

1 SOMACH SIMMONS & DUNN
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
3 500 Capitol Mall, Suite 1000
4 Sacramento, CA 95814
5 Telephone: (916) 446-7979
6 Facsimile: (916) 446-8199
7 Email: tdunham@somachlaw.com

8 Attorneys for East San Joaquin Water Quality Coalition

DEC 22 2017

hand delivered
10:53 pm

9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10 *In the Matter of Review of Waste Discharge*
11 *Requirements General Order No. R5-2012-0116*
12 *For Growers Within the Eastern San Joaquin*
13 *River Watershed That Are Members of the Third-*
14 *Party Group*

SWRCB/OCC File Nos. A-2239(a)-(c)

**EAST SAN JOAQUIN WATER
QUALITY COALITION'S REQUEST
FOR CONSIDERATION OF
SUPPLEMENTAL EVIDENCE**

15 Pursuant to section 2050.6 of title 23 of the California Code of Regulations, the East San
16 Joaquin Water Quality Coalition (ESJ Coalition) hereby requests that the State Water Resources
17 Control Board (State Board) add the following supplemental evidence to the administrative
18 record for the above-captioned matter and consider the following document: **Exhibit 1 – Review**
19 **of the Irrigated Lands Monitoring Program for the East San Joaquin Watershed**
20 **(December 2017)**, prepared by Exponent, Inc. (Exponent).

21 The ESJ Coalition makes this request because admission of the aforementioned document
22 is necessary and appropriate to respond to issues and questions raised by the State Water
23 Resources Control Board (State Board) in its review of Waste Discharge Requirements for
24 Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party
25 Group (General Order No. R5-2012-0116) (Second Draft Order). This request is consistent with
26 the State Board's regulations governing requests for supplemental evidence that were not
27 previously provided to the regional board (here the "Central Valley Regional Water Quality
28 Control Board," or "Central Valley Water Board") in the underlying proceedings for adoption of

1 the Waste Discharge Requirements for Growers Within the Eastern San Joaquin River Watershed
2 that are Members of the Third-Party Group (East San Joaquin WDR).

3 I. ARGUMENT

4 Section 2050.6 of title 23 of the California Code of Regulations requires any person
5 requesting the State Board to consider extra-record evidence to provide a reason why the
6 documents were unavailable for presentation to the regional board, a detailed statement of the
7 nature of the evidence and facts to be proved, and a detailed explanation of why the evidence
8 could not previously have been submitted. This Request for Consideration of Supplemental
9 Evidence justifies admitting the documents in question as supplemental evidence.

10 Exhibit 1 as identified above was not presented to the Central Valley Water Board during
11 the administrative process related to consideration and adoption of the East San Joaquin WDR
12 because it did not exist at the time that the East San Joaquin WDR was adopted in 2012. Further,
13 it was impossible to anticipate during the Central Valley Water Board's proceedings, issues,
14 questions and findings that might arise in a subsequent State Board review, as is occurring in this
15 case.

16 Specifically, when the Central Valley Water Board considered and adopted the East San
17 Joaquin WDR, the Central Valley Water Board found that the ESJ Coalition's existing
18 monitoring program was adequate. Now, the State Board is considering a Second Draft Order
19 with respect to review of the East San Joaquin WDR, and has found the ESJ Coalition's
20 monitoring program to be inadequate. Additionally, the Agricultural Expert Panel's review of the
21 ESJ Coalition's existing monitoring program was a new process that occurred after Central
22 Valley Water Board adoption, and prior to this State Board proceeding. Thus, the need to
23 respond to the Second Draft Order, State Board staff findings and the Agricultural Expert Panel's
24 review has arisen recently and well after completion of the Central Valley Water Board's
25 proceedings.

26 In response to statements and proposed findings in the Second Draft Order that focus on
27 the ESJ Coalition's existing irrigated lands surface water monitoring program, and the Second
28 Draft Order's suggestion that a new Expert Panel process is warranted, the ESJ Coalition on its

1 own initiative retained a national leading expert at Exponent to conduct an objective and
2 independent review of its surface water monitoring program. The final version of Exponent's
3 report became available on December 21, 2017.

4 **A. Request for Supplemental Evidence Is Timely Made.**

5 The ESJ Coalition submitted this Request for Supplemental Evidence as soon as possible
6 after the report became available on December 21, 2017. The need for this report became
7 apparent only in response to the Second Draft Order, whereby the State Board staff made
8 significant findings with respect to the sufficiency, or lack thereof, of the ESJ's surface water
9 monitoring program. The Central Valley Water Board, on the other hand, has made significant
10 findings as to the adequacy of the ESJ Coalition's monitoring program. Accordingly, the ESJ
11 Coalition timely submits this Request for Supplemental Evidence.

12 **B. Nature of the Evidence.**

13 As previously indicated above, the evidence being provided here was not available at the
14 time of the Central Valley Water Board's consideration and adoption of the East San Joaquin
15 WDR. That process took place over five (5) years ago, and State Board just now questions the
16 sufficiency of the ESJ Coalition's monitoring program. It is appropriate for the State Board to
17 supplement the record with the requested evidence because it is being offered directly in response
18 to proposed revisions that the State Board potentially seeks to make with respect to the Second
19 Draft Order.

20 The document being proposed as supplemental evidence is being provided to support the
21 ESJ Coalition's request that the State Board find that the ESJ Coalition's monitoring program is
22 adequate.

23 **C. Additional Evidence Provided in Writing.**

24 With this request, the ESJ Coalition provides the supplemental evidence in writing, on a
25 compact disc, attached as Exhibit 1.

26 ///

27 ///

28 ///


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. CONCLUSION

For the reasons provided above, the ESJ Coalition respectfully requests that the State Board grant the request contained herein.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: December 22, 2017

By: 

Theresa A. Dunham
Attorneys for East San Joaquin Water Quality
Coalition

1 SOMACH SIMMONS & DUNN
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
3 500 Capitol Mall, Suite 1000
4 Sacramento, CA 95814
5 Telephone: (916) 446-7979
6 Facsimile: (916) 446-8199
7 Email: tdunham@somachlaw.com

8 Attorneys for East San Joaquin Water Quality Coalition

DEC 22 2017

Hand Delivered
10:53 pm

9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10 *In the Matter of Waste Discharge Requirements*
11 *General Order No. R5-2012-0116 For Growers*
12 *Within the Eastern San Joaquin River Watershed*
13 *That Are Members of the Third-Party Group*

SWRCB/OCC File Nos. A-2239(a)-(c)

DECLARATION OF MELANIE
EDWARDS IN SUPPORT OF EAST SAN
JOAQUIN WATER QUALITY
COALITION'S REQUEST FOR
CONSIDERATION OF
SUPPLEMENTAL EVIDENCE

14
15 I, Melanie Edwards, declare:

16 1. I am an accredited statistician with the consulting firm of Exponent, Inc.
17 (Exponent). Exponent is a consulting firm with expertise in assisting clients with human health,
18 environmental, engineering, and regulatory issues, including projects involving hydrodynamics,
19 aquatic chemistry, and the environmental fate of numerous constituents. Exponent was retained
20 by the East San Joaquin Water Quality Coalition (ESJ Coalition) to conduct a review of the ESJ
21 Coalition's existing irrigated lands monitoring program. I assisted with data analytics for the
22 preparation of the monitoring program review for the ESJ Coalition.

23 2. Additionally, I have over 20 years of experience performing and critiquing aspects
24 of data analytics of lab chemistry concentrations, toxicity tests, field screening results, and
25 background or reference comparisons. My areas of application include environmental chemical
26 forensics and pesticide registration, and I have provided statistical support on projects involving
27 metals, PCBs, PAHs, and dioxins/furans in soil, sediment, dust, groundwater, and surface water.
28

1 SOMACH SIMMONS & DUNN
2 THERESA A. DUNHAM, ESQ. (SBN 187644)
3 500 Capitol Mall, Suite 1000
4 Sacramento, CA 95814
5 Telephone: (916) 446-7979
6 Facsimile: (916) 446-8199
7 Email: tdunham@somachlaw.com

8 Attorneys for East San Joaquin Water Quality Coalition

DEC 22 2017
Hand Delivered
10:53 PM

9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

10 *In the Matter of Waste Discharge Requirements*
11 *General Order No. R5-2012-0116 For Growers*
12 *Within the Eastern San Joaquin River Watershed*
13 *That Are Members of the Third-Party Group*

SWRCB/OCC File Nos. A-2239(a)-(c)

DECLARATION OF SUSAN C.
PAULSEN IN SUPPORT OF EAST SAN
JOAQUIN WATER QUALITY
COALITION'S REQUEST FOR
CONSIDERATION OF
SUPPLEMENTAL EVIDENCE

14
15 I, Susan C. Paulsen, declare:

16 1. I am Principal Scientist and Director of the Environmental and Earth Sciences
17 Practice with the consulting firm of Exponent, Inc. (Exponent). Exponent is a consulting firm
18 with expertise in assisting clients with human health, environmental, engineering, and regulatory
19 issues, including projects involving hydrodynamics, aquatic chemistry, and the environmental
20 fate of numerous constituents. Exponent was retained by the East San Joaquin Water Quality
21 Coalition (ESJ Coalition) to conduct a review of the ESJ Coalition's existing irrigated lands
22 monitoring program. I provided direct oversight of Exponent's services to the ESJ Coalition,
23 particularly the preparation of the monitoring program review.

24 2. Additionally, I have 25 years of experience with projects involving hydrology,
25 hydrogeology, hydrodynamics, aquatic chemistry, and the environmental fate of a range of
26 constituents. My expertise includes designing and implementing both field and modeling studies
27 to evaluate surface water and groundwater flows and contaminant fate and transport.
28

