred feet of noise-sensitive land uses has the potential to exceed local noise standards. This is considered a potentially significant impact. Implementation of **Mitigation Measure NOI-MM-1: Implement Noise-Reducing Construction Practices**, which is described at the end of the *Impact Findings* section, should reduce this impact to a less-than-significant level. Mitigation Measure NOI-MM-1 is within the responsibility and jurisdiction of local agencies, who can and should implement these measures.

Impact NOI-2. Exposure of Sensitive Land Uses to Noise from Operational Activities in Excess of Applicable Standards (Responsibility of Other Agencies)

Finding

As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of the mitigation measures for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measures.

Rationale for Finding

Under the Coalition Group Waiver, coalition groups would perform surface water quality monitoring. Because surface water quality monitoring is already occurring under existing conditions, implementation of the Coalition Group Waiver is not expected to result in an appreciable difference in operational noise levels related to vehicle trips for monitoring.

Construction of new well pumps as part of tailwater recovery systems may result in increased noise levels relative to existing conditions. Noise generated from individual well pumps would be temporary and sporadic. Information on the types and number of pumps, as well as the number and distances of vehicle trips, is currently unavailable.

Depending on the type of management practice selected, the Coalition Group Waiver also may result in noise benefits relative to existing conditions. For example, improved irrigation management may reduce the amount of time that pressurized pump generators are used. Enhanced nutrient application may minimize the number of tractors required to fertilize or plow a field. Removing these sources of noise may mediate any increases related to the operation of new pumps. However, in the absence of data, a quantitative analysis of noise impacts related to operations of the Coalition Group Waiver is not possible. Potential noise from unenclosed pumps located close to noise-sensitive land uses could exceed local noise standards. This is considered a potentially significant impact. Implementation of **Mitigation Measures NOI-MM-1: Implement Noise-Reducing Construction Practices** and **NOI-MM-2: Reduce Noise Generated by Individual Well Pumps**, which are described at the end of the *Impact Findings* section, should reduce this impact to a less-than-significant level. As discussed within the Final PEIR, mitigation measures NOI-MM-1 and NOI-MM-2 are within the responsibility and jurisdiction of local agencies. These agencies can and should implement these measures.

Air Quality

Impact AQ-1. Generation of Construction Emissions in Excess of Local Air District Thresholds (Responsibility of Other Agencies)

Finding

As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of the mitigation measures for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measures.

Rationale for Finding

Under the Coalition Group Waiver, construction impacts would result from implementation of management practices that require physical changes or the use of heavy-duty construction

equipment. It is difficult to determine how management practices selected under this alternative would change relative to existing conditions. Accordingly, it is not possible to determine construction-related effects based on a quantitative analysis. However, it is logical to assume that, as monitoring continues and management plans are implemented under the Coalition Group Waiver, growers would select and implement more management practices. Consequently, implementation of the Coalition Group Waiver may result in increased criteria pollutant emissions from construction activities relative to existing conditions.

Construction emissions associated with the Coalition Group Waiver would result in a significant impact if the incremental difference, or increase, relative to existing conditions exceeds the applicable air district thresholds shown in Table 5.5-2 of the Draft PEIR. Management practices with the greatest potential for emissions include those that break ground or move earth matter, thus producing fugitive dust, and those that require the use of heavy-duty construction equipment (e.g., backhoes or bulldozers), thus producing criteria pollutants from exhaust. Examples of management practices fitting this description include: sediment trap, hedgerow, or buffer; pressurized irrigation; and tailwater recovery systems.

While it is anticipated that any emissions resulting from construction activities would be minuscule on a per-farm basis, in the absence of a quantitative analysis, data are insufficient to determine whether emissions would exceed the applicable air district thresholds. Consequently, this is considered a potentially significant impact. Implementation of **Mitigation Measure AQ-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction Emissions below the District Thresholds**, which is described at the end of the *Impact Findings* section, should reduce this impact to a less-than-significant level. Mitigation Measure AQ-MM-1 is within the responsibility and jurisdiction of local air districts that can and should implement these measures.

Impact AQ-2. Generation of Operational Emissions in Excess of Local Air District Thresholds (Responsibility of Other Agencies)

Finding

As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of the mitigation measures for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measures.

Rationale for Finding

Under the Coalition Group Waiver, operational emissions would result from vehicle trips made by the third-party groups to perform surface water monitoring and from new diesel-powered pumps installed as part of tailwater recovery systems.

Any new emissions generated under the Coalition Group Waiver are not expected to be substantial or to exceed applicable air district thresholds. In addition, they may be moderated by emissions benefits related to management practices that reduce irrigation and cover crops (see Table 5.5-8 of the Draft PEIR). However, the difference in emissions relative to existing conditions is not known at this time and therefore cannot be compared to the significance criteria. This is considered a potentially significant impact. Implementation of **Mitigation Measure AQ-MM-2: Apply Applicable Air District Mitigation Measures to Reduce Operational Emissions below the District Thresholds**, which is described at the end of the *Impact Findings* section, should reduce this impact to a less-than-significant level. Mitigation

Measure AQ-MM-2 is within the responsibility and jurisdiction of local air districts that can and should implement these measures.

Impact AQ-3. Elevated Health Risks from Exposure of Nearby Sensitive Receptors to Toxic Air Contaminants/Hazardous Air Pollutants (TACS/HAPs) (Responsibility of Other Agencies)

Finding

As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of the mitigation measures for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measures.

Rationale for Finding

Toxic air contaminants (TACs) and hazardous air pollutants (HAPs) resulting from the Coalition Group Waiver include diesel particulate matter (DPM) from diesel construction equipment and new pumps, pesticides/fertilizers, and asbestos. Sensitive receptors near member growers could be affected by these sources.

As discussed in Chapter 3 of the Draft PEIR, one of the goals of the nutrient management and conservation tillage management practices is to reduce the application of pesticides/fertilizers. Because the Coalition Group Waiver would result in greater likelihood of these management practices being implemented, it is reasonable to assume that pesticides/fertilizers—and thus the potential for exposure to these chemicals—would be reduced under the Coalition Group Waiver.

It is expected that construction emissions may increase relative to existing conditions, thus resulting in minor increases of DPM. Elevated levels of construction in areas where naturally occurring asbestos (NOA) is common may also increase the likelihood of exposure to asbestos. New diesel-powered pumps also would increase DPM emissions relative to existing conditions. This is considered a potentially significant impact. Implementation of **Mitigation Measures AQ-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction Emissions below the District Thresholds, AQ-MM-2: Apply Applicable Air District Mitigation Measures to Reduce Operational Emissions below the District Thresholds, and AQ-MM-3: Apply Applicable Air District Mitigation Measures to Reduce TAC/HAP Emissions**, which are described at the end of the *Impact Findings* section, should reduce this impact to a less than significant level. Mitigation Measures AQ-MM-1, AQ-MM-2, and AQ-MM-3 are within the responsibility and jurisdiction of local air districts that can and should implement these measures.

Vegetation and Wildlife

Impact BIO-1. Loss of Downstream Habitat from Reduced Field Runoff (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

Under the Coalition Group Waiver, management practices that reduce field runoff would result in beneficial impacts on water quality but may adversely affect downstream wildlife and vegetation that depend on agricultural surface runoff. These practices cause water to be recirculated or used at an agronomic rate, resulting in a minimal amount of agricultural runoff. This would result in a net loss of water entering waterways and potential habitat loss along runoff ditches and downstream water bodies.

Such habitat would be seasonally present, available only during times of irrigation, and unlikely to support sensitive communities or special-status plants. While reduced runoff leads to, or is the result of, reduced surface water diversions to fields, some regions rely largely on groundwater to irrigate. While it is anticipated that the loss of sensitive communities or special-status plants resulting from reduced runoff would be small, if any, data are insufficient to determine how much loss would occur. Consequently, this is considered a potentially significant impact. **Mitigation Measure BIO-MM-2: Avoid and Minimize Impacts on Sensitive Biological Resources** has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Impact BIO-3. Potential Loss of Sensitive Natural Communities and Special-Status Plants from Construction Activities (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

Under the Coalition Group Waiver, construction impacts would result from implementation of management practices that require physical changes, such as construction of water and sediment control basins, temporary water checks, tailwater return systems, vegetated drain systems, windbreaks, and filter strips. It is difficult to determine to what extent management practices selected under the Coalition Group Waiver would change relative to existing conditions; thus, it is not possible to quantify any construction-related effects. However, it is logical to assume that implementation of the Coalition Group Waiver would result in selection of more management practices where water quality monitoring reveals that water quality objectives are not being met. Consequently, implementation of the Coalition Group Waiver may result in effects on vegetation from construction activities.

In general, management practices would be implemented on existing agricultural lands, which are unlikely to support native vegetation or special-status plants. However, construction that directly or indirectly affects natural vegetation communities adjacent to existing irrigated lands, particularly annual grasslands with inclusions of seasonal wetlands or vernal pools and riparian vegetation, could result in loss of sensitive wetland communities or special-status plants growing in the uncultivated or unmanaged areas. While it is anticipated that the loss of sensitive communities or special-status plants resulting from construction activities would be small, if any, data are insufficient to determine how much loss would occur. Consequently, this is considered a potentially significant impact. **Mitigation Measure BIO-MM-1: Avoid and Minimize Impacts on**

Sensitive Biological Resources has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Fisheries

Impact FISH-2. Temporary Loss or Alteration of Fish Habitat during Construction of Facilities for Management Practices (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

Under the Coalition Group Waiver, construction impacts would result from implementation of management practices that require physical changes to lands in the project area. These physical changes primarily include erosion and sediment controls with features such as construction of water and sediment control basins, temporary water checks, tailwater return systems, vegetated drain systems, windbreaks, and filter strips. Physical changes may be associated with implementation of other management practices, such as construction of filter ditches for pesticide management. Installation of facilities for management practices such as pressurized irrigation and sediment traps is unlikely to significantly exceed the baseline disturbance that occurs during routine field preparation. Construction of features associated with management practices may temporarily reduce the amount or quality of existing fish habitat in certain limited circumstances (e.g., by encroachment onto adjacent water bodies, removal of riparian vegetation, or reduction in water quality—such as increases in sediment runoff during construction). It is difficult to determine whether the management practices selected under the Coalition Group Waiver would change relative to existing conditions, and it is not possible to quantify any construction-related effects. Implementation of the Coalition Group Waiver may result in effects on fish habitat from construction activities related to management practices.

While it is anticipated that the loss of fish habitat resulting from construction activities would be small, if any, data are insufficient to determine how much loss would occur. Consequently, this is considered a potentially significant impact. **Mitigation Measure FISH-MM-1: Avoid and Minimize Impacts to Fish and Fish Habitat** has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Impact FISH-3. Permanent Loss or Alteration of Fish Habitat during Construction of Facilities for Management Practices (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

In some cases, permanent loss of fish habitat may occur as a result of construction required for implementation of management practices under the Coalition Group Waiver. Some of the impact may be due to loss of structural habitat (e.g., vegetation) whereas loss of dynamic habitat (e.g., wetted habitat) could be an issue where tailwater augments natural flows or makes seasonal streams into perennial systems. This may be of concern in areas where tailwater return flows are composed mostly of pumped groundwater. Because the extent of the loss is not known, the impact is considered potentially significant. **Mitigation Measure FISH-MM-1: Avoid and Minimize Impacts to Fish and Fish Habitat** has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Impact FISH-4. Toxicity to Fish or Fish Prey from Particle-Coagulant Water Additives (Less than Significant with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

Rationale for Finding

Under the Coalition Group Waiver, polyacrylamides (PAMs) may be applied to reduce erosion and sediment runoff and thereby improve water quality (Sojka et al. 2000). Anionic PAMs are safe to aquatic life when used at prescribed rates (Sojka et al. 2000). Because neutral and cationic PAMs may be toxic to fish and their prey (Sojka et al. 2000; Mason et al. 2005), application of anionic PAMs is recommended in areas with sensitive fish species (Mason et al. 2005). This impact is considered potentially significant. **Mitigation Measure FISH-MM-2: Educate Growers on the Use of Polyacrylamides (PAMs) for Sediment Control** has been incorporated into the Coalition Group Waiver to reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Agriculture Resources

Impact AG-1. Conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to Nonagricultural Use (Significant and Unavoidable)

Finding

Pursuant to State CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the Coalition Group Waiver, but these changes or alterations are not sufficient to reduce the significant environmental effect to less than significant as identified in the Final PEIR. As specified in Section 15091(a)(3) of the State CEQA Guidelines, specific considerations make mitigation and alternatives infeasible. A statement of overriding consideration has been adopted, as indicated in the Statement of Overriding Considerations Supporting Approval of the Short-term Renewal of the Coalition Group Conditional Waiver presented below.

Rationale for Finding

Under the Coalition Group Waiver, irrigated agricultural operations would be required to implement management practices and conduct monitoring and reporting to achieve water quality goals. Consequently, any operation under the waiver will experience increased operational costs due to increased regulation. The short-term renewal of the Coalition Group Waiver is a limited term (rather than long-term) version of Alternative 1. The estimated 328,000 acres of farmland removed from production that was estimated for Alternative 1 is not likely to occur in full in the abbreviated time frame that the Coalition Group waiver will be in place. Funding provided by the Water Board through Proposition 84 to the Coalition for Urban and Rural Environmental Stewardship (over \$8 million) and funding available through the Natural Resources Conservation Service (e.g., the Agricultural Water Enhancement Program) should allow growers to mitigate any financial impact that would result in loss of productive farm land. However, it is possible that some growers will make a business decision to abandon farming rather than implement practices that would increase their costs. Some of that farm land may not remain under agricultural production.

Because implementation of the Coalition Group Waiver potentially would result in conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural use, this impact is considered significant. **Mitigation Measure AG-MM-1: Assist the Agricultural Community in Identifying Sources of Financial Assistance that would Allow Growers to Keep Important Farmland in Production** has been incorporated into the Coalition Group Waiver to reduce the magnitude of the impact, but no feasible mitigation measures have been identified that would reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Cumulative Impacts

Cumulative Cultural Resource Impacts (Less than Cumulatively Considerable with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant cumulative environmental effect as identified in the Final PEIR.

Rationale for Finding

Use of ground-disturbing management practices under the Coalition Group Waiver could result in cumulatively considerable effects to cultural resources in concert with other, non-program-related agricultural enterprises and nonagricultural development in the program area. **Mitigation Measure CUL-MM-1: Avoid Impacts to Cultural Resources** has been incorporated into the Coalition Group Waiver to reduce the Coalition Group Waiver's contribution to this impact to a level that is not cumulatively considerable. The mitigation measure calls for identification of cultural resources and minimization of impacts to identified resources. Mitigation measures are included at the end of the *Impact Findings* section.

Cumulative Climate Change Impacts (Significant and Unavoidable)

Finding

Pursuant to CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the Coalition Group Waiver, but these changes or alterations are not sufficient to reduce the significant environmental effect to less than significant as identified in the Final PEIR. As specified in Section 15091(a)(2) of the State CEQA Guidelines, implementation of **Mitigation Measure CC-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction and Operational GHG Emissions** for this impact is within the responsibility and jurisdiction of other public agencies that can and should implement the measure. Further, as specified in Section 15091(a)(3) of the Guidelines, specific considerations make mitigation and alternatives infeasible. A statement of overriding consideration has been adopted, as indicated in the Statement of Overriding Considerations Supporting Approval of the Coalition Group Waiver presented below.

Rationale for Finding

Unlike criteria pollutant impacts, which are local and regional, climate change impacts occur at a global level. The relatively long lifespan and persistence of GHGs (as shown in Table 5.6-1 of the Draft PEIR) require that climate change be considered a cumulative and global impact. As discussed in the Draft PEIR, it is unlikely that any increase in global temperature or sea level could be attributed to the emissions resulting from a single project. Rather, it is more appropriate to conclude that, under the Coalition Group Waiver, GHG emissions would combine with emissions across California, the United States, and the globe to cumulatively contribute to global climate change.

Given the magnitude of state, national, and international GHG emissions (see Tables 5.6-2 through 5.6-4 of the Draft PEIR), climate change impacts from implementation of the Coalition Group Waiver likely would be negligible. However, scientific consensus concludes that, given the seriousness of climate change, small contributions of GHGs may be cumulatively considerable. Because it is unknown to what extent, if any, climate change would be affected by the incremental GHG emissions produced by the Coalition Group Waiver, the impact to climate change is considered cumulatively considerable. **Mitigation Measure CC-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction and Operational GHG Emissions** is within the responsibility and jurisdiction of local agencies, who can and should implement these measures. **Mitigation Measure CC-MM-2: Apply Applicable California Attorney General Mitigation Measures to Reduce Construction and Operational GHG Emissions** has been incorporated into the Coalition Group Waiver; these measures will result in lower GHG emissions levels than had they not been incorporated, but they will not completely eliminate Coalition Group Waiver GHG emissions. No feasible mitigation measures have been identified that would reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Cumulative Vegetation and Wildlife Impacts (Significant and Unavoidable)

Finding

Pursuant to State CEQA Guidelines Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the Coalition Group Waiver, but these changes or alterations

are not sufficient to reduce the significant environmental effect to less than significant as identified in the Final PEIR. As specified in Section 15091(a)(3) of the State CEQA Guidelines, specific considerations make mitigation and alternatives infeasible. A statement of overriding consideration has been adopted, as indicated in the Statement of Overriding Considerations Supporting Approval of the Coalition Group presented below.

Rationale for Finding

The Central Valley of California has been subjected to extensive human impacts from land conversion, water development, population growth, and recreation. These impacts have altered the physical and biological integrity of the Central Valley, causing loss of native riparian vegetation along river systems, loss of wetlands, and loss of native habitat for plant and wildlife species. **Mitigation Measures BIO-MM-1: Avoid and Minimize Impacts on Sensitive Biological Resources** and **BIO-MM-2: Determine Extent of Wetland Loss and Compensate for Permanent Loss of Wetlands** have been incorporated into the Coalition Group Waiver to reduce the severity of these effects. The measures are sufficient to mitigate any program-related impacts to rare or endangered plant or wildlife species, and to habitat for these species; however, the cumulative impact of the reduction in quality habitat and the take of individual listed plants or wildlife species is potentially cumulatively considerable. Mitigation measures are included at the end of the *Impact Findings* section.

Cumulative Fish Impacts (Less than Cumulatively Considerable with Mitigation)

Finding

As specified in Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in, or incorporated into, the Coalition Group Waiver that avoid or substantially lessen the significant cumulative environmental effect as identified in the Final PEIR.

Rationale for Finding

The ongoing impacts of impaired water quality from irrigated lands are likely to cumulatively affect fish, in combination with contaminants that remain in the Program area from past activities. Such activities include mining and past use of pesticides such as DDT that remain within sediments. Because many of the existing effects discussed in the section "Existing Effects of Impaired Water Quality on Fish" are cumulative, it is difficult to determine the relative contribution of irrigated lands and other sources. For example, low dissolved oxygen (DO) in the Stockton Deepwater Ship Channel is a result of contamination from upstream nonpoint sources (possibly including agricultural runoff) and discharges from the Stockton sewage treatment plant (Lehman et al. 2004; Central Valley Regional Water Quality Control Board 2005). Application of pesticides to nonagricultural lands such as urban parks and the resultant contaminant runoff also cumulatively contribute to impacts of inputs from irrigated lands.

Given the U.S. Environmental Protection Agency's (EPA's) ongoing federal Endangered Species Act (ESA) consultation process for pesticides as a result of recent court orders, it is reasonably foreseeable that further reasonable and prudent measures would be required by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) that would improve water quality within the Program area. Revision of water quality control plans and total maximum daily loads (TMDLs) also can be expected to improve water quality. These and other measures, in combination with the likely beneficial effects of the Coalition Group Waiver, suggest

that the cumulative effects of the Coalition Group Waiver are not cumulatively considerable with implementation of mitigation measures. **Mitigation Measures FISH-MM-1: Avoid and Minimize Impacts to Fish and Fish Habitat** and **FISH-MM-2: Educate Growers on the Use of Polyacrylamides (PAMs) for Sediment Control** have been incorporated into the Coalition Group Waiver to reduce these impacts to a less than cumulatively considerable level. Mitigation measures are included at the end of the *Impact Findings* section.

Cumulative Agriculture Resources Impacts (Significant and Unavoidable)

Finding

Pursuant to CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the Coalition Group Waiver, but these changes or alterations are not sufficient to reduce the significant environmental effect to less than significant as identified in the Final PEIR. As specified in Section 15091(a)(3) of the Guidelines, specific considerations make mitigation and alternatives infeasible. A statement of overriding consideration has been adopted, as indicated in the Statement of Overriding Considerations Supporting Approval of the Coalition Group Waiver presented below.

Rationale for Finding

Since 1984, the average biennial net conversion of prime and unique farmland, and farmlands of statewide importance in California has been 28,344 acres (California Department of Conservation, Division of Land Resource Protection 2008). However, conversion has increased substantially since 2000, with an average biennial net conversion of 114,003 acres (California Department of Conservation, Division of Land Resource Protection 2008). During the 2002–2004 period, prime farmland, unique farmland, and farmland of statewide importance was reduced by 133,024 acres (California Department of Conservation, Division of Land Resource Protection 2006). The trend continued during the 2004–2006 period, with a net reduction of 125,495 acres (California Department of Conservation, Division of Land Resource Protection 2008).

While conversion of important farmland may not continue at the accelerated rate of the past 10 years due to decreased demand for new housing, it is reasonably foreseeable that it will continue at a rate comparable to that seen since 1984. Although the magnitude of conversion of important farmland is expected to be limited with the short-term renewal of the Coalition Group Waiver, the Coalition Group Waiver could result in cumulatively considerable impacts to agriculture resources. **Mitigation Measure AG-MM-1** has been incorporated into the Coalition Group Waiver to reduce the severity of these effects. While implementation of AG-MM-1 could reduce these impacts to a level that is not a cumulatively considerable contribution to this statewide impact, such a reduction cannot be quantified. As such, AG-MM-1 is inadequate to fully mitigate the contribution of the Coalition Group Waiver to this impact, and its contribution is potentially cumulatively considerable. No feasible mitigation measures have been identified that would reduce this impact to a less-than-significant level. Mitigation measures are included at the end of the *Impact Findings* section.

Mitigation Measures

Cultural Resources

Mitigation Measure CUL-MM-1: Avoid Impacts to Cultural Resources

The measure described below will reduce the severity of impacts on significant cultural resources, as defined and described in Sections 5.3.1 and 5.3.3 of the Draft PEIR. Avoidance of such impacts also can be achieved when growers choose the least impactful management practices that will meet the Coalition Group Waiver's water quality improvement goals and objectives. Note that these mitigation measures may not be necessary in cases where no ground-disturbing activities would be undertaken as a result of implementation of the ILRP.

Although cultural resource inventories and evaluations typically are conducted prior to preparation of a CEQA document, the size of the project area and the lack of specificity regarding the location and type of management practices that would be implemented following adoption of the Coalition Group Waiver render conducting inventories prior to adoption untenable. Therefore, where the Coalition Group Waiver's water quality improvement goals cannot be achieved without modifying or disturbing an area of land or existing structure to a greater degree than through previously employed farming practices, individual farmers, coalitions, or third-party representatives will implement the following measures to reduce potential impacts to less-than-significant levels.

- Where construction within areas that may contain cultural resources cannot be avoided through the use of alternative management practices, conduct an assessment of the potential for damage to cultural resources prior to construction; this may include the hiring of a qualified cultural resources specialist to determine the presence of significant cultural resources.
- Where the assessment indicates that damage may occur, submit a non-confidential records search request to the appropriate CHRIS information center(s).
- Implement the recommendations provided by the CHRIS information center(s) in response to the records search request.
- Where adverse effects to cultural resources cannot be avoided, undertake additional CEQA review and develop appropriate mitigation to avoid or minimize the potential impact.

In addition, California state law provides for the protection of interred human remains from vandalism and destruction. According to the California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and the disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of the discovered human remains until the County Coroner has been notified, according to PRC Section 5097.98, and can determine whether the remains are those of Native American origin. If the coroner determines that the remains are of Native American origin, the coroner must contact the Native American Heritage Commission (NAHC) within 24 hours (Health and Safety Code Section 7050[c]). The NAHC will identify and notify the most likely descendant (MLD) of the interred individual(s), who will then make a recommendation for means of treating or removing, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.

PRC Section 5097.9 identifies the responsibilities of the project proponent upon notification of a discovery of Native American burial remains. The project proponent will work with the MLD (determined by the NAHC) and a professional archaeologist with specialized human osteological experience to develop and implement an appropriate treatment plan for avoidance and preservation of, or recovery and removal of, the remains.

Growers implementing management practices should be aware of the following protocols for identifying cultural resources.

- If built environment resources or archaeological resources, including chipped stone (often obsidian, basalt, or chert), ground stone (often in the form of a bowl mortar or pestle), stone tools such as projectile points or scrapers, unusual amounts of shell or bone, historic debris (such as concentrations of cans or bottles), building foundations, or structures are inadvertently discovered during ground-disturbing activities, the land owner should stop work in the vicinity of the find and retain a qualified cultural resources specialist to assess the significance of the resources. If necessary, the cultural resource specialist also will develop appropriate treatment measures for the find.
- If human bone is found as a result of ground disturbance, the land owner should notify the County Coroner in accordance with the instructions described above. If Native American remains are identified and descendants are found, the descendants may—with the permission of the owner of the land or his or her authorized representative—inspect the site of the discovery of the Native American remains. The descendants may recommend to the owner or the person responsible for the excavation work means for treating or disposing of the human remains and any associated grave goods, with appropriate dignity. The descendants will make their recommendation within 48 hours of inspection of the remains. If the NAHC is unable to identify a descendant, if the descendants identified fail to make a recommendation, or if the landowner rejects the recommendation of the descendants, the landowner will inter the human remains and associated grave goods with appropriate dignity on the property in a location not subject to further and future subsurface disturbance.

Noise

Mitigation Measure NOI-MM-1: Implement Noise-Reducing Construction Practices

Growers should implement noise-reducing construction practices that comply with applicable local noise standards or limits specified in the applicable county ordinances and general plan noise elements.

Mitigation Measure NOI-MM-2: Reduce Noise Generated by Individual Well Pumps

If well pumps are installed, growers should enclose or locate them behind barriers such that noise does not exceed applicable local noise standards or limits specified in the applicable county ordinances and general plan noise elements.

Air Quality

Mitigation Measure AQ-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction Emissions below the District Thresholds

Growers should apply appropriate construction mitigation measures from the applicable air district to reduce construction emissions. These measures will be applied on a project-level basis and may be tailored in consultation with the appropriate air district, depending on the severity of anticipated construction emissions.

Mitigation Measure AQ-MM-2: Apply Applicable Air District Mitigation Measures to Reduce Operational Emissions below the District Thresholds

Growers should apply appropriate mitigation measures from the applicable air district to reduce operational emissions. These measures were suggested by the district or are documented in official rules and guidance reports; however, not all districts make recommendations for operational mitigation measures. Where applicable, measures will be applied on a project-level basis and may be tailored in consultation with the appropriate air district, depending on the severity of anticipated operational emissions.

Mitigation Measure AQ-MM-3: Apply Applicable Air District Mitigation Measures to Reduce TAC/HAP Emissions

Growers should apply appropriate TAC and HAP mitigation measures from the applicable air district to reduce public exposure to DPM, pesticides, and asbestos. These measures were suggested by the district or are documented in official rules and guidance reports; however, not all districts make recommendations for mitigation measures for TAC/HAP emissions. These measures will be applied on a project-level basis and may be tailored in consultation with the appropriate air district, depending on the severity of anticipated TAC/HAP emissions.

Vegetation and Wildlife

Mitigation Measure BIO-MM-1: Avoid and Minimize Impacts on Sensitive Biological Resources

Implementation of the following avoidance and minimization measures would ensure that the construction activities related to implementation of management practices on irrigated lands would minimize effects on sensitive vegetation communities (such as riparian habitat and wetlands adjacent to the construction area) and special-status plants and wildlife species as defined and listed in Section 5.7.3 of the Draft PEIR. In each instance where particular management practices could result in impacts on the biological resources listed above, growers should use the least impactful effective management practice to avoid such impacts. Where the Coalition Group Waiver's water quality improvement goals cannot be achieved without incurring potential impacts, individual farmers, coalitions, or third-party representatives will implement the following measures to reduce potential impacts to less-than-significant levels.

- Where detention basins are to be abandoned, retain the basin in its existing condition or ensure that sensitive biological resources are not present before modification.

- Where construction in areas that may contain sensitive biological resources cannot be avoided through the use of alternative management practices, conduct an assessment of habitat conditions and the potential for presence of sensitive vegetation communities or special-status plant and animal species prior to construction. This may include the hiring of a qualified biologist to identify riparian and other sensitive vegetation communities and/or habitat for special-status plant and animal species.
- Avoid and minimize disturbance of riparian and other sensitive vegetation communities.
- Avoid and minimize disturbance to areas containing special-status plant or animal species.
- Where adverse effects on sensitive biological resources cannot be avoided, undertake additional CEQA review and develop a restoration or compensation plan to mitigate the loss of the resources.

Mitigation Measure BIO-MM-2: Determine Extent of Wetland Loss and Compensate for Permanent Loss of Wetlands

Prior to implementing any management practice that will result in the permanent loss of wetlands, conduct a delineation of affected wetland areas to determine the acreage of loss in accordance with current U.S. Army Corps of Engineers (USACE) methods. For compliance with the federal Clean Water Act Section 404 permit and WDRs protecting State waters from unauthorized fill, compensate for the permanent loss (fill) of wetlands and ensure no net loss of habitat functions and values. Compensation ratios will be determined through coordination with the Central Valley Water Board and USACE as part of the permitting process. Such process will include additional compliance with CEQA, as necessary. Compensation may be a combination of mitigation bank credits and restoration/creation of habitat, as described below:

- Purchase credits for the affected wetland type (e.g., perennial marsh, seasonal wetland) at a locally approved mitigation bank and provide written evidence to the resource agencies (USFWS, NMFS) that compensation has been established through the purchase of mitigation credits.
- Develop and ensure implementation of a wetland restoration plan that involves creating or enhancing the affected wetland type.

Fisheries

Mitigation Measure FISH-MM-1: Avoid and Minimize Impacts to Fish and Fish Habitat

This mitigation measure incorporates all measures identified in Mitigation Measure BIO-MM-1: Avoid and Minimize Impacts on Sensitive Biological Resources. In each instance where particular management practices could result in impacts to special-status fish species (see "Regulatory Classification of Special-Status Species" in Section 5.8.2 of the Draft PEIR), growers should use the least impactful effective management practice to avoid such impacts. Where the Coalition Group Waiver's water quality improvement goals cannot be achieved without incurring potential impacts, individual farmers, coalitions, or third-party representatives will implement the following measures to reduce potential impacts to less-than-significant levels. Note that these measures may not be necessary in many cases and are dependent on the location of construction in relation to water bodies containing special-status fish.

- Where construction in areas that may contain special-status fish species cannot be avoided through the use of alternative management practices, conduct an assessment of habitat conditions and the potential for presence of special-status fish species prior to construction; this may include the hiring of a qualified fisheries biologist to determine the presence of special status fish species.
- Based on the species present in adjacent water bodies and the likely extent of construction work that may affect fish, limit construction to periods that avoid or minimize impacts to special-status fish species.
- Where construction periods cannot be altered to minimize or avoid effects on special-status fish, undertake additional CEQA review and develop a restoration or compensation plan to mitigate the loss of the resources.

Mitigation Measure FISH-MM-2: Educate Growers on the Use of Polyacrylamides (PAMs) for Sediment Control

The Central Valley Water Board will provide information on the potential risks to aquatic life, including special-status fish, that may result from the use of cationic or neutral PAMs during water management activities. Information in the form of leaflets and website information will be provided to grower coalitions, encouraging the use of anionic PAMs. Application of anionic PAMs at prescribed rates will be emphasized in the information provided to growers. Adoption of the United States Department of Agriculture National Conservation Practice Standard 450 also will be recommended in the information.

Agriculture Resources

Mitigation Measure AG-MM-1: Assist the Agricultural Community in Identifying Sources of Financial Assistance that would Allow Growers to Keep Important Farmland in Production

The Central Valley Water Board will assist the agricultural community in identifying sources of financial assistance from existing federal, state, or local programs that promote water conservation and water quality through improved management practices. Funding received from grants, cost-sharing, or low-interest loans would offset some of the local growers' expenditures for compliance and implementation of FWQMPs, and likely would reduce the estimated losses in irrigated acreage. Potential funding sources for this mitigation measure are discussed below. The programs described below are illustrative and are not intended to constitute a comprehensive list of funding sources.

Federal Farm Bill

Title II of the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, in effect through 2012) authorizes funding for conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program. Both of these programs provide financial and technical assistance for activities that improve water quality on agricultural lands.

State Water Resources Control Board

The Division of Financial Assistance administers water quality improvement programs for the State Water Resources Control Board (State Water Board). The programs provide grant and loan funding to reduce non-point-source pollution discharge to surface waters.

The Division of Financial Assistance currently administers two programs that improve water quality associated with agriculture—the Agricultural Drainage Management Loan Program and the Agricultural Drainage Loan Program. Both of these programs were implemented to address the management of agricultural drainage into surface water. The Agricultural Water Quality Grant Program provides funding to reduce or eliminate the discharge of non-point-source pollution from agricultural lands into surface water and groundwater. It currently is funded through bonds authorized by Proposition 84.

The State Water Board's Clean Water State Revolving Fund also has funding authorized through Proposition 84. It provides loan funds to a wide variety of point-source and non-point-source water quality control activities.

Potential Funding Provided by the Safe, Clean, and Reliable Drinking Water Supply Act of 2010

This act was placed on the ballot by the Legislature as SBX 7-2 and was scheduled for voter approval in November 2010. In August of 2010, the Legislature removed this issue from the 2010 ballot and intends to re-introduce it in November of 2012. If approved by the public, the new water bond would provide grant and loan funding for a wide range of water-related activities, including agricultural water quality improvement, watershed protection, and groundwater quality protection. The actual amount and timing of funding availability will depend on its passage, on the issuance of bonds and the release of funds, and on the kinds of programs and projects proposed and approved for funding.

Other Funding Programs

Other state and federal funding programs have been available in recent years to address agricultural water quality improvements. Integrated Regional Water Management grants were authorized and funded by Proposition 50 and now by Proposition 84. These are administered jointly by the State Water Board and the California Department of Water Resources. Proposals can include agricultural water quality improvement projects. The Bureau of Reclamation also can provide assistance and cost-sharing for water conservation projects that help reduce discharges.

Cumulative Impacts

Mitigation Measure CC-MM-1: Apply Applicable Air District Mitigation Measures to Reduce Construction and Operational GHG Emissions

Several of the standard mitigation measures provided by the 24 local air districts to reduce criteria pollutant emissions would also help to minimize GHG emissions (please see Section 5.6.5 of the Draft PEIR). Measures to reduce vehicle trips and promote use of alternative fuels, as well as clean diesel technology and construction equipment retrofits, should be considered by the program applicants.

Mitigation Measure CC-MM-2: Apply Applicable California Attorney General Mitigation Measures to Reduce Construction and Operational GHG Emissions

A recent report by the California Attorney General's office entitled *The California Environmental Quality Act: Addressing Global Warming at the Local Agency Level* identifies various example measures to reduce GHG emissions at the project level (California Department of Justice 2008). The following mitigation measures and project design features were compiled from the California Attorney General's Office report. They are not meant to be exhaustive but to provide a sample list of measures that could be incorporated into future project design. Only those measures applicable to the Coalition Group Waiver are included.

Solid Waste Measures

- Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).
- Provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers.
- Recover by-product methane to generate electricity.

Transportation and Motor Vehicles

- Limit idling time for commercial vehicles, including delivery and construction vehicles.
- Use low- or zero-emission vehicles, including construction vehicles.

Findings for Alternatives Considered in the EIR

The CEQA Guidelines, at Section 15091(a)(3) require findings about the feasibility of project alternatives whenever the project within the responsibility and jurisdiction of the lead agency will have a significant environmental effect that has not been mitigated to a less than significant level. The significant impacts that require such findings are:

- Impact AG-1: 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.

Selection of Alternative 1 would continue to impose regulatory requirements on surface water discharges from irrigated agricultural operations while preserving the Board's resources to establish the elements of its long-term irrigated lands regulatory program. Of the six alternatives evaluated in the Program EIR, Alternative 1 is the only feasible alternative that is currently in place and may be utilized to continue to protect surface water quality while additional long-term

program requirements are developed and implemented by the Central Valley Water Board and irrigated agriculture. Furthermore, in consideration of significant adverse effects of the alternatives, it is clear that Alternative 2-6 would not substantially reduce or eliminate any of the significant adverse effects listed in this Section above. Furthermore, Alternatives 2-6 are not feasible for this project because none of them can feasibly be implemented prior to 30 June 2011, which is the expiration date of the current Coalition Group Waiver.

Statement of Overriding Considerations Supporting the Short-Term Renewal of the Coalition Group Waiver

Pursuant to the requirements of CEQA (PRC Sections 21002, 21002.1, 21081) and State CEQA Guidelines (15 CCR 15093), the Central Valley Water Board finds that approval of the Coalition Group Waiver, whose potential environmental impacts have been evaluated in the Final PEIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the above findings. These significant effects include:

- Conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural use
- Cumulative climate change
- Cumulative vegetation and wildlife impacts
- Cumulative conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural use

Pursuant to PRC Section 21081(b), specific overriding economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects. The specific reasons to support this approval, given the potential for significant unavoidable adverse impacts, are based on the following.

Economic Benefits

The water quality improvements expected to occur in surface water throughout the Central Valley as a result of implementing the Coalition Group Waiver is expected to create economic benefits for residents of the State. Although these benefits are difficult to quantify, they include 1) reduced water supply treatment costs associated with improvements in water quality for irrigation and drinking water uses; 2) reduced costs for maintaining irrigated ditches and canals associated with less erosion and sediment build-up; and 3) reduced pumping and water supply costs associated with reductions in water usage (Appendix A, Program EIR).

Consistency with NPS Policy and State Water Board Resolution 68-16 (Antidegradation Policy)

Waste discharges from irrigated agricultural operations have the potential to affect surface and groundwater quality. As documented in the *Irrigated Lands Regulatory Program Existing*

Conditions Report, many state waters have been adversely affected due in part to waste discharges from irrigated agriculture. State policy and law requires that the Central Valley Water Board institute requirements that will implement Water Quality Control Plans (California Water Code Sections 13260, 13269), the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy) and applicable antidegradation requirements (State Water Board Resolution 68-16).

The Coalition Group Waiver is a necessary component of the Central Valley Water Board's efforts to be consistent with State policy and law through its regulation of discharges from irrigated agriculture to surface waters. The short-term renewal of the Coalition Group Waiver will ensure that the regulation of discharges to surface water from irrigated lands is maintained as Orders regulating both discharges to groundwater and surface water are developed. Improvements in surface water quality will continue, whereas failure to renew the Coalition Group Waiver could result in degradation of surface water quality, since no water quality control program would be in place.

After balancing the above benefits of the Coalition Group Waiver against its unavoidable environmental risks, the specific economic, legal, and social benefits of the proposal outweigh the unavoidable adverse environmental effects, and these adverse environmental effects are considered acceptable, consistent with the Coalition Group Waiver approval contained in Central Valley Water Board Resolution R5-2011-0032.

References Cited

- California Department of Conservation, Division of Land Resource Protection. 2006. 2002–2004 Farmland Conversion Report. Farmland Mapping and Monitoring Program.
- California Department of Conservation, Division of Land Resource Protection. 2008. 2004 – 2006 Farmland Conversion Report. Farmland Mapping and Monitoring Program.
- California Department of Justice. 2008. The California Environmental Quality Act: Addressing Global Warming Impacts at the Local Agency Level. Last revised: December 9, 2008. Available: <http://www.ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf>. Accessed: September 25, 2009.
- Central Valley Regional Water Quality Control Board. 2005. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control Program for Factors Contributing to the Dissolved Oxygen Impairment in the Stockton Deep Water Ship Channel. Final staff report. February 23.
- Central Valley Regional Water Quality Control Board. 2011. *Recommended Irrigated Lands Regulatory Program Framework Staff Report*. March. Rancho Cordova, CA. Available: <http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/long_term_program_development/recomnd_framework_mar2011.pdf>.
- ICF International. 2011. *Irrigated Lands Regulatory Program Final Program Environmental Impact Report*. Final. March. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA.
- ICF International. 2010. *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. July. (ICF 05508.05.) Sacramento, CA. Prepared for Central Valley Regional Water Quality Control Board, Sacramento, CA. Available: <http://www.swrcb.ca.gov/centralvalley/water_issues/irrigated_lands/long_term_program_development>.
- Lehman, P.W., J. Sevier, J. Giulianotti, and M. Johnson. 2004. Sources of Oxygen Demand in the Lower San Joaquin River, California. *Estuaries* 27(3): 405–418.
- Mason, L.B., C. Amrhein, C. C. Goodson, M. R. Matsumoto, and M. A. Anderson. 2005. Reducing Sediment and Phosphorus in Tributary Waters with Alum and Polyacrylamide. *Journal of Environmental Quality* 34: 1998–2004.
- Sojka, R.E., R.D. Lentz, I. Shainberg, T.J. Trout, C.W. Ross, C.W. Robbins, J.A. Entry, J.K. Aase, D.L. Bjorneberg, W.J. Orts, D.T. Westermann, D.W. Morishita, M.E. Watwood, T.L. Spofford, and F.W. Barvenik. 2000. Irrigating with polyacrylamide (PAM): *Nine years and a million acres of experience*. P. 161–169 in R.G. Evans, B.L. Benham, and T.P. Trooien (eds.). Proceedings of the National Irrigation Symposium, 4th Decennial Symposium, Phoenix, Arizona, 14–16 November 2000. Publication 701P0004. St Joseph, MI: American Society of Agricultural Engineers.

EXHIBIT C

Notice of Determination

Appendix D

To:

Office of Planning and Research
For U.S. Mail: P.O. Box 3044 Sacramento, CA 95812-3044
Street Address: 1400 Tenth St. Sacramento, CA 95814

From:

Public Agency: California Regional Water Quality Control Board, Central Valley Region
Address: 11020 Sun Center Drive, #200 Rancho Cordova, CA 95670-6114
Contact: Kenneth D. Landau, Assistant Executive Officer
Phone: 916-464-4726

County Clerk
County of:
Address:

Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2003021100

Project Title: Short-term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Project Location (include county): See Attachment A

Project Description:

See Attachment A.

This is to advise that the California Regional Water Quality Control Board, Central Valley Region has approved the above described project on June 9, 2011 and has made the following determinations regarding the above described project:
(Date)
 Lead Agency or Responsible Agency

- 1. The project [input checked="" type="checkbox"/> will [input type="checkbox"/> will not] have a significant effect on the environment.
2. [input checked="" type="checkbox"/> An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [input type="checkbox"/> A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [input checked="" type="checkbox"/> were [input type="checkbox"/> were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [input checked="" type="checkbox"/> was [input type="checkbox"/> was not] adopted for this project.
5. A statement of Overriding Considerations [input checked="" type="checkbox"/> was [input type="checkbox"/> was not] adopted for this project.
6. Findings [input checked="" type="checkbox"/> were [input type="checkbox"/> were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: See Attachment A.

Signature (Public Agency) [Handwritten Signature] Title Assistant Executive Officer

Date June 13, 2011

Date Received for filing at OPR



Attachment A

Project Location

The project applies to all of the irrigated land and managed wetlands in the Sacramento River, San Joaquin River and Tulare Lake Basins. The project does not apply to discharges from irrigated lands to the extent they are regulated through other means by the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board).

Project Description

The project is the renewal of a Conditional Waiver of Waste Discharge Requirements. The project establishes requirements to regulate discharges of waste from irrigated lands to surface waters of the State to assure water quality standards are met. Irrigated lands are lands where water is applied to produce crops including, but not limited to, land planted to row, vineyard, pasture, field and tree crops, commercial nurseries, nursery stock production, managed wetlands, rice production, and greenhouse operations with permeable floors that do not currently discharge under waste discharge requirements, National Pollutant Discharge Elimination System (NPDES) permits, Municipal Separate Storm Sewer System permits, or other NPDES permits.

The Central Valley Region has more than seven million acres of cropland under irrigation and thousands of individuals and operations that falls into the category of "discharges of waste from irrigated lands." Discharges from irrigated lands include surface discharges, such as irrigation return flows, tailwater, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands, stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands, and operating spills containing waste.

Final EIR Available to Public At:

California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

EXHIBIT D

1 **EXHIBIT D – COUNSEL FOR PETITIONERS**

2 Petitioners request that all materials in connection with the Petition and administrative
3 record be provided to Petitioners' Counsel as follows:
4

5 Theresa A. Dunham, Esquire
6 Counsel for Northern California Water Association on behalf of the Sacramento Valley
7 Water Quality Coalition and the California Rice Commission
8 Somach Simmons & Dunn
9 500 Capitol Mall, Suite 1000
10 Sacramento, CA 95814
11 Phone: (916) 446-7979
12 Email: tdunham@somachlaw.com

13 Diane V. Rathman
14 Counsel for the San Joaquin Valley Drainage Authority
15 Linneman, Burgess, Telles, Van Atta, Vierra
16 Rathmann, Whitehurst & Keene
17 1820 Marguerite Street
18 P.O. Box 156
19 Dos Palos, CA
20 Phone: (209) 392-2141
21 Email: drathmann@aol.com

22 Jennifer L. Spaletta
23 Counsel for the San Joaquin County Resource Conservation District on behalf of the San
24 Joaquin County and Delta Water Quality Coalition
25 Herum/Crabtree
26 2291 W. March Lane, Suite B-100
27 Stockton, CA 95207
28 Phone: (209) 472-7700
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29 Kari E. Fisher
30 Counsel for California Farm Bureau Federation
31 2300 River Plaza Drive
32 Sacramento, CA 95833
33 Phone: (916) 561-5665
34 Fax: (916) 561-5691
35 E-mail: kfisher@cfbf.com; photz@cfbf.com

LAW OFFICES OF
BEST BEST & KRIEGER LLP
400 CAPITOL MALL, SUITE 1650
SACRAMENTO, CALIFORNIA 95814

1 **PROOF OF SERVICE**

2 At the time of service I was over 18 years of age and not a party to this action. My
3 business address is 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On July 11,
2011, I served the following document(s):

4 PETITION FOR REVIEW, OR ALTERNATIVELY, REQUEST FOR OWN MOTION
5 REVIEW OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
6 CENTRAL VALLEY REGION, RESOLUTIONS NO. R5-2011-0017 AND R5-2011-0032
7 CERTIFYING THE FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT FOR
8 THE LONG-TERM IRRIGATED LANDS REGULATORY PROGRAM DATED APRIL 7,
9 2011 AND FILING OF THE NOTICE OF DETERMINATION

10 **By fax transmission.** Based on an agreement of the parties to accept service by
11 fax transmission, I faxed the documents to the persons at the fax numbers listed
12 below. No error was reported by the fax machine that I used. A copy of the record
13 of the fax transmission, which I printed out, is attached.

14 **By United States mail.** I enclosed the documents in a sealed envelope or package
15 addressed to the persons at the addresses listed below (specify one):

16 Deposited the sealed envelope with the United States Postal Service, with
17 the postage fully prepaid.

18 Placed the envelope for collection and mailing, following our ordinary
19 business practices. I am readily familiar with this business's practice for
20 collecting and processing correspondence for mailing. On the same day that
21 correspondence is placed for collection and mailing, it is deposited in the
22 ordinary course of business with the United States Postal Service, in a
23 sealed envelope with postage fully prepaid.

24 I am a resident or employed in the county where the mailing occurred. The
25 envelope or package was placed in the mail at Sacramento, California.

26 **By personal service.** At ____ a.m./p.m., I personally delivered the documents to
27 the persons at the addresses listed below. (1) For a party represented by an
28 attorney, delivery was made to the attorney or at the attorney's office by leaving the
documents in an envelope or package clearly labeled to identify the attorney being
served with a receptionist or an Individual in charge of the office. (2) For a party,
delivery was made to the party or by leaving the documents at the party's residence
with some person not less than 18 years of age between the hours of eight in the
morning and six in the evening.

By messenger service. I served the documents by placing them in an envelope or
package addressed to the persons at the addresses listed below and providing them
to a professional messenger service for service. A Declaration of Messenger is
attached.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
400 CAPITOL MALL, SUITE 1650
SACRAMENTO, CALIFORNIA 95814

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By overnight delivery. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By e-mail or electronic transmission. ~~Based on a court order or an agreement of~~ the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 11, 2011, at Sacramento, California.



Linda Graham