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VIA EMAIL
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Adam Laputz
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Re: Response Comments on Draft General Order

Dear Chair, Vice Chair, Members, Ms. Creedon, Mr. Karkoski and Mr. Laputz:

The Southern San Joaquin Valley Water Quality Coalition (SSJVWQC) submits these comments on the proposed General Order for members of the third party group within the Tulare Lake Basin, excluding the area of the Westlands Stormwater Coalition, under the Irrigated Lands Regulatory Program. The agricultural waiver which has been in existence since 2004 pursuant to California Water Code section 13269 is now being bifurcated into six or more separate general orders, as driven by the staff alternative which was adopted by the Board, even though this alternative had not been reviewed pursuant to either the EIR or the associated Economic Analysis.

The Board staff has been engaged in informal negotiations with three of the water quality coalitions, namely, the Eastern San Joaquin Water Quality Coalition (ESJWQC), the SSJVWQC and the Rice Commission Water Quality Coalition on their general orders. Other coalition negotiations will follow. We have previously commented on the ESJWQC general order.

We have been previously advised by the Board and staff that the new general orders are being advanced pursuant to CWC § 13263, and are to follow similar formats (with the likely exception of Rice); however, the operational sections will likely be significantly different to reflect the considerable differences between the coalitions in respect to commodities, rainfall, hydrology, groundwater, Delta drainage, etc. However, upon reviewing the ESJWQC proposed General Order it appears very similar to the SSJVWQC draft now out for interested party review, despite considerable differences in conditions between the two coalition areas. Our coalition has been engaged in many multi-hour negotiation sessions with Regional staff, but it has been apparent that staff has not accommodated many of the points raised during these sessions.

The SSJVWQC is the existing third-party water quality coalition assisting growers in the Southern San Joaquin Watershed area, and at this writing, the entity that intends to submit a Notice of Intent to continue as the third-party coalition to assist its Members in this watershed area under this new General Order.

Following are some significant issues and potential problems with the proposed SSJVWQC General Order—this is just a summary of some of the key concerns which we have identified with the limited time available. We will certainly have considerably more comments submitted by our sub-coalitions and at subsequent opportunities in the process.

I. WASTE DISCHARGE REPORT – GENERAL ORDER

1. Page 1, Section 2, and Page 2, Section 9 – Membership

We appreciate the amendment to clarify that either the owner or operator may sign the farm up as a coalition member, which will avoid many problems and needless duplication.

2. Page 1, Section 4 and Page 2, Section 6 – Waste

Section 1 references that the General Order applies to "waste" discharges. Footnote 1 references Attachment E as defining "waste". Attachment E appropriately references that the CWC defines "waste" in section 13050(d). That attachment, however, goes well beyond this statutory definition, and therefore is not the definition that is being used in the General Order.

> Water Code section 13050(d):"Waste" 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 purposes of, disposal.

> The Proposed Order, however, expands that definition of "waste" so as to include "earthen materials, inorganic materials, organic materials such as pesticides and biological materials ... such water may directly impact beneficial uses or may impact water temperature, pH and dissolved oxygen."

What is the basis and authority for departing from this specific legislative direction? We have repeatedly sought this authority from the Regional staff, and staff has always refrained from answering, apparently because there is no such authority.

Further, what does the Board regard as constituting "waste"? When does sediment, nitrate or any other constituent become a "waste"? If the constituent does not exceed the Basin Plan objective or the trigger limit, how can it be identified as a waste? These are critical issues as they mark the point of the Board's jurisdiction. These points need to be expressly identified and clearly stated in this WDR General Order.

Under the Water Quality Control Plan for the Tulare Lake Basin (Basin Plan), the water quality objectives for surface water provide a limit of a constituent for discharge without requiring an individual permit from the Regional Board.

If the surface waters applied for irrigation of crops does not contain a constituent that exceeds the Basin Plan water quality objectives, or if such discharge is not classified as a "waste" as defined by Porter-Cologne [CWC, § 13050(d)], there is no authority for the Regional Board to regulate or require a report of waste discharge, nor is there authority for the Board to control a landowner's operations.

3. Page 2, Section 5 and Pages 3 and 4, Section 14 – Board Authority

This section clarifies that the Order does not regulate surface water on fields or farm distribution systems, ancillary structures or water in soil above the water table. This is important and touches on an important issue. The Regional staff has indicated that it believes it may have a regulatory interest on some farm distribution water structures and in groundwater above the water table. This section expressly points out that such distribution systems and the soil above the aquifers are beyond the Board's jurisdiction. (See also point #96, below)

4. Page 2, Section 8 – The EIR Did Not Evaluate the Adopted Alternative

This section incorrectly suggests that the adopted order was selected from the alternatives evaluated in the EIR. This alternative was not one of the alternatives evaluated and is outside the range of alternatives which were reviewed. Staff is well aware of this situation and stubbornly

contends there were six alternatives evaluated in the EIR review, which is certainly not the case. Litigation is pending concerning this very issue. (See also points #13 and #77)

5. Page 2, Section 6 – Edge of Field Discharge

The Draft WDR suggests it is intending to regulate water quality at the end of the field, regardless if the return flow or stormwater runoff causes or contributes to violations of receiving water quality standards. Such regulation at the end of the field is inappropriate and exceeds the Regional Board's authority. First, the Porter Cologne Water Quality Control Act (Porter-Cologne) states that "activities and factors that may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000.) Regulating water quality directly at the end of the field is NOT reasonable and directly violates the legislative intent with respect to Porter-Cologne control of non-point discharges. Second, waste discharge requirements must be related to the conditions in the receiving waters upon or into which the discharge is made, or is proposed. (Wat. Code, § 13263(a).) Irrigation return flows or stormwater leaving a field may or may not discharge to or affect a water of the state. This is particularly true of our coalition where about half of the irrigated lands do not drain to surface water and many of our irrigation wells exceed 1000 feet. Accordingly, it is inappropriate to set forth requirements that specifically apply to water leaving the field. Rather, the Draft Order must be limited to regulating discharges of waste that may affect waters of the state.

6. Pages 2 and 3 - All Irrigators are Dischargers

The proposed Order asserts, without evidence or scientific support, that all irrigators are potential dischargers of waste to groundwater, regardless of soil types, depth to usable groundwater, field practices and other conditions. The Regional Board must provide further evidence to support this assertion and, without it, more narrowly prescribe conditions that scientifically support the surface to groundwater connection. (See points #2 and #3, above)

7. Page 3, Section 13, (also Page 21, Section VII.A.2/1 on Reports), also Page 21, Section A – New Members

There are some two million irrigated acres in the Southern San Joaquin which will have to be brought into the Regional Board's jurisdiction and this ILRP for the very first time. This is equivalent to the total size of the East San Joaquin, the San Joaquin and Delta, and the San Joaquin River Coalition combined areas. This effort is unique to our coalition, and is in addition to signing up the existing members. This will require extraordinary efforts by the coalition, and

calls for total coordination with the Regional staff. Therefore, this requirement needs to be afforded at least 180 days.

8. Page 3, Paragraph 13 – Tulare Lake Basin

We have no confidence in the numbers advanced (there are more irrigated acres) and the math does not seem to add up as to the numbers set forth. Further, the numbers seem to be inconsistent with those in Attachment A, page 1 (See point #58, below)

9. Page 4, Paragraph 18 – Nitrate Exceedances

Nitrates should not generally be classified as contaminants unless they cause or contribute to an exceedance of a water quality objective in a water of the state. Nitrates are the most essential nutrients and nitrogen is the most prevalent element in our atomosphere.

10. Page 6, Section 23– Section 13267 Reports

Under Porter-Cologne, the Regional Board, or the Executive Officer through its delegated authority, has the authority to require technical reports, as necessary, under section 13267. However, section 13267 is not without limits. When the Regional Board is issuing such an order, section 13267 requires the Regional Board to show "[t]he burden on discharges of the Order, including costs to develop these reports which must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring these reports, the statute compels that 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 provide the reports." (Wat. Code, § 13267(b)(1).)

11. Page 6, Paragraph 24 – Overbroad Delegation of Authority

This section goes well beyond asserting a factual "finding". Further, it attempts to impart a wide open delegation of authority to the Executive Officer to make unlimited demands on the third party groups. Such delegation is wrongly placed in a Finding and is also improperly overbroad, as it is without any parameters for its exercise.

12. Page 6, Finding 24, second paragraph, Technical Reports

This should be revised as follows:

The original wording requires the third party to perform monitoring to evaluate effectiveness of individual member action. The proposed change requires the Member not the third party to provide technical reports.

> "Where regional monitoring does not allow the Regional Board to determine potential sources of water quality problems, identify whether management practices are effective, or to determine whether there are individuals causing exceedances of water quality objectives, this Order requires the Member to provide technical reports, which may include field specific special studies, at the direction of the Executive Officer. Such technical reports are needed to determine compliance when regional monitoring or other available information is not sufficient to determine compliance or the effectiveness of management practices."

13. Page 8, Paragraphs 33 and 34 – The Inadequate EIR Alternative Adoption

The language incorrectly states that there were "2-6 alternatives in the EIR". This is expressly false, as only five alternatives were advanced and reviewed. This fact is well known by staff; however, they insist on continually advancing this falsehood. (See also points #4, above, and #77, below)

14. Page 9, Sections 37-39 – High Quality Water

In 1968, the State Board wanted to provide special protection for the state's pristine "high quality waters," as distinct from mere "quality waters," which would be those represented by waters meeting the Basin Plan standards. For those pristine high quality waters, the antidegredation policy provided for specific regulatory efforts. This General Order should identify those waters which are classified as high quality, and those which are only quality waters. Certainly, the ag water in our distribution and conveyance systems are not pristine high quality water. (See also points #78 and #79, below)

15. Pages 9 to 10, Paragraph 40 – New Costs of Compliance

The cost estimate for compliance for growers in the Tulare Lake Basin is confusing, and certainly incorrect. Finding 13 indicates there are approximately 1.65 million acres in the coalition boundary that are subject to the new General Order. Using the estimated cost of $120 per acre would provide a total cost of approximately $200 million, not the $100 million, per year. Further, there are at least twice as many irrigated acres in the SSJVWQC that will be subject to this Order (closer to 4 million than 1.65 million). Therefore, this cost will exceed $400 million. Furthermore, the cost estimates should be based upon the number of irrigated lands that are

actually subject to the Order and not be based on all irrigated lands in the Central Valley as stated in footnote 13, page 10. (See also points #16, #17, #55, #65 and #80, below)

16. Page 10, Paragraph 40 – Unreasonable Costs

Implementation of the Proposed Order will create additional, unnecessary burdens on irrigators and third party groups that will have little or no benefit in protecting water quality. Irrigators will be required to pay for preparation or certification of nutrient management budgets in high vulnerability areas, certification of sediment and erosion control plans where the potential to discharge sediments to surface waters of the state exists, and civil engineer design of new or modified construction of on-farm ponds, tail-water recovery systems, etc. Membership costs in the third party group will increase significantly to cover monitoring wells, costs of groundwater monitoring, nutrient use reporting, outreach and education, and other required activities. The draft WDR estimates costs of BMPs of $100 million per year, which are not fully detailed or supported, and are thus questionable. These costs (which will most likely approach $400 million) will have a significant impact on the valley ag economy, and threaten the economic viability of smaller farms.

The document presents these costs of $100 million per year, or $120/acre annually, which are drastically understated. (See point #15, above) This costly regulatory expansion is largely due to the new provisions of this order dealing with increased monitoring groundwater management, farm plans, professional certifications and hundreds of new groundwater monitoring wells, etc. These clearly total to "unreasonable costs". (See also points #15 above, and also points #55 and #80, below, regarding the legal standard.) As evidenced by the comments below, the draft General Order for the SSJVWQC fails to meet this "reasonable" legal standard.

17. Page 10, Paragraph 40 – CWC Section 13141 Applicability

Finding 40 states that section 13141 of the Water Code does not apply to agricultural water quality control programs developed through waivers and/or waste discharge requirements. This is not true. The language of section 13141 does not state or imply that it is limited only to application of an agricultural water quality control program that is adopted into a Basin Plan. To the contrary, the language states that "prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan." (Wat. Code § 13141.) The fact that the long-term irrigated lands regulatory program is being implemented through a series of waste discharge requirements does not negate the applicability of section 13141 of the Water Code. Regardless, the costs of this program are significant and

need to be considered by the Regional Board in its adoption of the Draft WDR and all its requirements. By the Board's own assertion, thousands of acres would be regulated out of business. Now that the Board estimates this will cost $120/acre, that projection will increase substantially. (See points #15 and #16)

18. Page 11, Paragraph 43, and Page 26, 2nd Paragraph – CV-SALTS

The CV-SALTS process is not a codified regulatory program; therefore, it is improper to state that this order would be amended to conform to actions of that unofficial stakeholder process. The statement that salts and nitrates are "increasing" in the region, is not believed to be universally true, therefore it is improper to include that statement in a Finding .

Lastly, the proposal identified "reduction of salt imported with out-of-basin water supplies" as the only remedial option is inadequate. It should at least also identify salt disposal as an important remedy option.

The Page 26 comment that the water quality coalitions must submit management plans to the CV-SALTS group, a non-agency, non-official stakeholder process, is improper and must be stricken from regulation. Unofficial coordination is one thing, but making CV-SALTS as a regulatory component of this Order is improper and unreasonable.

19. Page 11, Paragraph 45 – Coordination with the Dairy Order

There has been considerable uncertainty regarding the interface of the Dairy Order and the existing ILRP waiver. This has been particularly evident involving the dairy operations' farm properties, whether they spread manure on such property or not. It has been stated by staff that the Dairy Order would be amended to require similar testing for constituents as required by this order, but that has yet to be accomplished by the Board.

(See also comments as to Attachment A, page 46)

20. Page 12, Section 48 – CDFA Fertilizer Program

We appreciate the reference to the need for coordination with the California Department of Food and Agriculture FREP (Fertilizer Research and Education Program).

21. Page 12, Section 48 – Nutrients

This Finding refers to nutrients in a generic manner. The primary issue with respect to agricultural fertilizer use and potential groundwater impacts is specific to nitrogen nitrates – not nutrients. Thus, this Finding, and others, needs to be revised to refer specifically to nitrogen or nitrates management.

22. Pages 12 and 13, Sections 53 and 54 – Enforcement

This Finding regarding enforcement clearly indicates that the Regional Board intends to holds growers responsible for meeting water quality objectives at the end of the field, and that the failure to do so will result in a priority enforcement action. End of field discharge limitations are not, nor have they ever been, appropriate waste discharge requirements. Such limitations are unreasonable and fail to comply with the Legislative intent of Porter-Cologne. By creating such limits here, the Regional Water Board is embarking on a completely different regulatory program than that which was evaluated in the Programmatic Environmental Impact Report, or as is conveyed publically to growers and Regional Board members. This is merely one example where the staff alternative adopted by the Regional Board went well beyond the five alternatives reviewed in the EIR.

23. Page 14, Section 61, and Page 17, IV.B.13 – Private Property Access/Unlawful Access

The preceding waivers properly conformed the waiver to the controlling Water Code sections clarifying that access to private property would be by permission or inspection warrant. With no prior discussion, this General Order now is set up such that important private property rights are sacrificed. The right to enter must be in accordance with the Code and Constitutional constraints, and not as written where staff attempts to self-authorize their private property entry to get around the statute and constitution by this section.

Agreeing to be subject to the terms of the order does not waive an individual's statutory or constitutional rights against improper search and seizure without a warrant. This provision must be revised to be consistent with the provisions of Water Code section 13267(c).

24. Page 12, Paragraphs 49-53 – Numbering Problem

There is a numbering problem as this Order jumps from #49 to #53, omitting 50, 51 and 52. This needs to be corrected.

25. Page 15, Section III. - Discharge Limitations

This section needs to be modified as follows:

"A. Surface Water Limitations

1. Except as allowed or permitted under this order, wastes discharged from Member operations shall not cause or contribute to an exceedance of applicable water quality objectives in surface water, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance.

B. Groundwater Limitations

1. Except as allowed or permitted under this order , wastes discharged from Member operations shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance."

26. Page 15, Section III.A. and B. – Grower Responsibility for Each Molecule

The language "cause or contribute" to an exceedance is overbroad. It should be merely "cause" because a single molecule or grain of sediment would be a contribution, and that should not make a farmer wholly responsible. Perhaps it should read, "significantly contribute to causing an exceedance."

27. Page 16, Section IV.A.3 – Water Quality Objectives

As proposed, this proposal would require Members to implement management practices that do more than achieve compliance with water quality standards. It states that Members must implement management practices to "improve and protect water quality" in addition to achieving compliance with water quality objectives. (Draft WDR, p. 16.) Such a requirement exceeds the Regional Board's regulatory authority. The Regional Board is to adopt waste discharge requirements that implement water quality control plans. (Wat. Code § 13260(a).) Such plans include water quality standards. There is no statutory authority that gives the Regional Board the authority to require individuals to go beyond achieving compliance with applicable water quality standards. Accordingly, the references to "improve and protect water quality" must be removed.

28. Page 16, section IV.B. - Requirements for Members of the Third-Party Group

We propose to add a new requirement as follows:

> "Each farmer Member that has signed up his leased lands and subsequently terminates the leasehold interest in such lands covered under this Order shall provide to the Property Owner notice of its intent to terminate the lease, and thereby coverage by this Order."

29. Page 16, Section IV.B.4 and Page 19, Section C.8 - Requirements of Members of Third-Party Group - Tail Water Recovery

This provision requires that each member shall annually participate in third party outreach events. There are three significant problems with the language. First, these events will not be held only by the third party, but also by Farm Bureau, water districts, RCDs, commodity groups, University Ag Extension, and many other delivery methods. Second, all these efforts will be in addition to the more traditional farm and water outreach mechanisms. There is absolutely no way to keep track of all such outreach and participation in each delivery. Third, requiring annual attendance to rehash the same stuff as the preceding year is meaningless and needlessly burdensome.

30. Pages 17 and 18, Section B.16 – Third Party Member Requirements – Tail Water Recovery

Throughout the eight years under the waiver program growers have been encouraged to capture their drain water to retain it or reuse it so as to avoid runoff concerns. The staff now advances a proposal to discourage such retention and thereby encourage runoff. They do this by placing unreasonable restrictions on constricting or modifying such ponds. This is a reversal of direction, and it is complete overkill to require a farmer to hire an engineer to design and construct a pond that can be scratched in the corner of a field to control field runoff.

This provision has just recently been added to the Draft WDR, and creates a new and additional unnecessary expense with respect to complying with the terms of this order. Under provision 16 as proposed, there is a new requirement that a Member would need to hire a licensed civil engineer to design and construct settling ponds, basins, and tailwater recovery systems. Like many other provisions in the Draft WDR, this provision is unreasonable and, more importantly, unnecessary. First, the Draft WDR fails to provide any findings or reasons to support the inclusion of this expensive and unnecessary provision. Farmers and their water engineers have for decades designed and constructed settling ponds, basins and tailwater recovery systems. There is no information to suggest that farmer created facilities are problematic with respect to water quality, and that farmers are unable to continue to competently

develop such facilities. Further, the cost of hiring a professional engineer is unreasonable, and provides no added water quality benefit. Accordingly, this provision must be removed from the Draft WDR. (See also point #31, below)

31. Page 17, Section B.16 - Requirements for Members of the Third-Party Group

This should be modified as follows:

> "Newly constructed and/or modified settling ponds, basins, and tail water recovery systems shall be constructed to minimize infiltration to the extent feasible and to prevent slope failure or erosion The requirement should be amended to require that impoundments be constructed to minimize infiltration to the extent feasible." (See point #31, below)

32. Pages 18 and 19, Section C. - Requirements for the Third-Party Group - Fees

The present language states, "Collect any fees from Members required by the State Water Board pursuant to the fee schedule contained in Title 23 CCR. Such fees shall then be submitted to the State Water Board." The coalition is the depositary for required fees submitted; but is not the collection agency for the State Board. The Member is the responsible party for paying the fee.

33. Page 19, Section 8 - Report Compliance

This section inappropriately compels coalitions to become enforcement agencies – a concept clearly agreed as far back as 2004 would never be required of coalitions.

The requirement to inspect and report farmers who did not provide certain information or employ some specific potential management practice is inappropriate. Similarly, providing lists of those who did not respond to a Regional Board request for information is inappropriate. Further, the requirement to report if the grower's water or groundwater "failed to achieve compliance with water limitations" is a totally unjustified requirement of coalitions, and these are clearly the responsibility of the Regional Board.

34. Pages 21 to 23, Section VII. - Required Reports and Notices-Members

The Notice of Confirmation/Notice of Intent/Membership Application language should be modified as follows:

> "Beginning 180 days after the Executive Officer issuance of a NOA to the third party, any growers within this Order's boundaries that are not yet Members of the third-party or a Coalition governed by the Coalition Group Conditional Waiver must submit..."

We should also add a new provision on page 22:

> "Any landowner or grower that either regains control or acquires control through a leasehold interest for land previously covered by this Order may be covered by providing within 180 days a completed membership application to the third party containing the information and certifications required in Section VII A. 2." (See also point #7, above)

35. Page 22, Section B – Farm Evaluation and Harmonizing the General Order and the Waiver

There is confusion as to the timeline for the farm plans. It says March 1 of each year (section B.1.); however, Section B language states 90 days after the template is available.

We have no idea when the templates will be available, nor certainty as to when the Order will become effective. Therefore, it is impossible to know if the 90 days will harmonize with the March date. This could also be significantly altered by the Superior Court action presently pending.

This also relates to the point raised several times during our negotiations dealing with the sequencing/harmonizing of the existing waiver and this new General Order. This has not been addressed in this draft.

36. Pages 22 and 23, Section C – Sediment Water Management Plan

The Sediment Water Management Plan (SWMP) is a new requirement which has not had sufficient discussion or understanding. It does not express what triggers requiring such a plan, or what is required in an SWMP. Further, the reference to a template is unreasonably vague as no template draft has ever been provided.

This proposed requirement is problematic for several reasons. First, this expands the requirement from those that could potentially discharge to a surface water, to anyone that has irrigation return flow or stormwater moving offsite of its property, regardless of the potential of this runoff discharging to a surface water. In other words, the Regional Board is creating end-of-

field discharge limits for sediment. This requirement fails to take into account that growers in some areas may have collective management practices at the end of a drain, or systems that collect and return runoff, even though the irrigation return flow moves offsite first. As indicated previously, the SSJVWQC and the districts are very familiar with its coalition area, and can easily identify the parcels and/or areas where such plans are necessary. Second, the requirement as proposed is overbroad and confusing. It provides no explanation or direction to the coalition or its members as to the category of individuals that are in fact required to prepare a sediment and erosion control plan. For these reasons, provisions in either VII.C or IV.B.7 should be revised to reflect that sediment and erosion control plans are required of those members that are notified by the Board or the coalition that they must do so.

The requirement with respect to development of such plans by a certified professional is problematic for a number of reasons. First, such a requirement creates a new expense and cost to those growers subject to this requirement. Professional engineers and/or certified specialists are paid consultants, which must then be hired to prepare such plans. Depending on the size of the grower's operation, the expense may be significant. Second, the intended reason for requiring preparation by a professional has no relevance to the irrigated lands program. Just because the construction stormwater program requires preparation of plans by professionals does not mean that such a requirement is appropriate for agriculture. Agricultural systems are different from construction projects. Construction projects are typically short-term projects that move extensive amounts of sediment, and typically clear project areas of all vegetation, at least for a short time. In comparison, agricultural systems are on-going operations such as preparation for planting or crop irrigation itself. Moreover, the construction stormwater program has as its bases a federal NPDES program; the irrigated lands program is adopted under state law only as federal law does not deal with ag drainage.

Accordingly, the requirement that sediment and erosion control plans need to be developed by a certified professional, any reference to service providers needs to be removed from the Draft WDR.

37. Page 23, Section D – Nitrogen Budget

The Nitrogen Budget Template is also not available; however, we at least know some of the elements which may be required, which is not true of the Sediment Template. Until these regulatory documents are available, this entire proposal is premature, or at the very least, the comment period must be re-opened when they are available. (See also points #38, #39 and #40, below)

38. Page 23 - Annual Nitrogen Budget

The language should be modified as follows:

> "By 1 March of each year, following the year the Executive Officer provides the Annual Nitrogen Budget Worksheet Template, and the coalition has had the opportunity to comment, all Members in the high vulnerable areas, except those in areas without MUN beneficial use, must prepare a Proposed Annual Nitrogen Budget Worksheet Template ..."

As compared to the administrative draft, the Draft WDR now requires all members to prepare annual nitrogen budgets. Previously, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets. The SSJVWQC believes that it is unnecessary to require all members to prepare annual nitrogen budgets. Rather, the SSJVWQC recommends that the Draft WDR be revised to state that "only members in high vulnerable areas must prepare annual nitrogen budgets versus making it a requirement of all growers. (See also points #37, above, and #39 and #40, below)

39. Page 23 - Nitrogen Use Data

The reporting provisions seem to have been recently expanded, and the rational has not been provided. As a result, the Annual Nitrogen Budget Reporting requirements are extensive and expensive, and Annual Nitrogen Budgets may be used as regulatory end-points for determining compliance with the terms of the order. The Draft MRP reporting requirements must be revised.

Annual Nitrogen Budgets are required of members in highly vulnerable groundwater areas where nitrate is found to be a constituent of concern. Annual Nitrogen Budget worksheets may include the calculation of a nitrogen consumption ratio. The ratio is an estimate of anticipated crop consumption in comparison to total applied nitrogen through sources including all added fertilizers, nitrates in irrigation supply water, available nitrates in soil and other sources. The budgets and ratios are tools to be used to inform the Members with respect to the need for new and/or additional management practices; ratios are not to be used as regulatory end-point for determining compliance with water quality standards, or this Order.

The WDR provides that third parties will aggregate information from Final Annual Nitrogen Budget Worksheets to characterize the input, uptake, and loss of nitrogen fertilizer applications by specific crops for the significant crops in the Tulare Lake Basin. This information may include a summary of nitrogen consumption ratios by crop or other equivalent reporting units. The nitrogen use ratio mentioned above is an estimate of anticipated crop consumption in comparison to total applied nitrogen through sources including fertilizers,

manures, composts, nitrates in irrigation supply water and other sources. However, appropriate ratios vary from crop to crop, and need to account for site-specific conditions. Any such ratios shall be used as a tool to inform the third-party and its members with respect to the need for new and/or additional management practices; ratios cannot be used as a regulatory end-point for determining compliance with water quality standards, or the terms of this Order. (See also points #37 and #39)

40. Page 23 – Nitrogen Use

Nitrogen Use Data is demanded in high vulnerable areas. A farmer's actual nitrogen use (fertilizer) is proprietary information and must be kept confidential. The Proposed Order requires irrigators in high vulnerability areas to prepare Nutrient Management Budgets before each crop year and to report actual use at the completion of each crop year. This information is to be provided to the third party group and also made available to the Regional Board staff upon request. Due to the proprietary nature of this information, additional conditions narrowly defining circumstances when and how such information should be made available to the Regional Board, and thus becoming public, should be developed. Moreover, providing any farm "inputs" should be limited to situations where exceedances of nitrates in drinking water supplies have been documented over multiple years of data collection under the new Long Term ILRP. (See also points #37, #38 and #39, above)

41. Pages 24 & 25, VIII. - Required Reports and Notices – Third-Party

B. Farm Evaluation Template at page 24, should be revised as follows:

"The Central Valley Water Board staff shall develop a draft Farm Evaluation Template upon consultation with the third party and appropriate agencies and entities."

D. Annual Nitrogen Budget Worksheet Template at page 25, should be revised as follows:

"The Central Valley Water Board staff shall develop a draft Annual Nitrogen Budget Template upon consultation with the third party and appropriate agencies and entities."

E. Sediment and Erosion Control Plan Template at page 25, should be revised as follows:

"The Central Valley Water Board staff shall develop a draft a Sediment and Erosion Control Plan upon consultation with the third party and appropriate agencies and entities."

G. Surface Water Exceedance Reports at page 25, should be revised as follows:

"The third-party shall report surface water monitoring results in excess of trigger limits adopted by the Board, which are based on interpretations of narrative water quality objectives."

42. Templates

Staff has reversed their position on each of these three templates several times during our negotiations. This version calls for them to be secretly drafted by the staff and be imposed on coalitions and members as a regulatory requirement. This is improper on several accounts. First, the suggestion that the public would be involved with the staff in developing these individual farm templates is highly inappropriate.

This would turn what should be technical documents into political documents. All three of these documents need to be developed by those in agricultural, with the assistance of professionals that work with agriculture. Specifically, all three of these documents need to be developed with the assistance of qualified agronomists and/or agricultural engineers – not interested party advocates. It is inappropriate to suggest that others outside of the third-party coalitions and their advisors should be able to participate in the development of these farm templates. Again, these are technical documents that should not rise to the level of "policy," which is likely to occur if their development is subject to a stakeholder-like process.

Second, if the template documents are prepared by Regional Board staff, these documents then become new permit requirements, and are essentially permit amendments. Amendments to WDRs are not delegated to the Executive Officer but instead require full Regional Board action. (Wat. Code, § 13223(a), "Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: (1). . . ; (2) the issuance, modification, or revocation of any . . . waste discharge requirement;. . . ." Thus, before the Regional Board staff could require members to report information on the developed templates, such templates would need to be subject to the appropriate noticing requirements, be available for public comment and review, be adopted by the Regional Board. (See also point #40, above)

43. Page 24, Section VIII.A.3 – Application to Serve as a Third Party

It is unclear what is intended by the use of the term "binding agreement".

44. Page 25, Section VIII.F – Groundwater Quality Assessment Reports (GARs)

The timing of submittal of such workplans should start from Executive Officer approval of the GAR and not the Notice of Applicability. Until the GAR is approved by the Executive Officer, it will be impossible for the coalition to develop the monitoring workplans.

45. Pages 25, 26 and 27, Section I.1 – SQMP/GQMP General Requirements

This section attempts to empower the Executive Officer to independently compel the coalition to amend or change their management plans. These pieces are crafted by the farmer/coalitions and for the Executive Officer to demand changes shifts this responsibility. There must be a standard the Executive Officer must meet, or a finding that must be made in order to impose her will. (See also points #46 and #47, below)

46. Page 26 - Conditions Triggering Preparation of SQMP/GQMP

Each of these management sections needs modification.

Surface Water Quality Management Plan (SQMP) revise paragraph as follows:

> "3) The Executive Officer upon substantial evidence provided to the third party determines that irrigated agriculture may be causing or contributing to a trend of degradation of surface water that may threaten applicable Basin Plan beneficial uses."

Groundwater Quality Management Plan (GQMP) (pages 26 & 27) revise the paragraph as follows:

> "4) The Executive Officer upon substantial evidence provided to the third party determines that irrigated agriculture may be causing or contributing to a trend of degradation of surface water that may threaten applicable Basin Plan beneficial uses."

47. Page 26, Section 2 and footnote 21 – Groundwater Quality Management Plans

It is unclear as to what constitutes a groundwater exceedance. It should be made clear that for this Order a groundwater exceedance is limited to a drinking water nitrate basin plan exceedance when reaching a usable aquifer.

Surface Water Quality Management Plans (SQMPs) are designed to be immediately reactive to the observed exceedance condition, identify the source of the condition, address the condition, and then demonstrate completion of the action(s) outlined in the SQMP. The third-party could then obtain completion of the management plan

Groundwater quality conditions, however, are contributed to by widespread non-point sources over wide geographical areas, perhaps far removed from the monitoring point, and perhaps many years prior. Therefore, they do not lend themselves to the same "management plan approach."

The Trend Groundwater Monitoring Program is designed to determine baseline quality of groundwater in the third-party area, and to develop long-term groundwater quality information that can be used to evaluate the regional effects (i.e., not site-specific effects) of irrigated agriculture and its practices. Long periods or many decades may be needed depending on the hydrogeologic setting. Groundwater trend monitoring describes water quality results collected over a long period that are symptomatic of practices associated with regional land uses. The measured water may have source many miles away, some 20 to 30 years previous.

Thus, rather than having GQMPs triggered in the way as proposed in the Draft WDR. The groundwater plans should identify areas where the coalition should concentrate its efforts on education and outreach to its Members, as well as identifying appropriate management practices for implementation. These areas would be prioritized based on a number of factors, including but not limited to, groundwater monitoring information, locations to urban areas, constituents of concern, and others. (See also point #48, below)

48. Page 27 - SQMP/GQMP - Aquifer Ambient Conditions

The following sentence should be added at the end of the section:

> "A GQMP may also not be required if the Executive Officer determines that ambient background water quality exceeds water quality objectives or the beneficial uses has been de-listed through the Basin Plan amendment process."

49. Page 27, Section J. - Technical Reports

This section should be amended as follows:

> "Where monitoring required by this Order is not effective in allowing the board to determine the effects of irrigated agricultural waste discharge on State waters or the effectiveness of water quality management practices being implemented, the Executive Officer may require the Member to submit technical reports to determine the effects of irrigated agricultural operations or implemented management practices on surface water or groundwater quality."

50. Page 27, Section 4 – Comprehensive Groundwater Quality Management Plan

It should be clarified that in lieu of many individual groundwater management plans a geographically wider comprehensive plan can be utilized.

51. Page 28, Section IX.2. – Reporting Provisions

It needs to be clarified that the third party coalition managers are authorized to sign such reports.

52. Page 29, Section 5 – Filings by Members

This provision calls for the members to file reports electronically. It does not, however, appear the members are required to file <u>any</u> reports to the Board. If that is now the case, why have this provision?

53. Page 30, Section XII. – Time Schedule

The regulatory requirement that all surface and groundwater tests must not exceed required standards within ten years is unreasonable as to surface water and is totally improper as to groundwater. That has been directly expressed in the Harter report, and elsewhere, where he has publicly recognized these types of regulations will not have favorable impact on aquifers for perhaps 40 years. The ten-year restriction must be amended.

Irrigated agriculture is in compliance with water quality objective limitations if its discharges are not the principal cause, or do not significantly contribute to water quality objective exceedances even if the surface water or groundwater in question does not meet applicable water quality standards. The time schedules for compliance must also be specifically

related to causing or significantly contributing to exceedances and not guaranteeing full compliance in the receiving water itself. As proposed, the Draft WDR suggests that discharges at the edge-of-the field are subject to these unreasonable time schedule provisions. Further, it is important to note that the ten-year timeframe for some constituents and some practices is an unreasonably aggressive timeframe.

54. Page 30, Section XII. - Time Schedule for Compliance

The second sentence in paragraph should be revised as follows:

> "Future Basin Plan Amendments or TMDLs with accompanying time schedules established through the CV-Salts process or any other Plan amendment process may require the Board to reopen and amend the general order."

55. Unreasonable Regulations

Throughout the Porter-Cologne Act, there is an underlying requirement of reasonableness to the regulation of water quality in the state. For example, under section 13300, the State may only regulate water quality "reasonabl[y], considering all demands being made and to be made on those waters." Similarly, under section 13050, "pollution means any alteration of the quality of water which may unreasonably affect" the waters of the state. While each regional board is required to ensure the "reasonable protection of beneficial uses,...it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." (§ 13241 [setting forth the Act's water quality objectives].) These multiple references to reasonableness indicate the legislature's desire for moderation and balance. This General Order falls well short of that statutory requirement.

56. The ILRP is Under Legal Challenge

As the Board knows, the Environmental Impact Report (EIR) which provides in large part the basis for the Regional Board to consider approving the new proposed General Order is being challenged by both the environmental community and coalition groups, including our Coalition. Our Complaint and Petition in *San Joaquin County Resource Conservation District, Southern San Joaquin Coalition, et al. vs California Regional Water Quality Control Board, Central Valley Region*, Sacramento Superior Court Case No. 34-2012-80001186, which we hereby assert must be part of this record, speaks for itself as to the many inadequacies of the EIR. Prudence and common sense dictate that this Board defer adopting each the East San Joaquin and the Southern San Joaquin Valley Water Quality Coalition orders until the merits of the CEQA challenges are heard and determined by a court.

II. ATTACHMENT A – INFORMATION SHEET

57. Pages 1-3 - Description of Basin

We believe that the descriptions of the Tulare Lake Basin having only 2.9 million irrigated acres with 350,000 of those acres in the dairy program is widely incorrect. (See point #8, above)

58. Page 1 - Description of the Tulare Lake Bed Area

The following should be added after the 1st paragraph :

> "The Tulare Lake Bed is unique and may be distinguished from the remainder of the Tulare Lake Basin. The Lake Bed is the terminal point of four major streams that once entered the former Tulare Lake. The Lake Bed consists of an integrated network of water delivery and recirculation facilities to maximize water use efficiencies. Water delivered to the Lake Bed is contained and only in flood events is there a possibility of water exiting. No irrigation water returns to any natural or surface water body. Applied irrigation water in excess of crop requirements is collected and transported for disposal by the Tulare Lake Drainage District. The EC in groundwater (first waters encountered) exceeds the State Board Sources of Drinking Water Policy. The Tulare Lake Bed is a fully coordinated water delivery, recirculation and salt recovery area." (See also points #8 and #57, above)

59. Page 7, Page 21, Section A – Enrollment

The enrollment process for the SSJVWQC must be at least 180 days because it faces a unique situation having to sign up 1-2 million new members. (See points #7, #34 and #57, above)

60. Page 10 – Constructed Conveyance Structures

Manmade conveyance structures, distribution systems, ancillary structures and canals are not waters of the state, irrespective of their size. If a farm has large retention ponds, or wide conveyance canals or distribution systems, that does not change their character as farm distribution or ancillary irrigation structures as also discussed on page 2 of the General Order.

The types of Waterways which this proposed order identifies (Homeland Canal, Lakeside Canal and Westside Canal) are irrigation canals for farm delivery, and do not discharge to waters of the state or U.S. Therefore, the entire reference should be omitted.

Thus reference to Homeland Canal, Lakeside Ditch, etc., bear out the staff's improper disregard for the rule identified on page 2. The Lakeside Canal dates back to 1873 and was expressly constructed to convey irrigation water. This is also true of the Homeland Canal. This entire paragraph must be eliminated. (See point #3, above)

61. Page 12 – Groundwater Monitoring Advisory Workgroup

It should be noted that the referenced Groundwater Monitoring Advisory Workgroup (GMAW) did not contain any true experts which were involved in or were expert in water or water quality in the Southern San Joaquin Valley. Such actual experts were suggested to be included, but were rejected by the Regional staff.

62. Page 13 - Groundwater Monitoring

The proposed order provides that existing shallow wells may be used for "trend" well monitoring. These wells should also be allowed for "representative" well monitoring for the same reason - the significant costs in drilling new wells is not justified.

The reference to representative monitoring is completely deficient as it gives no evidence as to the number of new wells that will be required. We have been told we may need to drill from 200 to 500 new wells. This $7-12 million of added expense for new wells needs to be specifically identified in the proposal and therefore provide the impacted parties an opportunity for review and comment. Hiding the ball in proposed regulations violates not just regulatory propriety, but also the public's right of due process.

Representative groundwater monitoring must be developed and based on sound scientific principles in coordination with ag commodity groups, major fertilizer manufacturers and irrigation experts. This effort should start with a literature search to develop a comprehensive catalog of existing data and studies, followed by conduct of specific field trials aimed at measuring nitrogen use efficiency of current best management practices on major crops (those comprising the majority of crop land in high vulnerability areas). These trials should be focused on measurement of nitrate movement beyond the root zone that may likely percolate to aquifers. Costs of representative monitoring efforts must be contained to a reasonable level. Those results must be evaluated in the context of the attenuation of nitrate in the 100 to 1200 feet of soil overlying aquifers which has not yet been accounted for. This important element has been

totally disregarded by staff.

63. Page 15 - Vulnerable Area

There has been considerable discussion as to the Vulnerable Area Map, Figure 5, particularly in Kern County; however, such alternative area designations have been rejected by staff. (See also point #83, below)

64. Page 19, Figure 8

This figure appears to be fundamentally incorrect. The basin plan standard for nitrogen is 10 mg/l and the standard for nitrates is 45 mg/l. The Figure 8 key has three color coded concentrations of < 2 mg/l, >2<10 mg/l and > 10 mg/l. The chart is labeled to be applicable to nitrate. All those levels would be far below nitrate levels of concern, 45 mg/l. Therefore, this GAMA figure merely shows that all of these wells offer no nitrate concern.

65. Page 26 – Excessive Costs

The regulatory statement that the costs associated with these new extensive regulations are reasonable is completely unfounded. First, the costs are clearly not reasonable, nor are they justified. Secondly, the adopted alternative was not reviewed in the EIR, nor subject to the economic analysis, and the General Order as advanced contains elements not expressed in any of the alternatives which were evaluated. (See points #15, #16, #17 and #55, above)

The PEIR Technical Memorandum concerning the economic analysis of the Irrigated Lands Regulatory Program did not support the statement: "Staff was also able to use that analysis to estimate costs of a sixth alternative, since the sixth alternative fell within the range of the five alternatives." and "Therefore, potential economic considerations related to the Order have been considered as part of the overall economic analysis for implementation of the long term irrigated lands program."

66. Page 26 - Farm Template

The Farm Evaluation Template has not been provided, and therefore it cannot be understood or evaluated. (See points #41 and #42, above)

67. Page 26 - Farm Evaluations

The following should be added at the end of the first paragraph:

"The public disclosure of service wells location may be restricted by homeland security concerns. The Board staff will ensure there is no public disclosure of this information."

68. Page 27 - Sediment Plan

The new sediment plan is not only a new proposal, but it is stated that it has been lifted from the Industrial/Construction Storm Water Performance Program. That point source industrial storm water permit may be reasonable for temporary construction situations, but it is not reasonable for continued rural irrigation to support food production.

The statement, "The Order requires that all members implement sediment discharge and erosion prevention practices to minimize or eliminate the discharge of sediment above natural background levels." is too broad and should be narrowed to only those members that have a potential of a sediment discharge to surface waters of the state. (See points #36, #41 and #42, above)

69. Pages 27-30 - Farm Evaluations and Management Plans

There is inconsistency regarding the Farm Plan and other management plans between the Order, the Attachment A and other appendices. The Order at page 22 calls for the Farm Evaluation to be completed by the farmer and submitted to the coalition and maintained at the farm. This, in and of itself, is an overstep because it is burdensome and needless to submit them to the coalition. It, however, does not require any further action by the coalition.

Appendix A, pages 27-30, goes much further and requires the coalitions to take affirmative steps with these reports, such as summarize or evaluate them in some fashion. This would constitute an unbearable burden on the coalitions and require the hiring of several additional staff to attempt to summarize the thousands of separate submitted evaluations and plans.

Moreover, this is an improper burden to impose on the coalitions as these documents would be available to the Regional staff on the farms for whatever review the staff deems important. Further, the Regional Board is the water regulatory agency, the coalitions are not a farm practice regulatory agency.

70. Page 28 - Nitrogen Budgets

The requirement that all farmers must submit nitrate budgets is overreach. This should only be required if farming in a high vulnerability area. (See points #37 and #38, above)

71. Page 29 - Nitrogen Budget/Spacial Resolution

Compiling specific data down to the square mile may have bureaucratic convenience and, as stated, or be convenient for the staff's enforcement purposes; however, it is far overkill, particularly when dealing with the over four million irrigated acres in the SSJVWQC. (See points #8, #57 and #58, above)

72. Pages 30 and 31 -Water Quality Objectives

We have no problem understanding numeric standards, but narrative objectives are unclear. We are unable to manage in accordance with such uncertainty and they are subject to interpretive abuse by staff. For any contaminant that is deemed important enough to the Regional Board to impose constraints on farms are important enough for the Board to adopt a numeric objective.

73. Page 31 - Implementation of Water Quality Objectives

The cited reference for determining effluent limitations is for establishing Water Quality Based Effluent Limitations (WQBELs) for NPDES permits for surface water dischargers subject to Section 402 of the Federal Clean Water Act. Non-point sources are not subject to permitting requirements of the Clean Water Act and are not NPDES permits.

> "With respect to narrative objectives, the Regional Water Board must establish limitations using one or more of three specified sources, including: (1) USEPA's published water quality criteria, (2) a proposed state criterion (i.e., water quality objective) or an explicit state policy interpreting its narrative water quality criteria (i.e., the Regional Water Board's "Policy for Application of Water Quality Objectives"), (40 CFR122.44(d)(1)(vi)(A), (B) or (C)), or (3) an indicator parameter."

We should therefore delete the entire second sentence.

74. Page 15 of WDR - Discharger Limitations

The Draft WDR improperly characterizes what should be receiving water limitations as discharge limitations. (See Draft WDR, p. 15.) By characterizing the limitations as "discharge

limitations," the Regional Board is transforming receiving water limits into end-of-field discharge limits. This means that all irrigation and stormwater leaving a field, or discharging to groundwater must comply with water quality objectives instantaneously – unless there is a management plan that includes a time schedule for compliance. Such requirements are unreasonable, and well beyond the scope of the Irrigated Lands Regulatory Program as analyzed in the Programmatic Environmental Impact Report.

75. Page 31 - Implementation of Water Quality Objectives, Third paragraph

We should change this language as follows:

Delete the following sentence: "Those trigger limits will be considered the numeric interpretation of the applicable narrative objectives". This language provides the power to the Executive Officer to establish numerical limitations; however, setting objectives can only be established through the Regional Board in a public hearing.

> "Implementation of numeric and narrative water quality objectives under the Order involves an iterative process. The Order's MRP establishes management plan trigger limits that are equivalent to the applicable Basin Plan numeric water quality objectives. For constituents that are not assigned Basin Plan numeric water quality objectives, board staff will develop trigger limits in consultation with the Department of Pesticide Regulation (for pesticides) and other agencies as appropriate. Board staff will provide interested parties, including the third-party representing Members, with an opportunity to review and comment upon the trigger limits. The Executive Officer will then propose those trigger limits to the Board for review and adoption. In locations where adopted trigger limits are exceeded, water quality management plans must be developed that will form the basis for reporting which steps have been taken by growers to achieve compliance with numeric and narrative water quality objectives."

76. Page 32, Section (2) and Page 41, Section 1 – The Board/Staff Cannot Dictate the Use of Any Particular Management Practice

The order appropriately acknowledges that the Board has no authority to prescribe/demand specific management practices. This is clear by statutory directive, and the staff needs to bear in mind that they cannot do so, either directly or indirectly. This point is particularly pertinent when dealing with management plan submittals and subsequent follow up on those reports.

77. Page 34 - CEQA 5 Alternatives

This again is a significant falsehood continually advanced by staff that 1) there were six alternatives and 2) that the staff proposal was evaluated in the EIR and economic evaluation. The EIR expressly states that it only evaluated five alternatives, not including the staff proposal. (See also points #4 and #13, above)

78. Pages 35-39 - High Quality and Not High Quality Waters

It is important that the Board Order express which waters are in each category. We had advanced to the Board that the valley ag waters are not the high quality waters which the State Board had adopted 68-16 to protect. The waters that are below the reservoirs and are in the distribution and conveyance channels or in drain water ditches are not high quality waters. (See points #14, above and #79, below)

79. Page 39 - Waters that are Not High Quality:

The sentence is a mischaracterization of the State Board Order. The Order states that when a constituent in a groundwater basin is already at or exceeding the water quality objective, the Regional Board must set limitations no higher than the objectives set forth in the Basin Plan. The Tulare Lake Basin Plan indicates that where naturally occurring constituents exceed the objective the discharger is not required to improve the receiving water.

The State Board indicated that the Regional Board should set limitations more stringent than the water quality objectives provided that the discharger could do so using best efforts. This is only done on a case by case and constituent basis. Even where best efforts are utilized, it may not be possible to met limitations more stringent than quality objectives. (See points #14 and #77, above)

80. Pages 44-46 - Cost of Compliance

The proposed order states "The total costs of this Order is $100 million per year ($120 per acre annually). It is believed that these costs are actually under evaluated; however, these costs as projected are themselves unreasonable. Some irrigated farm properties have values less than $1400/acre. It is crazy that this order would cost the entirety of the land value in a mere decade for just this new regulatory program. These $120+/ac costs will clearly drive many operations out of business.

It is unconscionable that the Regional Board is implementing an order which purposely removes "important farmland" from production due to regulatory costs of the Order. The Regional Board's attention is directed to CWC, section 13267, that clearly states "The burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports." (See points #15, #16, #17 and #65, above)

81. Page 47 - Economic Analysis

The economic analysis did not evaluate the existing alternative nor this draft General Order. (See points #4, #13, and #76, above)

III. ATTACHMENT B – MONITORING AND REPORTING PLAN

Attached as Exhibit A is our coalitions monitoring expert's summary of the detailed MRP. It takes 25 pages to briefly summarize the hundreds of requirements in this new and extensive MRP. The Board should review this MRP just to contemplate the extent of what staff is proposing to require of the coalitions. Follows are merely a couple of key provisions.

82. Pages 3 and 4, Section III.B. – Complexity, Expansions and Target Waters

The new MRP relative to the surface water monitoring is far more complex than the existing waiver. The MRP also suggests that monitoring may be required down into the farm distribution channels by the reference to "all waters". This is an overreach of the Board's authority.

83. Page 5, Section 4 - Special Project Monitoring

The language should be amended as follows:

> "In accordance with Water Code section 13267, the Executive Officer may require the Member to conduct local or site-specific monitoring, in addition to the Core and Assessment monitoring, where monitoring identifies a localized water quality problem. Core sites and Assessment sites located in areas where management plans are required will also be considered Special Project sites."

84. Page 7, Section VIII.C.3. – Reporting Period, Calendar Year

We had several discussions with the Regional staff regarding the draft proposal to shift reporting to a water year rather than the traditional calendar year, which has guided this program

for several years. Staff agreed to keeping it on a calendar basis, but this draft has diverted it back to the problematic water year.

85. Pages 12 and 13 - Vulnerability Areas

There is still some uncertainty as to the appropriate western line of the Vulnerability Area in Kern County. (See also point #63, above)

86. Page 13, Section IV.A - Groundwater Quality Monitoring Requirements, Groundwater Vulnerability Designations

The following language should be inserted:

> "Vulnerability designations for groundwater are required by this MRP as part of the Groundwater Assessment Report. Vulnerability designations may be refined/updated periodically during the Monitoring Report process. The Executive Officer will provide the third party the rationale and basis for determining vulnerability designations."

87. Page 13, Section IV.A – Prioritization of Vulnerability Areas

The provisions regarding prioritizing high vulnerability areas do not seem to be possible unless an area is comprised of a major commodity which comprises at least 80% of an area. This needs clarification. (See also point #80)

88. Page 16, Section IV.C.2 – Coalitions as the Enforcing Agency

The coalitions were never to be placed in the role of the enforcing agencies. Monitoring, reporting and education are proper, but it is improper and counter-productive to require the coalitions to be cast as the enforcers. The language that it shall be the coalitions that determine if farming practices are adequate crosses that important line.

89. Page 16, Section 2 - Representative Monitoring/Enforcement

The requirements of the Summary Representative Monitoring Reports (SRMAs) are unclear and uncertain. The term "sufficient specificity" does not provide clarity or certainty, and is therefore subject to unreasonable staff interpretation.

Further, this improperly places the coalition into the Board's enforcement role which was never to be required. Those misplaced requirements are to "identify which practices are appropriate for farms" and to report and "assess whether farms are implementing management procedures," and "propose new management".

This is not the role of coalitions, and in fact the first and last provisions would not even be appropriate for the Regional Board.

90. Pages 16 and 17 - Summary Representative Monitoring Report

We should clarify as follows:

> "The third-party in conjunction with commodity groups and/or other experts (e.g., University of California Cooperative Extension, Natural Resources Conservation Service) shall propose and the Member shall consider implementing new/alternative management practices which would be subsequently evaluated at monitored farms."

91. Pages 16, 17 and 18 - Representative Monitoring

The staff has avoided clarifying the representative monitoring requirements and has suggested this may involve from 200 to 500 new monitoring wells in our coalition. That would clearly not be "reasonable" as required by both the Code and the first sentence of this section. (See also points #55, #65, #79, above, and #88, below)

92. Page 16, Section 2 - Representative Monitoring Wells

The many new monitoring wells will be almost unimaginably difficult for coalitions. Each well will involve complex negotiations with landowners regarding the purpose, monitoring protocol, access agreements, easements for monitoring access, and maintenance. This will also involve liability protections, indemnity clauses and liability insurance. Other important issues will be the protection of landowner identification and data location identification. Separate negotiations with perhaps 500 landowners is an extraordinary burden. These well locations cannot shift on a staff whim, as reflected in this MRP.

93. Page 18, Section IV. and V. – Representative Monitoring

The uncertainty and the excessive scope of representative monitoring, perhaps 500 new monitoring wells in our coalition, is one of the two major problems with the General Order. The

MRP furthers this unreasonable requirement with additional reporting schedules (May 1, Section V.C.)

94. Page 18 - Representative Monitoring

There has been widespread reaction to the proposed representative monitoring plan across all of the coalitions and considerable concern expressed by Regional Board members at the recent workshop (principally as to uncertainty and excessive costs); therefore, it may be more prudent to hold off on this component of these initial General Orders, which would allow the Board to further coordinate with the coalitions and possibly commodity groups relative to such monitoring.

During our negotiations with staff relative to our General Order, our coalition advanced a couple of alternative approaches to monitoring. One alternative for representative monitoring was to focus on key commodity groupings across the entirety of the region. Another alternative was to identify hot spots and target such monitoring in those areas. Both concepts were rejected by staff in our negotiations and instead they insisted on the proposed plan, yet they did not identify the extent of this monitoring obligation other than to hint that it may be from 200 to 500 new wells in our coalition area.

At the recent Regional Board hearing staff indicated to the Board they may now be interested in such alternative approaches. Those staff responses may have been mere window dressing for response to the Regional Board. However, if they were sincere, we need a time-out because it will take considerable effort for such coordination.

95. Pages 23 and 24, Section VI. - Water Quality Triggers for Development of Management Plans

We should change the first paragraph, third sentence as follows:

> "The Executive Officer shall provide to the third party the basis for determining the final trigger limits. Any trigger limits proposed by the Executive Officer must be consistent with applicable Basin Plan policies governing the interpretation of narrative water quality objectives and submitted to the Board for adoption."

96. Field Studies

This Order suggests that the third-party may be ordered to conduct field specific studies to identify sources of water quality problems. The third-party coalitions are to assist Members

and to be responsible for fulfilling regional requirements, which include monitoring, development of regional or watershed-based water quality management plans, and tracking Member compliance with certain identified management plan and reporting requirements. (See, Draft WDR Finding 10, p. 3) The third-party has no legal standing to determine if an individual Member's discharge is in compliance with water quality standards and cannot be placed in that enforcement role.

The Draft MRP includes provisions to suggest that the Regional Board may require the third party to conduct site-specific field studies of an identified Member's operation. This is misplaced. If the Regional Board determines that individual site operations need to be monitored, then the Regional Board's Executive Officer has the authority to issue an inspection and monitoring order directly to the Member under Water Code section 13267. Such a directive or order to a coalition is inappropriate. Moreover, such an order issued to the coalition would not comply with Water Code section 13267. Water Code section 13267 specifically requires "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge . . . [to] furnish, . . . technical or monitoring program reports which the regional board requires." The third parties are not dischargers, thus the Regional Board cannot compel the third parties to furnish technical or monitoring reports.

Further, under this statutory authority, "the burden of the report, including costs of these reports, must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." (Wat. Code, § 13267(b)(1).) Here, the burden to monitor and prepare reports on an individual farm basis would not be reasonable. Requiring the SSJVWQC to use its limited resources to monitor an individual farm would not be a reasonable use of funds, and it would deflect limited resources from its watershed and subwatershed obligations to inspect just a few.

97. Nitrogen Reporting

The requirement that reporting must be down to the single section basis (640 acres) is totally unreasonable and unnecessary. Moreover, it is hopelessly burdensome. The SSJVWQC has some four million irrigated acres. This would constitute over 6400 sections requiring a separate report and, because the coalition boundaries cut across sections, this would likely mean something like 7500 separate reports. Such volume is so large there will be no analysis of these thousands of pages; therefore, this regulatory overreach is self-defeating and not just needless, but inappropriately burdensome.

Any analysis or calculation of a ratio of crop nitrogen needs against various inputs/sources is only a management guide tool for the farmer. It should not be considered a

regulatory target or trigger limit. Nitrogen usage is highly variable, based upon local soil conditions, crop type (varietal changes and management) and a given season's ultimate growing potential, and should not be arbitrarily limited by some region-wide average.

They are inappropriate as a regulatory end-point for determining compliance with water quality standards, or the terms of this Order. Unfortunately, based on the language in the Draft Information Sheet, the Regional Board clearly intends to use this information for enforcement purposes. Moreover, the Draft Information Sheet suggests that use of such information would be used if there are identified water quality problems, however, the Draft Information Sheet fails to consider that identified water quality problems in groundwater may be associated with practices from decades ago, and not associated with practices in place today.

Further, these management tools may be ripe for abuse by staff or any other outside party. Inaccurate and mischaracterizations of data and information by others would undermine the program by sending a signal to participants that the reporting of Annual Nitrogen Budget information to the third-parties provides no assurance that the information is protected from public disclosure, such that it will allow members of the public to match the information to a grower directly. Any public disclosure of farming management defeats the purpose of having the information reported to the third-party versus the Regional Board directly.

Further, individual fertilizer use information is clearly agronomic proprietary information. Most farmers are in direct competition with others on the quality of produce, the quantity of production, but they are also competing on minimizing inputs so as to be more competitive. Clearly, the rate and timing of fertilization has major influence on each of these three factors and, unless protected, will simply not be able to be supplied.

IV. ATTACHMENT E – DEFINITIONS

98. The following definitions need to be added or modified:

a. **Constructed Conveyance Structures** (New) - Structures constructed to deliver waters to various sub regions within the Southern San Joaquin Valley Water Quality Coalition for irrigation purposes. Constructed Conveyance Structures do not include On-Farm Conveyance Structures as defined in Section 29 of Attachment E.

b. **On-Farm Conveyance Structures** (New) - Structures constructed to deliver water solely for irrigation purposes on the Member property. On-Farm Conveyance Structures include constructed facilities as a part of an integrated delivery and recirculation network serving Members.

c. **Surface Water** - Water pooled or collected at or above ground level. Surface waters include, but are not limited to, natural streams, lakes, wetlands, creeks, constructed agricultural drains, agricultural dominated waterways, irrigation and flood control channels, or other non-stream tributaries. Surface water includes all waters of the United Sates and their tributaries, interstate waters and their tributaries, intrastate waters, and all impoundments of such water. For the purpose of this Order, surface waters do not include water in agricultural fields or waters contained in On-Farm Conveyance Structures, or water in constructed conveyance structures. (See point #3, above)

Sincerely,

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

Attachment

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ATTACHMENT A
General Order for SSJVWQC: MRP Review

Page, Section, Paragraph	Topic, Issue	Comments
Pg. 3, III.A.	Surface Water Assessment Report	
	First Report due 1 year after MRP implementation, updated every 5 years after. Also states that the SWAR is to be included in each Annual Report	Which is it? First year and every 5 years after or Annually?
Pg. 3, III.B. (2nd paragraph)	Surface Water Monitoring Plan	
	"...the third-party group shall design a scientifically and technically justifiable Surface Water Monitoring Plan sufficient to characterize water quality for all waters of the state within the third-party group's boundaries." (emphasis added).	This is similar to the previous order, but seems to imply that it expects the Coalition to expand into canals or other waterways that are proper to be in not the current program.
Pg. 4, III.B. (1st paragraph)	"The **Surface Water Monitoring Plan** shall utilize 5 different types of surface water monitoring sites: 1) fixed, long-term Core sites; 2) Assessment sites; 3) ephemeral sites; 4) special project sites; and 5) Representative sites"	This is a far more complex system of Surface Water Monitoring than had been in the previous Assessment/Core monitoring program from the current waiver.
Pg. 4, III.B.1	Core Monitoring Sites	
	1. Selected from existing sites 2. Show diversity in size, flow rates, hydrology 3. Include sites that show changes in cropping patterns 4. Include bodies that carry agricultural drainage 5. Include Management Practice information to establish relationship with water quality info	This is far more complex than before. It continues to allow fixed schedule sampling, seems to continue push into canal systems (we really do not have drains up this way, most flows are away from the river system).
Pg. 4, III.B.2	Assessment Monitoring Sites	
	1. Same selection criteria as Core sites 2. Specifically states that constructed waterways (canals) are to be included in selection process, but seems to only exclude on-field systems 3. Drainage areas without an Assessment or Core site must have a Representative site (see below)	Creation of a continuous rotation of additional sites, with no upper limit. Substantial increase in Surface Water Program costs. Elevation of 303(d) sites to Assessment status.
Pg. 5, III.B.3	Ephemeral Monitoring Sites	
	1. Sites with short term, intermittent flows 2. Full chemistry testing required (includes WCT, sediment)	We question the value of conducting full spectrum biological tests for sites that are dry most of the time. The tests can run longer than water is present at the sample site.

Pg. 5, III.B.4	Special Project Monitoring	
	1. Management Practice evaluation sites 2. Evaluation of sources of identified water quality problems 3. A Core or Assessment site within an area where a Management Plan is in effect would also be considered a Special Project site	There is no mention of this type of site for 303(d) listings, which seems to reinforce the notion that a 303(d) impaired site would fall under Assessment. Monitoring. If this is the case, using the Kings as an example, where the Kings is currently listed asimpaired for "unknown toxicity," does this mean the entire Kings subcoalition is now in Assessment mode?
Pg. 5, III.B.5	Representative Monitoring	
	1. Areas of similar conditions (hydrologic, cropping, pesticide use, etc.) can be grouped together as Representative Sites 2. Management Practices implemented to correct issues at a Representative Site must be applied throughout the area being designated as Representative	The use of Representative Monitoring sites has the following benefits: Reduction in number of sample sites by saying that a single site "represents" a larger geographic area. Similarities in cropping patterns and management practices can make this easier. Issues include: If a problem is found at these sites, the solution (management practice changes) must be applied to the entire area, not just at the impacted site (even though the conditions that created the problem may only exist at the sample site). Requires considerable landowner and grower cooperation for this monitoring approach to succeed.
Pg. 6, III.0	Monitoring Requirements	
	1. Monitoring conducted at accessible sites 2. Consist of physicalparameters, nutrients, pathogen indicators, water column and sediment toxicity, pesticides, and metals as specified in Table 2 (pg.7-9) 3. Sampling to include 2 storm events 4. Third party to determine monitoring parameters (III.C.3) by August 1 5. Sampling based on water year (1 Oct to 30 Sept)	Not all sites are accessible during the storm season. We must make allowances for sampling safety (flood operations)Setting parameters is both good and bad. We are alreadyscanning for pesticides in many classes. We can ask for a complete readout, it will affect the final price as additional calibrations are required for

		anything beyond the standard suite of chemistries In our discussions, we agreed this should be on a CALENDAR Year. Reporting Schedule, not aWATER Year. Staff has now reversed present operations and this agreement.
Pg. 6, III.C.1	Monitoring Schedule	
	A. Core Monitoring	
	1. 2 years Assessment, 3 years Core, with additional constituents if detected during Assessment Sampling for 2 more years 2. Cycle Repeats every 5 years	Logistics will also be an issue as the number of sites increase plus the extensive new demands for new wells for the groundwater program.
	B. Assessment Monitoring	
	1. Assessment at new sites for 2 years, repeated on a regular basis	
	C. Ephemeral Monitoring	
	1. Use Rainfall Forecasts to schedule sampling events 2. One sampling event per month 3. Sample each month water is present 4. Assessment Monitoring requirements	This level of monitoring is excessive given that these waterways are dry. One assessment reading with the first sample and Core level sampling for any further samples that calendar year?
Pg. 6, III.C.2	Monitoring Frequency	
	Third party shall identify/discuss monitoring periods for individual parameters listed in Table 2	Can the coalition tailor monitoring to peak application periods.
Pg. 7, III.C.2	Most monitoring can be done according to the approved schedule	
	Monitoring must be done when the parameter is most likely to be present, if there is a temporal component to beneficial use.	Does this call for seasonal rather than monthly monitoring?
	The frequency of data collection must be sufficient to allow a determination of compliance with the relevant numeric water quality standards	
	Changes in monitoring sites, parameters, or monitoring schedule must be submitted in writing and approved by the EO	
Pg. 7, III.C.3	Monitoring Parameters	

	1. TBD (To Be Determined) constituents are to be added by the Regional Board in consultation with the third party group 2. Metals to be tested for depend upon their use in irrigated ag (copper as a fungicide e.g.) 3. Third party to identify parameters to be monitored by 1 August 4. Pyrethroid testing is for sediment tests only (if toxicity exists)	Can the coalition possibly remove some constituents such as metals from our testing program such as copper, arsenic, zinc, lead, and cadmium which are naturally occurring. Hardness issues have already been removed from management plan requirements. Staff returns to the Water Year schedule, rather than our agreed upon Calendar Year.
Pg. 9, III.C.4	Toxicity Testing	
Pg. 9, III.C.4.a	Aquatic Toxicity	No Issues
Pg. 10, III.C.4.b	Sediment Testing	We continued to have an issue with sampling sites that do not have adequate sediment (or sediment that is unsafe to obtain).
Pg. 11, III.C.5	Special Project Monitoring	This places the Coalition in a position to conduct commodity and management practice specific studies related to constituents of concern.
Pg. 11, III.D	Surface Water Data Management	
	Uploading of Field and Laboratory data to a Duplicate CEDEN database New Field Data Sheets	CEDEN is SWAMP comparable, so very little change is required, except for field data sheet formats.
	eQAPP	It is unclear if Coalitions develop this formatting/data checking document or if it is provided. Could modify document developed from existing QAPP.
	GROUNDWATER	
Pg. 12, IV.	Groundwater Quality Monitoring Requirements	
Pg. 12, IV.A	Groundwater Vulnerability Designations	
	1. Begins with "default" boundaries for high vulnerability areas 2. Third party may recommend refinements through the development of the Groundwater Assessment Report (GAR) 3. Vulnerability areas seem to be dynamic (subject to revision at any time) 4. Basis of Trend and Representative Monitoring Programs	Monitoring wells are not yet identified and may involve several hundred new wells. This uncertainty raises many possible problems regarding placement of wells and conducting monitoring.
	High Vulnerability Area Criteria	

	1. Meets requirements for preparation of Groundwater Management Plan a. Confirmed exceedance of a water quality objective in a groundwater well and irrigated agriculture may be a cause of the exceedance b. The EO may determine that irrigated agriculture may be causing or contributing to degradation that threatens Basin Plan beneficial uses	This seems to be a circular argument.
	Low Vulnerability Area Criteria	
	1. Not a High Vulnerability Areaas defined above	
Pg. 13, IV.A	Prioritization of High Vulnerability Areas	
	1. Identified exceedances of water quality objectives 2. Proximity of the high vulnerability area to areas contributing recharge to urban and rural communities where groundwater is a significant source of supply 3. Existing field or operational practices identified to be associated with waste discharge 4. The largest acreage commodity types (>80%) of the irrigated agricultural acreage in the high vulnerability area, and the practices employed	#1. This should be limited to nitrate exceedances. #4. Suggests that the coalition cannot parcel out our monitoring program by commodity because no one commodity is 80% of the total acreage within the high vulnerability area.
Pg. 13, IV.B	Groundwater Assessment Report (GAR)	
	The Groundwater Monitoring Strategy is to use data to: 1. Identify ag operations that may cause or contribute to known groundwater issues or where groundwater is more vulnerable 2. Prioritization of high vulnerability areas 3. Evaluate the inclusion of existing groundwater monitoring efforts	
Pg. 14, IV.B	90 days after NOA for GAR submit to Regional Board 1. Outline of data sources 2. Other references to be used	
	GAR due to RB 1 year after NOA	
	GAR Components 1. Detailed Land Use Information 2. Information regarding depth to groundwater (contour maps) 3. Groundwater Recharge information (maps and rates) 4. Soil Survey Information 5. Shallow Water Constituent Concentrations 6. Information on existing groundwater data collection and analysis efforts 7. Discuss pertinent geologic and Hydrogeologic information for third party area	

	GAR Evaluation Components 1. Determine where known groundwater quality impacts exist 2. Determine merit and feasibility of incorporating existing data collection efforts 3. Prepare a ranking for staged implementation	
Pg. 15, IV.0	Groundwater Monitoring Strategy	
Pg. 15, IV.C.1	Trend Monitoring	
	1. Objectives a. Baseline water quality b. Evaluate Regional effects 2. Implementation a. Groundwater monitoring network covering **both** high and low vulnerability areas b. Employ shallow wells, but not necessarily completed to first encountered groundwater c. The number of wells used shall be sufficient to cover the third party area and address the objectives of the program. Rationale to be described in Trend Groundwater Monitoring Workplan 3. Reporting a. Results to be included in Monitoring Report b. Map of sampled wells, tabulated analytical data, time-concentration charts c. Data to be uploaded to GeoTracker (State Board) and Regional Board d. Trend analysis once sufficient amounts of data have been collected (third party defined timescale)	We should be able to sample existing shallow wells. Those are the wells which are actual drinking water wells.
Pg. 16, IV.C.2	Representative Groundwater Monitoring Program	
	1. Evaluate current conditions 2. Evaluate changes in management practices 3. Phased implementation expected	The phased implementation provision here conflicts with requirements listed above.
	a. Implementation 1. Monitoring wells into first encountered groundwater 2. Priority ranking to be submitted as part of work plan to EO b. Reports 1. Reports submitted to EO as part of Annual Report or separately, but on the same schedule as Annual Reports 2. Include all analytical data since last report 3. Tabulated data to date (including previous reports) 4. Identify the number and location of installed	#5 puts the third party in the role of water quality police which was never to be the role of coalitions.

	monitoring wells 5. Determine if practices employed in vicinity of monitoring well are protective or not	
	Reports to include section describing current status of program and if proposed schedule is being maintained	
	c. Summary RepresentativeMonitoring Report 1. Due 6 years afterimplementation of each phase of the RGMP i. Identify management practices that are protective of groundwater ii. Must be specific enough to allow RB action iii. Include maps showing where practices are being used iv. Non protective practices are to be changed through cooperative process	ii. What specific actions are contemplated? iii. This level of detail will never be available to the coalition
Pg. 17, IV.D	Groundwater Monitoring Workplans	
Pg. 17, IV.D.1	Trend Workplan 1. Rationale for number of wells proposed, and their locations a. Variety of commodities produced b. Conditions discussed in GAR related to vulnerability c. Areas that contribute to significant recharge for urban/rural areas 2. Well details (DWR well completion reports, if available) 3. Proposed sampling schedule 4. Proposed methods to be used to evaluate trends	
Pg. 18, IV.D.2	Representative Workplan	
	1. Third party or Monitoring Group (group of cooperating Coalitions) to propose a reasonable number of monitoring locations throughout the high vulnerability area a. Management practices b. Commodities	The Regional staff has not given any information on the number of wells.
	Models are acceptable, but must be approved by the EO Must include data to verify accuracy of model	

	A single Workplan may be developed if the intention is to prioritize the investigations (must include a schedule for each phase and report addendums)	
	c. Constituents to be monitored (minimum of Trend constituents)	
	Workplan must include sufficient information for EO to determine if existing management practices are protective 1. Practices used 2. Site conditions present 3. Test results over time	
	Networked sites (representative sites across multiple Coalitions) must provide enough data to prove that what is seen at monitored sites will likely exist at non-monitored sites	
Pg. 19, V.A.	Reporting Requirements	
	Quarterly Submittals 1. 1 March 2. 1 June 3. 1 September 4. 1 December	Reported data is 6 months old by time of reports according to supplied table.
	Submittals 1. Excel copy of data uploaded to CEDEN 2. eQAPP 3. Electronic copies of Field sheets 4. Digital Photos 5. Electronic copies of lab reports	Minor changes from current requirements. eQAPP can be prepared from RB supplied version (we adjust for new constituents, limits).
Pg. 20, V.B.	Annual Groundwater Monitoring Results	
	Previous Year's monitoring results due to RB on 1 May in excel format (matches data uploaded to GeoTracker)	
Pg. 20, V.C.	Monitoring Report	
	Monitoring Report due 1 May every 2 years, first report on 1 May 2014	This is a new change which was never discussed.
	Report covers previous 2 hydrologic years	
	Standard set of report requirements, with new sections regarding outreach, Farm Evaluations, Nitrogen budgets, etc.	
Pg. 23, V.D.	Surface Water Exceedance Reports	
	Must issue Exceedance Reports for exceedances of trigger limits (numeric or narrative interpretation) 1. Report of Exceedance 2. Photo of Site 3. Estimated Flow 4. Email notification to designated RB contact next day after exceedance detection 5. Submit written report within 5 business days of	Brent seems to be the designated contact?

	receiving laboratory data 6. Description of actions to be taken	
	At sites that are not already under a Management Plan, the following must occur: 1. Investigation of Pesticide use within the immediate area (as broad an area as necessary for that particular watershed) 2. If for toxicity, the investigation must include all pesticides applied in the area for the 4 weeks prior to the sampling date 3. Results from this investigation must be discussed in the Monitoring Report	Pesticide usage reports are not available until far beyond the four-week timeline. They are not in the Exceedance Report at the time of the detection
Pg. 23, VI.	Water Quality Triggers	
	References Table 5, which has not yet been provided.	Use Interim Trigger Limits Table in mean time
Pg. 24, VII.	QAPP	
		Now states that the SSJWQC QAPP has not been approved, and any corrections need to be made prior to submission of the Surface and Groundwater Monitoring Workplans. This is merely one of the many problems which will occur if the existing waiver is not harmonized with the adoption of the new General Order.
	MRP-1: Management Plan Requirements	
	If multiple COC's are covered by a Management Plan, a section discussing the prioritization of those COC's must be included	
	Required Components	
	1. Introduction and Background a. Area covered, reason for management plan b. Previous work if a groundwater exceedance Physical Setting	

2. Physical Setting
    a. Description of the physical conditions that promote the need for a management plan
    b. Land use
    c. Identification of potential sources
    d. List of Beneficial Uses
    e. Baseline inventory of management practices in use and locations
    f. Summary of existing data for the region
    g. If surface water and a representative site, the other regions covered by the representative site must be discussed
    h. Groundwater plans must discuss:
        1. Soil type
        2. Discussion of hydrologic conditions including known geologic conditions (layers), physical parameters of the groundwater, identification of water tables being used and how they are used, depth to groundwater, flow direction, surface water and associated chemistry
        3. Management Plan Strategy
            a. Description of approach to be utilized (single area or wide area coverage), prioritization, time schedule for compliance
            b. Address Compliance with Order's discharge limitations, Education components, Identification and validation, and implementation of management practices
            c. Identify duties and responsibilities for keypeople within the project, organizational chart showing lines of authority, Strategies to implement management plan tasks
            d. Identify entities or agencies that will be contacted for assistance (UCCE, NRCS, etc.)

		e. Identify management practices that are technically feasible, economically feasible, proven to be effective at protecting water quality, and comply with the Order f. Identify Outreach for participating growers g. Schedule and milestones for the implementation of the management plan h. Establish measurable performance goals that align with the management plan strategy 4. Monitoring Methods a. System used to measure effectiveness of management plan b. Management Practice specific or commodity specific field studies c. Field studies can be ordered by the EO that includes a reasonable number and variety of field study sites that are representative of the management practice being studied 5. Surface Water Additional Elements a. Location(s) of monitoring sites and schedule based upon the COC being studied b. Surface water monitoring data must be submitted electronically (upload to CEDEN) 6. Groundwater Additional Elements a. Third party representative monitoring program shall be evaluated to determine if additional monitoring is required 7. Data Evaluation a. Methods used to evaluate the data generated b. Identify the information necessary to quantify program effectiveness going forward, including tracking of management plan implementation. Can include field studies, modeling, or assessment to associate the degree of management practice implementation to changes in water quality. Include process for tracking such data	Sections e. and h. go beyond reasonable requirements of coalitions which are not to be the enforcing (identify management actions and establish performance goals) agency.	

		8. Records and Reporting a. 1 May of each year, a Management Plan Progress Report shall be prepared for the previous hydrologic year 9. Source Identification Studies a. Must first receive approval from EO (done instead of Management Plan) b. Study includes evaluation of types of practices used, commodities involved, and locations of potential sources, continued monitoring at the management plan site/area, with increased monitoring if appropriate, assessment of potential pathways through which waste discharges can occur, and schedule for conducting the study. c. Multiple field studies may be required to adequately characterize/identify the source of the waste in question d. If irrigated ag is not the source, the third party can request the EO to determine that the management plan has been completed. If irrigated ag is the source, then a full SQMP or GQMP must be implemented.	Again this reflects the hydrologic year rather than calendar year. It was agreed that this would be changed back to calendar year.
		10. Management Plan Approval a. Public Comment Period b. 5 year review period for management plans. RB to review plans for efficacy in improving water quality. Management plans could be amended to reflect changes in conditions/available data that affect the ability of the management plan to achieve its goals. Could include expansion of management plan area if EO decides it is warranted. Determination of whether adequate progress is being made. If inadequate, the EO can order field monitoring studies, Independent on-site verification of management practices, or Individual WDRs (removal of member from third party)	What will be the nature of this public review? These management plans may involve only a couple of farms. In such case, it would be improper to impose some public review.

	11. Management Plan completion a. Source Study shows that irrigated ag is not the source b. Management practice changes have resolved the water quality problem c. Criteria for completion include: 3 years of no detections during the timeframe when the detections were originally made; documentation of third party outreach to applicable growers in the region where the management plan was triggered; documentation that management practices have been implemented; demonstration that the management practices in use are effective. 12. Management plans remain in full effect until EO has approved completion. Constituents removed from the management plan (or if multiple constituents are covered) revert to a normal monitoring program as specified by the MRP	This needs to be expanded to also account for situations where the situation will not be able to be reasonably remedied.
	MRP-2: Monitoring Well Installation and Sampling Plan; Monitoring Well Installation and Completion Report	
Introduction	Third party to develop and submit a Monitoring Well Installation and Sampling Plan (MWISP) to the EO before installation of any monitoring wells	
	Upon completion of any monitoring well network, the third party shall submit to the RB a Monitoring Well Installation Completion Report (MWICR)	
MWISP	Prepared by or under direct supervision of and certified by a California Registered Civil Engineer, or a California Registered Geologist with experience in hydrogeology, submitted to the EO for approval 1. If prioritization is used, the initial MWISP must provide an overview and justification for the prioritization 2. Separate MWSIPs are required for each phase of the implementation. A master MWISP can be prepared covering all phases of well installation. 3. The MWISP is due 180 days after EO approval of the Representative Groundwater Monitoring Workplan	
Stipulations	1. All wells are to be constructed in such a manner as to prevent them from becoming a conduit to groundwater, and completed to first encountered groundwater	

	2. Third party shall follow all state, county, or local guidelines with regards to wells 3. Horizontal and vertical position of each monitoring well shall be determined by a registered land surveyor or otherqualified professional. Horizontalaccuracy to 1 ft.; vertical accuracy to 0.5 ft.; accuracy between monitoring wells at 0.01 ft 4. Sampling shall begin once the monitoring network is installed, according to the schedule submitted in the RGMP. Sampling shall occur so that seasonal variations are captured, as well as high and low groundwater level periods. 5. Groundwater samples shall be collected as specified in MWISP and QAPP.	
MWISP Requirements	1. Topographic map showing any nearby (2000 ft.) domestic, irrigation, municipal supply, and known wells, their locations and depths, and identification of anticipated depth to groundwater. Discuss how this information will result in the collection of data that can be used to assess groundwater at farms not directly monitored	
	4. Topographic map showing any nearby (2000 ft.) domestic, irrigation, municipal supply, and known monitoring wells, utilities, surface water bodies, drainage courses, and other physical or man-made features that are appropriate 5. Site plan showing proposed well location, other existing wells, unused or abandoned wells, other physical features (canals, fertilizer/pesticide tanks, etc.) 6. Rationale for the number of proposed monitoring wells, their locations and depths, and identification of anticipated depth to groundwater. Discuss how this information will result in the collection of data that can used to assess groundwater at farms not directly monitored. 7. Local permitting information 8. Drilling details (methods and type of equipment). Decontamination procedures (if necessary)	

	9. Health and Safety Plan 10. Well Construction details and rationale 11. Development method and rationale 12. How the site survey is to be completed, and the accuracy of the method used	
MWICR	Monitoring Well Installation Completion Report	
	Due within 60 days of completion of network, a MWICR shall be prepared by a Registered Civil Engineer, a Registered Geologist, or prepared under the supervision of IF the work is done in phases, the reports should be submitted within 90 days of well completion, even if this means multiple reports.	
	MWICR shall include: 1. Overview of field activities, including description of any issues encountered 2. Site plan showing installed well, locations of surrounding wells and other features 3. Period of report and dates of milestone events (well installation, development, sampling) 4. Construction details a. Number and depths of wells installed b. Well identification numbers c. Dates of drilling and installation d. Description of monitoring well locations (including local physical hazards that force relocation of site from original plan) e. Description of drilling and construction, including any issues encountered f. Name of drilling company, driller, and site geologist/engineer g. As-built plans (included in well completion report) h. Development date and details (who, method used, how it was determined that development was competed i. Development log (volume purged, physical characteristics, disposal of developed water j. Identification of reference points on well, coordinate system used, name of person who conducted survey work, field notes, survey data.	Use of GPS survey equipment should preclude this requirement