Comment Letter A

DAS

Westlands Water District

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FRESNO, CALIF.

December 2, 2013

Regional Water Quality Control Board
David Sholes, Senior Engineering Geologist
1685 "E" Street
Fresno, CA 93706

RE: Comments on Draft Waste Discharge Requirements General Order for Western Tulare Lake Basin Area

Dear Mr. Sholes:

Westlands Water District (Westlands) appreciates the opportunity to comment on the Draft Waste Discharge Requirements General Order for Western Tulare Lake Basin Area. Westlands is concerned with many of the provisions in the WDR that will prove too costly and overly burdensome to our growers, and result in no benefit to the unconfined aquifer. Paragraph 28 of the Findings section in the General Order recognizes that specific beneficial use designations may be unattainable, since naturally occurring saline waters likely exceed water quality objectives for these uses. 1

Enclosed are comments on the draft General Order and a copy of previously submitted comments on the Administrative Draft WDR General Order. We request the opportunity to address these comments with you and look forward to helping you and your staff craft a final WDR that will benefit the growers of the Western Tulare Lake Basin Area and the resources protected by the Regional Board as well.

Sincerely,

Jose Gutierrez, P.E.
Deputy General Manager – Resources

Enclosures

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER R5-2014-XXXX

WASTE DISCHARGE REQUIREMENTS GENERAL ORDER FOR GROWERS WITHIN THE WESTERN TULARE LAKE BASIN AREA, THAT ARE MEMBERS OF A THIRD-PARTY GROUP

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER R5-2014-XXXX

WASTE DISCHARGE REQUIREMENTS GENERAL ORDER
FOR
GROWERS WITHIN THE WESTERN TULARE LAKE BASIN AREA,
THAT ARE MEMBERS OF A THIRD-PARTY GROUP

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

Findings

SCOPE AND COVERAGE OF THIS ORDER

1 This Order serves as general waste discharge requirements (WDRs) for waste discharges from irrigated lands (or "discharges") that could affect ground and/or surface waters of the state. The discharges result from runoff or leaching of irrigation water and/or stormwater from irrigated lands. Discharges can reach waters of the state directly or indirectly.[1]

2 This Order applies to owners and operators of irrigated lands within the Western Tulare Lake Basin Area (hereafter the Western Tulare Lake Basin Area). Either the owner or operator may enroll an irrigated lands parcel under this Order. The owners or operators that enroll the respective irrigated lands parcels are considered members of a third-party representing all or a portion of this area (hereafter "Members"). The Member is required to provide written notice to the non-Member owner or operator that the parcel has been enrolled under the Order. Enforcement action by the board for non-compliance related to an enrolled irrigated lands parcel may be taken against both the owner and operator. Although a third-party representative has not yet been selected, this Order contains eligibility requirements for a third-party representative and describes the process by which the Executive Officer may approve a request for third-party representation. This order applies throughout the Western Tulare Lake Basin Area, within which one or more third parties may represent Members based on geographic area. If multiple third parties apply to serve different portions of the Western Tulare Lake Basin, the applications, along with the proposed boundaries of third-party responsibility, shall be coordinated to ensure that all areas within the Western Tulare Lake Basin Area may be represented by a third-party.

3 The Western Tulare Lake Basin Area is bounded by the crest of the Coast Range to the west, Westlands Water District's boundary and portions of the Panoche –San Luis Reservoir watersheds to the north, Westlands Water District's boundary to the east, and Westlands Water District's boundary and portions of Upper Los Gatos-Avenal and Tulare-Buena Vista Lakes watersheds to the south. This area is referred to as the "Western Tulare Lake Basin Area", or "Order watershed area" in this Order. See Figure 1 for a map of the Western Tulare Lake Basin Area.

[1] Definitions for "waste discharges from irrigated lands," "waste," "groundwater," "surface water," "stormwater runoff," and "irrigation runoff," as well as all other definitions, can be found in Attachment E to this Order. It is important to note that irrigation water, the act of irrigating cropland, and the discharge of irrigation water unto itself is not "waste" as defined by the California Water Code, but that irrigation water may contain constituents that are considered to be a "waste" as defined by California Water Code section 13050(d).

4 "Irrigated lands" means land irrigated to produce crops or pasture used for commercial purposes including lands that are planted to commercial crops that are not yet marketable (e.g., vineyards and tree crops). Irrigated lands also include nurseries, and privately and publicly managed wetlands.

5 This Order is not intended to regulate water quality as it travels through or remains on the surface of a Member's agricultural fields or the water quality of soil pore liquid within the root zone.[2]

6 This Order does not apply to discharges of waste that are regulated under other Central Valley Water Board issued WDRs or conditional waiver of WDRs (waiver). If the other Central Valley Water Board WDRs/waiver only regulates some of the waste discharge activities (e.g., application of treated wastewater to crop land) at the regulated site, the owner/operator of the irrigated lands must obtain regulatory coverage for any discharges of waste that are not regulated by the other WDRs/waiver. Such regulatory coverage may be sought through enrollment under this Order or by obtaining appropriate changes in the owner/operator's existing WDRs or waiver.

7 This Order implements the long-term Irrigated Lands Regulatory Program (ILRP) in the Western Tulare Lake Basin Area. The long-term ILRP has been conceived as a range of potential alternatives and evaluated in a programmatic environmental impact report (PEIR).[3] The PEIR was certified by the Central Valley Water Board on 7 April 2011; however, the PEIR did not specify any single program alternative. The regulatory requirements contained within this Order fall within the range of alternatives evaluated in the PEIR. This Order, along with other orders to be adopted for irrigated lands within the Central Valley, will constitute the long- term ILRP. Upon adoption of this Order, Order R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group Conditional Waiver), is rescinded as applied to irrigated lands within the Western Tulare Lake Basin Area. Existing Members that had previously enrolled under the Coalition Group Conditional Waiver will be enrolled under this Order upon timely submittal of a Notice of Confirmation (see section VII.A of this Order).

GROWERS REGULATED UNDER THIS ORDER

8 This Order regulates both landowners and operators of irrigated lands from which there are discharges of waste that could affect the quality of any waters of the state. In order to be covered by this Order, the landowners or operators must be Members. Because this Order regulates both landowners and operators, but does not require enrollment of both parties, the provisions of this Order require that the Member provide notification to the non-Member responsible party of enrollment under this Order. A third-party group representing Members will assist its Members in complying with the requirements of this Order. Both the landowner and operator are ultimately responsible for complying with the terms and conditions of this Order.

9 A third-party entity proposing to represent Members in the Western Tulare Lake Basin Area, or a portion thereof, (the third-party) is required to submit to the Central Valley Water Board an

[2] Water that travels through or remains on the surface of a Member's agricultural fields includes ditches and other structures (e.g., ponds, basins) that are used to convey supply or drainage water within that Member's parcel or between contiguous parcels owned or operated by that Member.

[3] ICF International. 2011. *Irrigated Lands Regulatory Program, Program Environmental Impact Report.* Final and Draft. March. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA

application to represent growers within this Order's coverage area or identify the area the third-party proposes to cover. The third-party representation will become effective upon Central Valley Water Board Executive Officer approval of the third party's application. If a third-party proposes to cover a portion of the Order's coverage area, the Executive Officer will determine and identify the geographic area covered by the third-party in the Notice of Applicability. The Westlands Stormwater Coalition served as the third-party group representing owners and operators of irrigated lands within portions of the Order watershed area during the interim irrigated lands regulatory program, Order R5-2006-0053 (Coalition Group Conditional Waiver).

10 The third-party will be responsible for fulfilling the regional requirements and conditions (e.g., surface and groundwater monitoring, regional management plan development and tracking) of this Order and associated Monitoring and Reporting Program Order R5-2013-XXXX (MRP). By retaining its third-party membership or establishing a new membership, a Member is agreeing to be represented by the third-party for the purposes of this Order. Any requirements or conditions not fulfilled by the third-party are the responsibility of the individual Member. The Member and non-Member owners and operators are responsible for conduct of operations on the Member's enrolled property.

11 To apply for coverage under this Order, a grower that is not a current Member in the third-party group will have different application requirements depending on the timing of its request for regulatory coverage (see section VII.A of this Order for specific requirements). Growers that enroll within 120 days of Executive Officer approval of the third-party will enroll under this Order by obtaining membership in the applicable third-party group. This will streamline the initial enrollment process for the bulk of the irrigated agricultural operations within the Western Tulare Lake Basin Area. Landowners and/or operators who do not enroll within 120 days of Executive Officer approval of the third-party, or whom are prompted to apply by Central Valley Water Board enforcement or inspection, are required to submit a Notice of Intent (NOI) to comply with the terms and conditions of this Order to the Central Valley Water Board and obtain membership with the third-party group. This additional step for late enrollees is intended to provide incentive for landowners and operators to enroll promptly. There will be an administrative fee for submitting an NOI to the board. The fee will help recover costs for board efforts to conduct outreach to ensure landowners and operators subject to this Order enroll or submit reports of waste discharge.

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REASON FOR THE CENTRAL VALLEY WATER BOARD ISSUING THIS ORDER

12 The Western Tulare Lake Basin Area has approximately 528,000 acres of cropland under irrigation and approximately 1,070 growers with "waste discharges from irrigated lands," as defined in Attachment E to this Order. Nearly all of these irrigated acres are currently regulated under the Coalition Group Conditional Waiver; however, it is anticipated that some additional irrigated acres will require regulatory coverage under this Order or other WDRs or waivers. Small Farming Operations are those with a total farming operation that comprises less than 60 acres of irrigated land. There are a few~~no known~~ Small Farming Operations within the Westlands Water District ~~or~~ and Pleasant Valley portions of the Western Tulare Lake Basin Area; ~~however,~~ there may be Small Farming Operations in the smaller groundwater basins or foothill areas of the Western Tulare Lake Basin Area. 2

13 The Western Tulare Lake Basin Area region contains all or portions of seven groundwater basins/sub basins and has approximately 38 linear miles of surface water courses that are, or could be, affected by discharges of waste from irrigated lands. This does not include surface water courses in the foothill and mountainous regions of the third-party area, where there are

few irrigated lands operations. Discharges of waste from irrigated lands could adversely affect the quality of the "waters of the state," as defined in Attachment E to this Order.

14 Currently, there are no identified irrigated lands that would be covered by this Order within Department of Pesticide Regulation (DPR) Groundwater Protection Areas (GWPAs).

15 The Central Valley Water Board's *Irrigated Lands Regulatory Program Existing Conditions Report* (ECR)[4] identifies waters of the state with impaired water quality attributable to or influenced by irrigated agriculture, including within the third-party area. The *Irrigated Lands Regulatory Program Environmental Impact Report* (PEIR) describes that "*[f]rom a programmatic standpoint, irrigated land waste discharges have the potential to cause degradation of surface and groundwater…."*

16 An 18 linear mile section of Panoche Creek within the Western Tulare Lake Basin Area has been listed as impaired pursuant to Clean Water Act section 303(d)[5] for mercury, sediment toxicity, sedimentation/siltation, and selenium. The 2010 Clean Water Act Section 303(d) List / 305(b) Report (Integrated Report) lists agriculture as a potential source of sedimentation/siltation and selenium impairment. Sediment toxicity is listed with an unknown source of impairment.

17 Elevated levels of nitrates in drinking water can have significant negative health effects on sensitive individuals. The Basin Plan contains a water quality objective for nitrate to protect the drinking water uses. The water quality objective for nitrate is the maximum contaminant level (MCL) of 10 mg/L for nitrate plus nitrite as nitrogen (or 45 mg/L of nitrate as nitrate) established by the California Department of Public Health (22 CCR § 64431) that has been set at a level to protect the most at risk groups – infants under six months old and pregnant women.[6]

In some areas, nitrate from both agricultural and non-agricultural sources has resulted in degradation and/or pollution of groundwater beneath agricultural areas in the Central Valley.[7] Available data (see Information Sheet and the PEIR) indicate that there are a number of wells within the Western Tulare Lake Basin Area that have exceeded the MCL for nitrate. Where nitrate groundwater quality data are not available, information on the hydrogeological characteristics of the area suggest that significant portions of the Western Tulare Lake Basin Area are vulnerable to nitrate contamination. Sources of nitrate in groundwater may include leaching of excess fertilizer, confined animal feeding operations, septic systems, discharge to land of wastewater, food processor waste, unprotected well heads, improperly abandoned wells, and lack of backflow prevention on wells.

3

Groundwater in the Western Tulare Lake Basin Area ~~has been designated for drinking water uses; therefore, the water quality objective of 10 mg/L for nitrate plus nitrite (as nitrogen) applies to groundwater in the Western Tulare Lake Basin Area~~. is not suitable for drinking water purposes and the cost of treatment is prohibitive. Therefore, all public drinking water in the Western Tulare Lake Basin area is treated surface water. The Westlands Water District supplies all municipal and industrial water users with an allocation of surface water that the

[4] California Regional Water Quality Control Board, Central Valley Region, and Jones and Stokes. 2008. *Irrigated Lands Regulatory Program Existing Conditions Report.* Sacramento, CA.
[5] 2008-2010 303(d) List
[6] See, for example, the California Department of Public Health Nitrate Fact Sheet: http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Nitrate/FactSheet-Nitrate-05-23-2012.pdf.
[7] PEIR, Appendix A

user treats, by various methods approved by the State to water quality standards suitable for drinking purposes. ~~Where nitrate groundwater quality data are not available, information on the hydrogeological characteristics of the area suggest that significant portions of the Western Tulare Lake Basin Area are vulnerable to nitrate contamination. Sources of nitrate in groundwater may include leaching of excess fertilizer, confined animal feeding operations, septic systems, discharge to land of wastewater, food processor waste, unprotected well heads, improperly abandoned wells, and lack of backflow prevention on wells.~~ 3

18 The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).

19 California Water Code section 13263 requires the Central Valley Water Board to prescribe WDRs, or waive WDRs, for proposed, existing, or material changes in discharges of waste that could affect water quality. The board may prescribe waste discharge requirements although no discharge report under California Water Code section 13260 has been filed. The WDRs must implement relevant water quality control plans and the California Water Code. The Central Valley Water Board may prescribe general waste discharge requirements for a category of discharges if all the following criteria apply to the discharges in that category:

a. The discharges are produced by the same or similar operations;
b. The discharges involve the same or similar types of waste;
c. The discharges require the same or similar treatment standards; and
d. The discharges are more appropriately regulated under general requirements than individual requirements.

The rationale for developing general waste discharge requirements for irrigated agricultural lands in the Western Tulare Lake Basin Area includes: (a) discharges are produced by similar operations (irrigated agriculture); (b) waste discharges under this Order involve similar types of wastes (wastes associated with farming); (c) water quality management practices are similar for irrigated agricultural operations; (d) due to the large number of operations and their contiguous location, these types of operations are more appropriately regulated under general rather than individual requirements; and (e) the geology and the climate are similar, which will tend to result in similar types of water quality problems[8] and similar types of solutions.

20 Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the state depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors. These individual discharges may also have a cumulative effect on waters of the state. Waste discharges from some irrigated lands have impaired or degraded and will likely continue to impair or degrade the quality of the waters of the state within the Central Valley Region if not subject to regulation pursuant to the Porter-Cologne Water Quality Control Act (codified in California Water Code Division 7).

21 California Water Code section 13267(b)(1) states: "(1) *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which*

[8] "Water quality problem" is defined in Attachment E.

the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports. (2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report."

22 Technical reports are necessary to evaluate Member compliance with the terms and conditions of this Order and to assure protection of waters of the state. Consistent with California Water Code section 13267, this Order requires the implementation of a monitoring and reporting program (MRP) that is intended to determine the effects of Member waste discharges on water quality, to verify the adequacy and effectiveness of the Order's conditions, and to evaluate Member compliance with the terms and conditions of the Order. The requirements for reports and monitoring specified in this Order and attached MRP are based in part on whether an operation is within a high or low vulnerability area. The third-party is tasked with describing high and low vulnerability areas based on definitions provided in Attachment E to this Order and guidance provided in the MRP for development of the Groundwater Quality Assessment Report. The Executive Officer will review third-party proposed high and low vulnerability area designations and make the final determination of these areas. High and low vulnerability areas will be reviewed and updated throughout the implementation of this Order. A Member who is covered under this Order must comply with MRP Order R5-2013-XXXX which is part of this Order, and future revisions thereto by the Executive Officer or board.

23 The water quality monitoring under this Order is representative in nature instead of individual field discharge monitoring. The benefits of representative monitoring include the ability to determine whether waste discharges from numerous represented irrigated lands are meeting water quality objectives and to determine if existing high quality waters are being maintained. Further, representative monitoring allows the board to determine whether represented practices are protective of water quality. There is a cost savings with representative monitoring, since all surface waters or all groundwater aquifers that receive irrigated agricultural discharges do not need to be monitored. Surface water and groundwater monitoring sites are selected to represent areas with similar conditions (e.g., crops grown, soil type). However, there are limitations to representative monitoring's effectiveness in determining individual sources of water quality problems, the effectiveness of management practices, and individual compliance with this Order's requirements.

Therefore, through the Management Practices ~~Evaluation~~ Implementation Program~~ and the Surface Water Quality Management Plans and Groundwater Quality Management Plans, the third-party must evaluate the effectiveness of management practices in protecting water quality. In addition~~, m~~Members must report the practices they are implementing to protect water quality. Through the evaluations, studies, and monitoring conducted by the third-party, the reporting of practices by the Members, and the board's compliance and enforcement activities, the board will be able to determine whether a Member is complying with the Order.

Where required monitoring, evaluations, and reporting do not allow the Central Valley Water Board to determine potential sources of water quality problems or identify whether management practices are effective, the Executive Officer may require the third-party or individual Members to provide technical reports. Such technical reports are needed when

monitoring or other available information is not sufficient to determine the effects of irrigated agricultural waste discharges to state waters. It may also be necessary for the Central Valley Water Board to conduct investigations by obtaining information directly from Members to assess individual compliance.

24 The Central Valley Water Board's *Water Quality Control Plan for the Tulare Lake Basin* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains programs of implementation needed to achieve water quality objectives, and references the plans and policies adopted by the State Water Board. The water quality

objectives are developed to protect the beneficial uses of waters of the state. Compliance with water quality objectives will protect the beneficial uses listed in Findings 27 and 28.

25 The Tulare Lake Basin Plan identifies the greatest long-term problem facing the Basin as the increase in salinity in groundwater. Because of the closed nature of the Tulare Lake Basin, there is little subsurface outflow. Thus salts accumulate within the Basin due to the importation and evaporative use of water. A large portion of this increase is due to the intensive use of soil and water resources by irrigated agriculture. The farming operations in the Western Tulare Lake Basin area have no drainage service as the United States Bureau of Reclamation has neglected to provide it as contractually obligated. The Tulare Lake Basin Plan recognizes that degradation is unavoidable without a plan for removing salts from the Basin and that salt sources should be managed to the extent practicable to reduce the rate of groundwater degradation until there is a long-term solution to the salt imbalance. 4

26 This Order implements the Basin Plan and applicable State policies by requiring the implementation of management practices that are considered to constitute best practicable treatment or control where applicable, that achieve compliance with applicable water quality objectives and that prevent nuisance. The Order requires implementation of a monitoring and reporting program to determine effects of discharges on water quality and the effectiveness of management practices designed to comply with applicable water quality objectives.

27 Pursuant to the Basin Plan and State Water Board plans and policies, including State Water Board Resolution 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of surface waters in the Western Tulare Lake Basin Area may include:

a. Municipal and Domestic Supply;
b. Agricultural Supply;
c. Industrial Service Supply;
d. Industrial Process Supply;
e. Water Contact Recreation;
f. Non-Contact Water Recreation;
g. Warm Freshwater Habitat;
h. Wildlife Habitat;
i. Rare, Threatened, and Endangered Species; and
j. Groundwater Recharge

28 Pursuant to the Basin Plan and State Water Board plans and policies including State Water Board Resolution 88-63, and unless otherwise designated in the Basin Plan, all ground waters in the region are considered as suitable or potentially suitable at a minimum, for:

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a. Municipal and Domestic Supply;
b. Agricultural Supply;
c. Industrial Service Supply; and
d. Industrial Process Supply

29 The board recognizes that some areas within the Western Tulare Lake Basin Area overlie groundwater containing naturally occurring constituents, including salts, that may exceed water quality objectives for specific beneficial use designations. In such cases, the use may be unattainable, even in the absence of any waste discharge, and de-designation or modification of the designated use may be appropriate. It is reasonable, under circumstances described below, to delay the imposition of monitoring and reporting associated with high vulnerability

areas in these circumstances. This Order allows, with Executive Officer approval, portions of the high vulnerability areas identified within the Groundwater Quality Assessment Report (GAR) to temporarily operate under reduced monitoring and reporting requirements when 1) a third-party, board, or other group is actively pursuing a basin plan amendment to de-designate or modify the beneficial use; and 2) the third-party provides the required information indicating that it is reasonably likely that the beneficial use is not appropriate in the area of the proposed de-designation. The requirements for pursuing reduced monitoring and reporting as a condition of a basin plan amendment are described in section VIII.M of this Order and section V.E of the MRP.

30 In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy). The purpose of the NPS Policy is to improve the state's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy requires, among other key elements, an NPS control implementation program's ultimate purpose to be explicitly stated. It also requires implementation programs to, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

31 This Order constitutes an NPS Implementation Program for the discharges regulated by the Order. The ultimate purpose of this program is expressly stated in the goals and objectives for the ILRP, described in the PEIR and Attachment A to this Order. Attachment A, Information Sheet, describes the five key elements required by the NPS Policy and provides justification that the requirements of this Order meet the requirements of the NPS Policy. This Order is consistent with the NPS Policy.

32 The United States Environmental Protection Agency adopted the National Toxics Rule (NTR) on 5 February 1993 and the California Toxics Rule (CTR) on 18 May 2000, which was modified on 13 February 2001. The NTR and CTR contain water quality criteria which, when combined with beneficial use designations in the Basin Plans, constitute enforceable water quality standards for priority toxic pollutants in California surface waters.

33 It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This order promotes that policy by, among other things, utilizing a tiered system that imposes more stringent requirements in areas deemed "high vulnerability" based on threat to surface or groundwater quality, requiring surface and groundwater monitoring and management plans, an identification and evaluation of management practices that are protective of surface and groundwater quality, and requiring discharges to meet applicable water quality objectives, which include maximum contaminant levels designed to protect human health and ensure that water is safe for domestic uses. Protection of the beneficial

uses of surface and groundwater is described throughout this Order, including the discussion in Attachment A to this Order of State Water Board Resolution 68-16 *Statement of Policy with Respect to Maintaining High Quality Waters in California*.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

34 For purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). Pursuant to board direction in Resolutions R5-2006-0053 and R5-2006-0054, a Program Environmental Impact Report (PEIR) was prepared. In accordance with CEQA, the Central Valley Water Board,

acting as the lead agency adopted Resolution R5-2011-0017 on 7 April 2011, certifying the PEIR for the Irrigated Lands Regulatory Program.

35 This Order relies on the environmental impact analysis contained in the PEIR to satisfy the requirements of CEQA. Although the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR's wide range of alternatives. Therefore, the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order. The potential compliance activities undertaken by the regulated Members in response to this Order fall within the range of compliance activities identified and analyzed in the PEIR. Therefore, all potentially adverse environmental impacts of this Order have been identified, disclosed, and analyzed in the PEIR. If it is determined that a grower filing for coverage under this Order could create impacts not identified in the PEIR, individual WDRs would be prepared for that grower and additional CEQA analysis performed, which would likely tier off the PEIR as necessary. (See Title 14, CCR § 15152).

36 The requirements of this Order are based on elements of Alternatives 2 through 6 of the PEIR. The PEIR concludes that implementation of some of these elements has the potential to cause significant adverse environmental impacts. Such impacts are associated, directly and indirectly, with specific compliance activities growers may conduct in response to the Order's regulatory requirements. Such activities are expected to include implementation of water quality management practices and monitoring well installation and operation. Attachment A of this Order describes example water quality management practices that may be implemented as a result of this Order and that monitoring wells may be installed as a result of this Order. The types and degrees of implementation will be similar to those described in the PEIR for Alternatives 2 through 6. Also, because the cost of this Order is expected to fall within the range of costs described for Alternatives 2 through 6, significant impacts to agriculture resources under this Order will be similar to those described in the PEIR. Because of these similarities, this Order relies on the PEIR for its CEQA analysis. A listing of potential environmental impacts, the written findings regarding those impacts consistent with § 15091 of the CEQA Guidelines, and the explanation for each finding are contained in a separate Findings of Fact and Statement of Overriding Considerations document (Attachment D), which is incorporated by reference into this Order.

37 Where potentially significant environmental impacts identified in Attachment D may occur as a result of Members' compliance activities, this Order requires that Members either avoid the impacts where feasible or implement identified mitigation measures, if any, to reduce the potential impacts to a less than significant level. Where avoidance or implementation of identified mitigation is not feasible, use of this Order is prohibited and individual WDRs would be required. The Monitoring and Reporting Program (MRP) Order, Attachment B, includes a Mitigation Monitoring and Reporting Program to track the implementation of mitigation measures.

38 The PEIR finds that none of the program alternatives will cause significant adverse impacts to

water quality. Consistent with alternatives in the PEIR, this Order contains measures needed to achieve and maintain water quality objectives and beneficial uses, reduce current pollutant loading rates, and minimize further degradation of water quality. As such, this Order will not cause significant adverse impacts to water quality.

STATE WATER RESOURCES CONTROL BOARD RESOLUTION 68-16

39 State Water Resources Control Board (State Water Board) Resolution 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution 68-16 or

"antidegradation policy") requires that a Regional Water Quality Control Board maintain high quality waters of the state unless the board determines that any authorized degradation is consistent with maximum benefit to the people of the state, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Quality Control Board's policies (e.g., quality that exceeds applicable water quality objectives). The board must also assure that any authorized degradation of existing high quality waters is subject to waste discharge requirements which will result in the best practicable treatment or control (BPTC) of the discharge necessary to assure that pollution, or nuisance will not occur and the highest water quality consistent with the maximum benefit to the people of the state will be maintained.

40 The Central Valley Water Board has information in its records that has been collected by the Central Valley Water Board, growers, educational institutions, and others that demonstrates that many water bodies within the Central Valley Region are impaired for various constituents, including pesticides, nitrates, and salts. One water body has been listed as impaired pursuant to Clean Water Act section 303(d). This Order does not authorize further degradation of such waters.

Appendix A to the PEIR for the Irrigated Lands Program describes that "*there may be cases where irrigated agricultural waste discharges threaten to degrade high quality waters.*" For discharges to water bodies that are high quality waters, this Order is consistent with Resolution 68-16. Attachment A to this Order summarizes applicable antidegradation requirements and provides detailed rationale demonstrating how this Order is consistent with Resolution 68-16. As indicated in the summary, this Order authorizes degradation of high quality waters, not to exceed water quality objectives, threaten beneficial uses, or cause a condition of pollution or nuisance. The Order will also result in the implementation of BPTC by those discharging to high quality waters and assure that any change in water quality will be consistent with maximum benefit to the people of the state.

CALIFORNIA WATER CODE SECTIONS 13141 AND 13241

41 California Water Code section 13141 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*." Section 13141 concerns approvals or revisions to a water quality control plan and does not necessarily apply in a context where an agricultural water quality control program is being developed through waivers and waste discharge requirements rather than basin planning. However, the Basin Plan includes an estimate of potential costs and sources of financing for the long-term irrigated lands program. The estimated costs were derived by analyzing the six alternatives evaluated in the PEIR. This Order, which implements the long-term ILRP within the Western Tulare Lake Basin Area, is based on Alternatives 2-6 of the

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PEIR; therefore, estimated costs of this Order fall within the Basin Plan cost range.[9] The total average annual cost of compliance with this Order, e.g., summation of costs for administration, monitoring, reporting, tracking, implementation of management practices, is expected to be approximately $7.02 per acre greater than the current surface water only protection program under the Coalition Group Conditional Waiver. The total estimated average cost of compliance of continuation of the previous Coalition Group Conditional Waiver within the Westlands Area is expected to be approximately 4.88 million dollars per year ($9.80 per acre annually). The total estimated average cost of compliance with this Order is expected to be

approximately 8.38 million dollars per year ($16.82 per acre annually).

Approximately $11.82 of the estimated $16.82 per acre annual average cost of the Order is associated with implementation of management practices. This Order does not require that Members implement specific water quality management practices.[10] Many of the management practices that have water quality benefits can have other economic and environmental benefits (e.g., improved irrigation can reduce water and energy consumption, as well as reduce runoff). Management practice selection will be based on decisions by individual Members in consideration of the unique conditions of their irrigated agricultural lands; water quality concerns; and other benefits expected from implementation of the practice. As such, the cost estimate is an estimate of potential, not required costs of implementing specific practices. Any costs for water quality management practices will be based on a market transaction between Members and those vendors or individuals providing services or equipment and not based on an estimate of those costs provided by the board. The cost estimates include estimated fees the third-party may charge to prepare the required reports and conduct the required monitoring, as well as annual permit fees that are charged to permitted dischargers for permit coverage. In accordance with the State Water Board's Fee Regulations, the current annual permit fee charged to Members covered by this Order is $0.56/acre. The combined total estimated average administrative costs that include third-party and state fees are estimated to be $4.54/acre annually. These costs have been estimated using the same study used to develop the Basin Plan cost estimate, which applies to the whole ILRP being overseen by the Central Valley Water Board. The basis for these estimates is provided in the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program.*[11] Attachment A includes further discussion regarding the cost estimate for this Order.

42 California Water Code section 13263 requires that the Central Valley Water Board consider the following factors, found in section 13241, when considering adoption of waste discharge requirements.

(a) Past, present, and probable future beneficial uses of water;

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;

(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;

[9] When compared on a per irrigated acre basis; as the Basin Plan cost range is an estimate for all irrigated lands in the Central Valley versus this Order's applicability to a portion thereof (irrigated lands in Westlands Area).

[10] Per California Water Code section 13360, the Central Valley Water Board may not specify the manner in which a Member complies with water quality requirements.

[11] ICF International. 2010. *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program.* Draft. July. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA

(d) Economic considerations;

(e) The need for developing housing within the region; and

(f) The need to develop and use recycled water.

These factors have been considered in the development of this Order. Attachment A, Information Sheet, provides further discussion on the consideration of section 13241 factors.

RELATIONSHIP TO OTHER ONGOING WATER QUALITY EFFORTS

43 Other water quality efforts conducted pursuant to state and federal law directly or indirectly serve to reduce waste discharges from irrigated lands to waters of the state. Those efforts will continue, and will be supported by implementation of this Order.

44 The Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) initiative has the goal of developing sustainable solutions to the increasing salt and nitrate concentrations that threaten the achievement of water quality objectives in Central Valley surface and groundwater. This Order requires actions that will reduce nitrate discharges and should result in practices that reduce salt loading. The board intends to coordinate all such actions with the CV-SALTS initiative. CV-SALTS may identify additional actions that need to be taken by irrigated agriculture and others to address these constituents. This Order can be amended in the future to implement any policies or requirements established by the Central Valley Water Board resulting from the CV-SALTS process. This Order includes provisions to promote coordination with CV-SALTS and to support the development of information needed for the CV-SALTS process.

45 Total Maximum Daily Loads (TMDLs) are established for surface waters that have been placed on the State Water Board's 303(d) list of Water Quality Limited Segments for failure to meet applicable water quality standards. A TMDL, which may be adopted by the Central Valley Water Board as Basin Plan amendments, is the sum of allowable loads of a single pollutant from all contributing point sources and nonpoint sources. A TMDL has not been adopted for any surface water in the Western Tulare Lake Basin Area. This Order will implement any future TMDLs to the extent they include established requirements that pertain to irrigated agriculture.

46 The General Order for Existing Milk Cow Dairies (R5-2007-0035) and NPDES Dairy General Permit CAG015001 (Dairy General Orders) regulates discharges of waste to surface waters and groundwater from existing milk cow dairies in the Central Valley. Discharges from irrigated agricultural parcels are regulated by the Dairy General Orders if the owner or operator of the parcel applies dairy waste from its dairy operation. Irrigated agricultural parcels that receive dairy or other confined animal facility[12] waste from external sources must obtain regulatory coverage for their discharge under this Order or waste discharge requirements that apply to individual growers. The Central Valley Water Board encourages the dairy industry and the third-party to coordinate the surface water and groundwater quality monitoring required of the two orders and coordinate their response to identified water quality problems.

[12] "Confined animal facility" is defined in Title 27 CCR section 20164 as "*… any place where cattle, calves, sheep, swine, horses, mules, goats, fowl, or other domestic animals are corralled, penned, tethered, or otherwise enclosed or held and where feeding is by means other than grazing.*"

47 The Executive Officer approved the Westlands Stormwater Coalition Management Plan on 28 March 2012. The approved plan (along with updates and modifications approved by the Executive Officer) will continue to be implemented under this Order to address the surface water quality problems identified therein, unless and until such time the Executive Officer requires modification of the plan or deems it to be complete, as described in this Order. Management Plans required by data gathered under the Coalition Waiver, which have not been approved by the date the Order is adopted, will be completed in accordance with the requirements of Appendix MRP-1 of this Order. Any request to consider management plans approved under the Conditional Waiver complete will be evaluated in accordance with this Order.

COORDINATION AND COOPERATION WITH OTHER AGENCIES

48 *Integrated Regional Water Management Plans:* Pursuant to part 2.75 of Division 6 of the California Water Code (commencing with section 10750), local agencies are authorized to adopt and implement groundwater management plans (hereinafter "local groundwater management plans"), including integrated regional water management plans. The legislation provides recommended components to the plans such as control of saline water intrusion, regulation of the migration of contaminated water, monitoring of groundwater levels and storage, and the development of relationships with regulatory agencies. The information collected through implementation of groundwater management plans can support or supplement efforts to evaluate potential impacts of irrigated agricultural discharges on groundwater. This Order requires the third-party to develop regional groundwater monitoring workplans and, where necessary, Groundwater Quality Management Plans (GQMPs). The third-party is encouraged to coordinate with local groundwater management plans and integrated regional water management plans, where applicable, when developing regional groundwater monitoring workplans and GQMPs.

49 *California Department of Pesticide Regulation (DPR)*: DPR has developed a Groundwater Protection Program under the authority of the Pesticide Contamination Prevention Act (PCPA) (commencing with Food and Agriculture Code section 13142). The program is intended to prevent contamination of groundwater from the legal application of pesticides. In addition to activities mandated by the PCPA, DPR's program has incorporated approaches to identify areas vulnerable to pesticide movement, develop mitigation measures to prevent pesticide contamination, and monitor domestic drinking water wells located in groundwater protection areas. The Groundwater Protection Program can provide valuable information on potential impacts to groundwater from agricultural pesticides. If necessary, DPR and the county agricultural commissioners can use their regulatory authorities to address any identified impacts to groundwater or surface water attributable to pesticide discharges from agricultural fields.

50 *California Department of Food and Agriculture (CDFA)*: The CDFA Fertilizer Research and Education Program (FREP) coordinates research to advance the environmentally safe and agronomically sound use and handling of fertilizer materials. Currently, CDFA is developing nitrogen management training programs for farmers and Certified Crop Advisors (CCA). Among other certification options available for nitrogen management plans, the CDFA training programs will be recognized as providing the training necessary for a farmer or CCA to certify nitrogen management plans in high vulnerability groundwater areas. This Order leverages CDFA's work and expertise with respect to nitrogen management training and technical support to the professionals and third-parties that will be developing nitrogen management plans for individual Members.

51 *Nitrogen Management and Control* – CDFA, in coordination with the Water Boards is

convening a Task Force to identify intended outcomes and expected benefits of a nitrogen mass balance tracking system in nitrate high-risk areas. The CDFA Task Force may identify appropriate nitrogen tracking and reporting systems, and potential alternatives, that would provide meaningful and high quality data to help better protect groundwater quality.

In the Report to the Legislature[13], the State Water Resources Control Board (SWRCB) has committed to convene a panel of experts from a broad spectrum of relevant disciplines (Expert Panel) to assess existing agricultural nitrate control programs and develop recommendations,

as needed, to ensure that ongoing efforts are protective of groundwater quality. The Expert Panel will evaluate ongoing agricultural control measures that address nitrate in groundwater, and will propose new measures, if necessary. In its assessment of existing agricultural nitrate control programs and development of recommendations for possible improvements in the regulatory approaches being used, the Expert Panel will consider groundwater monitoring, mandatory adoption of best management practices, tracking and reporting of nitrogen fertilizer application, estimates of nitrogen use efficiency or a similar metric, and farm-specific nutrient management plans as source control measures and regulatory tools.

The deadlines for preparation of a nitrogen management plan and associated reporting allow the board to make any necessary adjustments to this Order based on the findings and recommendations of the CDFA Task Force and the SWRCB Expert Panel and prior to the established compliance dates.

52 The Central Valley Water Board will continue to work cooperatively with the other state agencies to identify and leverage their efforts.

ENFORCEMENT FOR NONCOMPLIANCE WITH THIS ORDER

53 California Water Code section 13350 provides that any person who violates Waste Discharge Requirements may be: 1) subject to administrative civil liability imposed by the Central Valley Water Board or State Water Board in an amount of up to $5,000 per day of violation, or $10 per gallon of waste discharged; or 2) be subject to civil liability imposed by a court in an amount of up to $15,000 per day of violation, or $20 per gallon of waste discharged. The actual calculation and determination of administrative civil penalties must be set forth in a manner that is consistent with the State Water Board's Water Quality Enforcement Policy.

54 The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative Members in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. Progressive enforcement actions may begin with informal enforcement actions such as a verbal, written, or electronic communication between the Central Valley Water Board and a Member. The purpose of an informal enforcement action is to quickly bring the violation to the Member's attention and to give the Member an opportunity to return to compliance as soon as possible. The highest level of informal enforcement is a Notice of Violation.

[13] State Water Board Resources Control Board. 2013. Report to the Legislature, Recommendations Addressing Nitrate in Groundwater <http://www.swrcb.ca.gov/water_issues/programs/nitrate_project/docs/nitrate_rpt.pdf>

The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Violations of this Order that will be considered a priority include, but are not limited to:

a) Failure to obtain required regulatory coverage;

b) Failure to meet receiving water limitations, unless the Member is implementing a Central Valley Water Board approved SQMP or GQMP in accordance with the time schedule provisions of this Order (section XII);[14]

c) The discharge of waste to lands not owned, leased, or controlled by the Member without written permission from the landowner;

d) Failure to prevent future exceedances of water quality objectives once made aware of an exceedance;

e) Falsifying information or intentionally withholding information required by applicable laws, regulations or an enforcement order;

f) Failure to implement a SQMP/GQMP;

g) Failure to pay annual fees, penalties, or liabilities;

h) Failure to monitor or provide information to the third-party as required;

i) Failure to submit required reports on time; and

j) Failure to implement the applicable management practices, or equivalent practices, identified as protective of groundwater in the Management Practices Evaluation Report.

55 Under this Order, the third-party is tasked with developing monitoring plans, conducting monitoring, developing water quality management plans, and informing Members of requirements. It is intended that the following progressive enforcement steps will generally be taken in the event that the third-party fails to comply with the terms and conditions of this Order or attached MRP:

a) *First notification of noncompliance to the third-party*. The Central Valley Water Board intends to notify the third-party of the non-compliance and allow a period of time for the third-party to come back into compliance. This notification may be in the form of a verbal notice, letter, or written notice of violation, depending on the severity of the noncompliance.

b) *Second notification of noncompliance to the third-party*. If the third-party fails to adequately respond to the first notification, the board intends to provide written notice to the third-party and potentially affected Members of the failure to address the first notice.

c) *Failure of the third-party to adequately respond to the second notification*. Failure to adequately respond to the second notification may result in partial (e.g., affected areas or Members) or full disapproval of the third-party to act as a lead entity, depending on the severity of noncompliance. Growers that were Members affected by a partial or full third-party disapproval would be required to obtain coverage for their waste discharge under other applicable general waste discharge requirements or submit a Report of Waste

[14] A Member participating in a Management Practices Evaluation Program study (i.e., the study is taking place on the Member's farm) where data indicate the discharge from the study area is not meeting receiving water limitations will not be a priority for enforcement, if the Member is implementing a Central Valley Water Board approved SQMP or GQMP in accordance with the time schedule provisions of this Order (section XII).

GENERAL FINDINGS

56 This Order does not authorize violation of any federal, state, or local law or regulation.

57 This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the Member shall obtain authorization for an incidental take prior to construction or operation of the project. The Member shall be responsible for meeting all requirements of the applicable Endangered Species Act.

58 This Order does not supersede the Central Valley Water Board's Basin Plans and policies, or the State Water Board's plans and policies.

59 As stated in California Water Code section 13263(g), the discharge of waste into waters of the state is a privilege, not a right, and regulatory coverage under this Order does not create a vested right to continue the discharge of waste. Failure to prevent conditions that create or threaten to create pollution or nuisance will be sufficient reason to modify, revoke, or enforce this Order, as well as prohibit further discharge.

60 This Order requires Members to provide the third-party with contact information of the person(s) authorized to provide access to the enrolled property for inspections. This requirement provides a procedure to enable board staff to contact grower representatives so that it may more efficiently monitor compliance with the provisions of this Order.

61 Any instance of noncompliance with this Order constitutes a violation of the California Water Code and its regulations. Such noncompliance is grounds for enforcement action, and/or termination of coverage for waste discharges under this Order, subjecting the discharger to enforcement under the California Water Code for further discharges of waste to surface or groundwater.

62 All discharges from the irrigated agricultural operation are expected to comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges to storm drain systems or to other courses under their jurisdiction.

63 The fact that it would have been necessary to halt or reduce the discharge in order to maintain compliance with this Order shall not be a defense for violations of the Order by the Member.

64 This Order is not a National Pollutant Discharge Elimination System Permit issued pursuant to the Federal Clean Water Act. Coverage under this Order does not exempt a facility from the Clean Water Act. Any facility required to obtain such a permit must notify the Central Valley Water Board.

65 California Water Code section 13260(d)(1)(A) requires persons subject to waste discharge requirements to pay an annual fee established by the State Water Board.

66 The Findings of this Order, supplemental information and details in the attached Information Sheet (Attachment A), and the administrative record of the Central Valley Water Board

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relevant to the Irrigated Lands Regulatory Program, were considered in establishing these waste discharge requirements.

67 The Central Valley Water Board has notified interested agencies and persons of its intent to adopt this Order for discharges of waste from irrigated lands within the Western Tulare Lake Basin Area, and has provided them with an opportunity for a public hearing and an opportunity to submit comments.

68 The Central Valley Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

69 Any person affected by this action of the Central Valley Water Board may petition the State Water Board to review this action. The State Water Board must receive the petition within 30 days of the date on which the Central Valley Water Board adopted this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13260, 13263, and 13267 and in order to meet the provisions contained in Division 7 of the California Water Code and regulations and policies adopted there under; all Members of a third-party group[15], their agents, successors, and assigns shall comply with the following:

I. Coverage

1. Order R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group Conditional Waiver), is hereby rescinded as it applied to Members of the Westlands Stormwater Coalition in the Western Tulare Lake Basin Area.

2. The area to be covered by a third-party group will be identified in its Notice of Applicability (NOA). A third-party group receiving an NOA under this Order is responsible for all third-party group requirements within the geographic area identified in its NOA.

II. Prohibitions

1. The discharge of waste to waters of the state, from irrigated agricultural operations other than those defined in the Findings of this Order, is prohibited.

2. The discharge of hazardous waste, as defined in California Water Code section 13173 and Title 23 CCR section 2521(a), respectively, is prohibited.

3. The discharge of wastes (e.g., fertilizers, fumigants, pesticides) into groundwater via backflow through a water supply well is prohibited.

4. The discharge of any wastes (e.g., fertilizers, fumigants, pesticides) down a groundwater well casing is prohibited.

III. Receiving Water Limitations

A. Surface Water Limitations[16]

[15] References to "the third-party group" in this Order apply to each of the entities (if more than one) that are approved as a third-party group under this Order.

[16] These limitations are effective immediately except where Members are implementing an approved Surface Water Quality Management Plan (SQMP) for a specified waste parameter in accordance with an approved time schedule authorized pursuant to sections VIII.I and XII of this Order.

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1. 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[17]

1. 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.

~~1.~~2. Shallow groundwaters in certain areas of the Western Tulare Lake area have been well documented to be inherently highly saline and no amount of regulation will appreciably benefit the quality of those waters. Discharges from Members operations will continue to impact these groundwaters until such time as a workable drainage solution can be established. 5

IV. Provisions

A. General Specifications

1. The third-party will assist its Members in complying with the relevant terms and provisions of this Order, including required monitoring and reporting as described in MRP Order R5-2013-XXXX. However, individual Members of the third-party group continue to bear ultimate responsibility for complying with this Order.

2. Irrigated lands owners or operators with waste discharges to state waters (or "Dischargers") that are not Members of the third-party group, or whose property is not enrolled by a Member of the third-party group, shall not be subject to coverage provided by the terms of this Order. Such Dischargers shall be required to obtain coverage for their waste discharge under individual waste discharge requirements or any applicable general waste discharge requirements that apply to individuals that are not represented by a third-party.

3. Members who are subject to this Order shall implement water quality management practices, as necessary, to protect water quality and to achieve compliance with applicable water quality objectives. Where applicable, the implementation of practices must be in accordance with the time schedule contained in an approved Groundwater Quality Management Plan or Surface Water Quality Management Plan

4. Installation of groundwater monitoring wells or implementation of management practices to meet the conditions of this Order at a location or in a manner that could cause an adverse environmental impact as identified in the *Irrigated Lands Regulatory Program, Final Program Environmental Impact Report* (PEIR)[18] shall be mitigated in accordance with the mitigation measures provided in Attachment C of this Order.

5. The provisions of this Order are severable. If any provision of the Order is held invalid, the remainder of the Order shall not be affected.

B. Requirements for Members of the Third-Party Group

1. Members shall comply with all applicable provisions of the California Water Code, the *Water Quality Control Plan for the Tulare Lake Basin,* and State Water Board plans and policies.

[17] These limitations are effective immediately except where Members are implementing an approved Groundwater Quality Management Plan (GQMP) for a specified waste parameter in accordance with an approved time schedule authorized pursuant to sections VIII.I and XII of this Order.

[18] On 7 April 2011, the Central Valley Water Board adopted Resolution R5-2011-0017, certifying the PEIR for the long-term irrigated lands regulatory program.

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2. All Members shall comply with the attached Monitoring and Reporting Program (MRP) R5-2013-XXXX, and future revisions thereto.

3. Members who are covered under this Order shall comply with the terms and conditions contained in this Order.

4. Each Member shall participate in third-party outreach events, at least annually, if any of the Member's parcels are in a designated "high vulnerability" area or governed by a SQMP/GQMP. The Member shall review outreach materials to become informed of any water quality problems to address and the management practices that are available to address those issues. The Member shall provide annual confirmation to the third-party that the Member has attended an outreach event during the previous year and reviewed the applicable outreach materials.

5. All Members shall provide the third-party with information requested for compliance with this Order.

6. All Members shall implement water quality management practices in accordance with any water quality management plans approved by the Central Valley Water Board Executive Officer, and/or as necessary to protect water quality and to achieve compliance with surface and groundwater receiving water limitations of this Order (sections III.A and B). Water quality management practices can be instituted on an individual basis, or implemented to serve multiple growers discharging to a single location.

7. All Members shall implement effective sediment discharge and erosion prevention practices to minimize or eliminate the discharge of sediment above background levels. Members with the potential to cause erosion and discharge sediment that may degrade surface waters, as identified by the Member in their Farm Evaluation, by the third-party in the Sediment Discharge and Erosion Assessment Report, or by the Executive Officer shall prepare and implement a Sediment and Erosion Control Plan as specified in section VII.C below.

8. All Members shall implement practices that minimize excess nutrient application relative to crop consumption. ~~Members shall prepare and implement a farm-specific nitrogen management plan as required by section VII.D of this Order.~~

9. In addition to the reports identified in section VII of this Order, the Executive Officer may require the Member to submit additional technical reports pursuant to California Water Code section 13267.

10. The requirements prescribed in this Order do not authorize the commission of any act causing injury to the property of another, or protect the Member from liabilities under other federal, state, county, or local laws. However, enrollment under this Order does protect the Member from liability alleged for failing to comply with California Water Code section 13260.

11. This Order does not convey any property rights or exclusive privileges.

12. This Order shall not create a vested right, and all such discharges of waste shall be considered a privilege, as provided for in California Water Code section 13263.

13. The Member understands that the Central Valley Water Board or its authorized representatives, may, at reasonable hours, inspect the facilities[19] and irrigated lands of

[19] The inspection of Member's facilities and irrigated lands does not include the Member's private residence.

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persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the Member is complying with the conditions of this Order. To the extent required by California Water Code section 13267(c) or other applicable law, the inspection shall be made with the consent of the Member, owner or authorized representative, or if consent is withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with section 1822.50). In the event of an emergency affecting the public health and safety, an inspection may be performed without the consent or the issuance of a warrant.

14. The Member shall provide the third-party with the phone number(s) of the individual(s) with authority to provide consent to access its facilities as described in provision IV.B.13 above.

15. The Member shall properly operate and maintain in good working order any facility, unit, system, or monitoring device installed to achieve compliance with the Order.

16. Settling ponds, basins, and tailwater recovery systems shall be constructed, maintained, and operated to prevent groundwater degradation, erosion, slope failure; and minimize the discharge of sediment. The construction and operation must be consistent with the applicable Natural Resources Conservation Service (NRCS) conservation practice standard, an NRCS or University of California Cooperative Extension recommendation, or an equivalent alternative standard.

17. Where applicable, the Member shall follow state, county or local agency standards with respect to water wells and groundwater quality when constructing new wells, modifying existing wells, or destroying wells. Absent such standards, at a minimum, the Member shall follow the standards and guidelines described in the California Department of Water Resources' *Water Well Standards (Bulletins 74-81 & 74-90 combined)*.

18. The Member shall maintain a copy of this Order, either in hard copy or electronic format, at the primary place of business, or the Member's farming operations headquarters. The Member shall also maintain excerpts of the Order's Member requirements that have been provided by the Executive Officer so as to be available at all times to operations personnel. The Member and his/her designee shall be familiar with the content of this Order.

19. The Member, or the third-party on its Member's behalf as applicable, shall submit all required documents in accordance with section IX of this Order.

20. Members shall, at a minimum, implement water quality management practices that meet the following farm management performance standards:
    a. Minimize waste discharge offsite in surface water,
    b. Minimize percolation of waste to groundwater,
    c. Protect wellheads from surface water intrusion.

21. Members shall implement the applicable management practices, or equivalent practices, identified as protective of groundwater in the Management Practices Evaluation Report.

C. Requirements for the Third-Party Group

In order to remain eligible to serve as a third-party representative to Members, the third-party shall perform the following:

1. Provide the Central Valley Water Board documentation of its organizational or management structure. The documentation shall identify persons responsible for ensuring that program

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requirements are fulfilled. The documentation shall be made readily available to Members.

2. Prepare annual summaries of expenditures of fees and revenue used to comply with this Order. The summaries shall be provided to or made readily available to Members.

3. If the third-party group receives a notice of violation (NOV) from the Central Valley Water Board, the third-party must provide to Members in the area addressed by the NOV appropriate information regarding the reason(s) for the violation. The notification must be provided to all Members within the area affected by the NOV within thirty (30) days of receiving the NOV from the board. The third-party group must provide confirmation to the board of each notification. A summary of all notices of violation received by the third-party group must be provided to all Members annually. The annual NOV summary may be part of a written or electronic communication to Members.

4. Develop and implement plans to track and evaluate the effectiveness of water quality management practices, pursuant to approved Surface Water Quality Management Plans and Groundwater Quality Management Plans.

5. Provide timely and complete submittal of any plans or reports required by this Order.

6. Conduct required water quality monitoring and assessments in conformance with quality assurance/quality control requirements.

7. Within 30 days of receiving an NOA from the Central Valley Water Board (as described in VIII.A), inform Members of this Order's requirements by providing a notice of confirmation form to be completed by each Member.

8. Conduct education and outreach activities to inform Members of program requirements and water quality problems, including exceedances of water quality objectives or degradation of water quality, identified by the third-party or Central Valley Water Board. The third-party shall:

   a. Maintain attendance lists for third-party outreach events, provide Members with information on water quality management practices that will address water quality problems and minimize the discharge of wastes from irrigated lands, and provide informational materials on potential environmental impacts of water quality management practices to the extent known by the third-party group.

   b. Provide an annual summary of education and outreach activities to the Central Valley Water Board. The annual summary shall include copies of the educational and management practice information provided to the growers. The annual summary must report the total number of growers who attended the outreach events and describe how growers could obtain copies of the materials presented at these events.

9. Work cooperatively with the Central Valley Water Board to ensure that all Members are providing required information and taking necessary steps to address exceedances or degradation identified by the third-party or board. As part of the Membership List submittal, identify the growers known by the third-party who have: (1) failed to implement improved water quality management practices within the timeframe specified by an applicable SQMP/GQMP; (2) failed to respond to an information request from the third-party associated with any applicable SQMP/GQMP or other provisions of this Order; (3) failed to participate as requested in third-party studies for which the third-party is the lead; (4) failed to provide confirmation of participation in an outreach event (per section IV.B.4 of this Order); or (5) otherwise failed to maintain good standing of their membership in the third-party group.

10. Ensure that any activities conducted on behalf of the third-party by other groups meet the requirements of this Order. The third-party is responsible for any activities conducted on its behalf.

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11. 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 fees invoiced by the State Water Board will be based on the Membership List submitted by the third-party group. The third-party group is responsible for ensuring the Members identified in the Membership List have provided their required portion of the State Water Board fees.

V. Effective Dates

1. This Order is effective upon adoption by the Central Valley Water Board on XX XXXX 2013**,** and remains in effect unless rescinded or revised by the Central Valley Water Board.

2. Regulatory coverage under this Order for discharges of waste from Members already enrolled under Order R5-2006-0053 is effective upon adoption of this Order by the Central Valley Water Board. Regulatory coverage under this Order is automatically terminated, if a Notice of Confirmation (NOC) is not received by the third-party from the currently enrolled Member within

   120 days of Executive Officer issuance of an NOA to the third-party; or, if the third-party group application for the area in which the Member has irrigated lands is denied; or if the Central Valley Water Board revokes the approval of the third-party representing the Member's area.

3. Regulatory coverage for Dischargers not already enrolled under Order R5-2006-0053 as of the date of adoption of this Order can be obtained directly through obtaining membership in the third-party group within 120 days of Executive Officer issuance of a Notice of Applicability (NOA) to the third-party. Regulatory coverage is effective when the third-party notifies the Central Valley Water Board that the Discharger's application for membership has been accepted.

4. After the initial 120-day period following issuance of an NOA to the third-party group, regulatory coverage for Dischargers who are not members of the third-party under section V.2 or V.3 is effective upon notification by the Central Valley Water Board that this Order applies to the Discharger through the issuance of an NOA. The Central Valley Water Board shall only issue an NOA after it has received a Notice of Intent (NOI) as required by section VII.A, and after the Central Valley Water Board has received notification from the third-party that the Discharger is a Member. The Discharger must pay any applicable State Water Board administrative fees associated with the filing of NOIs.

VI. Permit Reopening, Revision, Transfer, Revocation, Termination, and Reissuance

1. This Order may be reopened to address any changes in state statutes, regulations, plans, or policies that would affect the water quality requirements for the discharges, including, but not limited to, the Central Valley Water Board *Water Quality Control Plan* (Basin Plan) *for the Tulare Lake Basin*.

2. The filing of a request by the third-party on behalf of its Members for modification, revocation and re-issuance, or termination of the Order, or notification of planned changes or anticipated noncompliance, does not stay any condition of the Order.

3. The third-party, on behalf of its Members, shall provide to the Executive Officer any information which the Executive Officer may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the Order, or to determine compliance with the requirements of this Order that apply directly to the third-party. Members shall provide to the Executive Officer, any information which the Executive Officer may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the Order as applied to the individual Member, or to determine compliance with the provisions of this Order that

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apply directly to the Member.

4. After notice and opportunity for a hearing, the Order may be terminated or modified for cause as applied to individual Members identified by the Central Valley Water Board. Cause for such termination or modification, includes, but is not limited to:

    a. Violation of any term or condition contained in the Order;
    b. Obtaining Order coverage by misrepresentation; or
    c. Failure to fully disclose all relevant facts.

    A Member's regulatory coverage shall be automatically revoked if the NOC is not timely submitted (see section VII.A).

5. After notice and opportunity for a hearing, the approval of the third-party to act as a lead entity representing Members may be partially (e.g., affected areas or Members) or fully revoked. Cause for such termination or modification includes, but is not limited to consideration of the factors in Finding 52 of this Order, and/or:

    a. Violation of any term or condition contained in the Order that applies directly to the third-party;
    b. Third-party misrepresentation;
    c. Failure by the third-party to fully disclose all known relevant facts; or
    d. A change in any condition that results in the third-party's inability to properly function as the third-party entity representing Member interests or in facilitating Member compliance with the terms and conditions of this Order.

6. The Central Valley Water Board will review this Order periodically and may revise this Order when necessary.

VII. Required Reports and Notices – Member

The Central Valley Water Board or the Executive Officer may require any of the following reports and notices to be submitted electronically as long as the electronic format is reasonably available to the Member, and only to the extent that the Member has access to the equipment that allows for them to submit the information electronically. If the Member does not have such access, reports and notices must be submitted by mail. Reports and notices shall be submitted in accordance with section IX, Reporting Provisions, as well as MRP Order R5-2013-XXXX. Due dates for Member required reports are summarized in Table 1 at the end of this Order. Members must prepare and maintain the following reports as instructed below, and shall submit or make available such reports to the third-party or the Central Valley Water Board as identified below.

A. Notice of Confirmation / Notice of Intent / Membership Application

1. To confirm coverage under this Order, growers that are enrolled under Order R5-2006-0053 as Members of the Westlands Stormwater Coalition must submit a completed notice of confirmation (NOC) to the third-party within 120 days of Executive Officer approval of the third-party (as provided by issuance of an NOA to the third-party, see section VIII.A of this Order). The third-party will provide a NOC form to Members within 30 days of receiving an NOA (see section VIII.A) from the Central Valley Water Board. As part of the NOC, Members must provide certification that they have provided written notice to any responsible non-Member parties of the Member's enrollment under this Order and of the requirements of this Order (a responsible non-Member is a landowner whose parcel has been enrolled by an operator-Member under this Order or an operator who farms a parcel that has been enrolled by a

landowner-Member). If the Member is a landowner that leases their land, the Member must provide the name and contact information of the lessee and provide updated information to the third-party should the lessee change. If the Member is the lessee, the Member must provide the name and contact information of the landowner and provide updated information to the third-party should the landowner change.

2. Within 120 days of Executive Officer issuance of an NOA to the third-party, all other growers within this Order's boundaries must become Members of the third-party to avoid additional fees and administrative requirements (see section VII.A.3 below). To obtain membership, a grower must submit a completed third-party Membership application to the third-party group. As part of the membership application, growers must provide certification that they have provided written notice to any responsible non-Member parties of the Member's enrollment under this Order and of the requirements of this Order. Upon submittal of a complete application, the third-party group may confirm membership, after which the Member will be considered covered under this Order.

3. Beginning 121 days after Executive Officer issuance of an NOA to the third-party, any growers within this Order's boundaries that are not Members of a third-party or another irrigated lands third-party group governed by other WDRs or waiver of WDRs must submit (1) a completed Notice of Intent (NOI) to the Central Valley Water Board to comply with the conditions of this Order, (2) any required State Water Board administrative processing fee for the NOI, and (3) a Membership application to the third-party group. Upon submittal of a complete NOI, and after receiving confirmation from the third-party group that the grower is now a Member, the Central Valley Water Board Executive Officer may then issue a Notice of Applicability (NOA), after which the Member will be considered covered under this Order. In lieu of issuing an NOA, the Executive Officer may deny the NOI and require the submittal of a report of waste discharge or issue an NOA for regulatory coverage under any applicable general waste discharge requirements for individual dischargers not represented by a third-party.

4. As an alternative to receiving regulatory coverage under this Order, a discharger may submit a report of waste discharge in accordance with the California Water Code section 13260 or a Notice of Intent for regulatory coverage under any applicable general waste discharge requirements for individual dischargers not represented by a third-party.

B. Farm Evaluation

Members shall complete a Farm Evaluation and submit a copy of the completed Farm Evaluation to the third-party group according to the schedule below[20]. The Member must use the Farm Evaluation Template approved by the Executive Officer (see section VIII.C below). A copy of the Farm Evaluation shall be maintained at the Member's farming headquarters or primary place of business, and must be produced upon request by Central Valley Water Board staff. In addition, Members shall comply with the following requirements where applicable:

1. Members in Low Vulnerability Areas (Surface/Groundwater)

a. Members with Small Farming Operations

By 1 March 2018, Members with Small Farming Operations (for definition, see Attachment E) must prepare their Farm Evaluation and submit it to the third-party. An updated Farm Evaluation must be prepared and submitted to the third-party every five years thereafter.

b. All other Members

[20] Any farm map or information on the location of wells on the farm does not need to be provided to the third-party group

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By 1 March 2016, all other Members must prepare their Farm Evaluation and submit it to the third-party. An updated Farm Evaluation must be prepared and submitted to the third-party every five years thereafter.

2. ***All Members in High Vulnerability Areas (Surface/Groundwater)***
By 1 March 2015, all Members within a high vulnerability area must prepare their Farm Evaluation and submit it to the third-party. An updated Farm Evaluation must be prepared and submitted to the third-party by 1 March annually thereafter. As part of the Farm Evaluation, the Member shall provide information on any outreach events attended in accordance with section IV.B.4 of this Order. After 1 March 2018, the Executive Officer may approve reduction in the frequency of updates and submission of Farm Evaluations, if the third-party demonstrates that year to year changes in Farm Evaluation updates are minimal and the Executive Officer concurs

that the practices identified in the Farm Evaluations are consistent with practices that, when properly implemented, will achieve receiving water limitations and, where applicable, achieve best practicable treatment or control..

C. Sediment and Erosion Control Plan

The requirements and deadlines of this section apply as specified to Members that are required to develop a Sediment and Erosion Control Plan per section IV.B.7 of this Order. The Member must use the Sediment and Erosion Control Plan Template provided by the Executive Officer (see section VIII.C below), or equivalent. The Sediment and Erosion Control Plan must be prepared in one of the following ways:

i. The Sediment and Erosion Control Plan must adhere to the site-specific recommendation from the Natural Resources Conservation Service (NRCS), NRCS technical service provider, the University of California Cooperative Extension, the local Resource Conservation District; or conform to a local county ordinance applicable to erosion and sediment control on agricultural lands. The Member must retain written documentation of the recommendation provided and certify that they are implementing the recommendation; or

ii. The Sediment and Erosion Control Plan must be prepared and self-certified by the Member, who has completed a training program that the Executive Officer concurs provides necessary training for sediment and erosion control plan development; or

iii. The Sediment and Erosion Control Plan must be written, amended, and certified by a Qualified Sediment and Erosion Control Plan Developer possessing one of the following registrations or certifications, and appropriate experience with erosion issues on irrigated agricultural lands: California registered professional civil engineer, geologist, engineering geologist, landscape architect; NRCS Certified Conservation Planner; professional hydrologist registered through the American Institute of Hydrology; certified soil scientist registered through the American Society of Agronomy; Certified Professional in Erosion and Sediment Control (CPSEC)™/Certified Professional in Storm Water Quality (CPSWQ)™ registered through EnviroCert International, Inc.; professional in erosion and sediment control registered through the National Institute for Certification in Engineering Technologies (NICET); or

iv. The Sediment and Erosion Control Plan must be prepared and certified in an alternative manner approved by the Executive Officer. Such approval will be provided based on the Executive Officer's determination that the alternative method for preparing the Sediment and Erosion Control Plan meets the objectives and requirements of this Order.

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The plan shall be maintained and updated as conditions change. A copy of the Sediment and Erosion Control Plan shall be maintained at the farming operations headquarters or primary place of business; and must be produced by the Member, if requested, should Central Valley Water Board staff, or an authorized representative, conduct an inspection of the Member's irrigated lands operation.

1. ***Deadline for Members with Small Farming Operations***
   Within one (1) year of the Executive Officer approving the third party's Sediment Discharge and Erosion Assessment Report, Members with Small Farming Operations must complete and implement a Sediment and Erosion Control Plan.

2. ***Deadline for all Other Members[21]Within 180 days of the Executive Officer approving the third party's Sediment Discharge and Erosion Assessment Report, all other Members must complete and implement a Sediment and Erosion Control Plan.***

D. Nitrogen Management Plan

~~Members must prepare and implement a Nitrogen Management Plan and submit the Nitrogen Management Plan Summary Report for the previous crop year as described below. The Member must use the Nitrogen Management Plan Template provided by the Executive Officer (see section VIII.C below). The Nitrogen Management Plan and Nitrogen Management Plan Summary Report shall be maintained at the Member's farming operations headquarters or primary place of business. The Member must provide the Nitrogen Management Plan and Summary Report to board staff, if requested or, should board staff or an authorized representative conduct an inspection of the Member's irrigated agricultural operation. In addition, Members shall comply with the following requirements where applicable:~~

Members within the Western Tulare Lake Basin area are using nutrient experts to tailor their fertilizer applications to the least amount practical and as groundwater in this area is not being consumed by the public for drinking water purposes, the consumption of nitrates is not an area of concern. The Nitrogen Management Plan will consist of the documentation currently in use between the Member and their nutrient suppliers and nutrient experts. This documentation shall be maintained at the Members farming operations headquarters or primary place of business. The Member must provide the nutrient documentation, if requested or, should board staff or an authorized representative conduct an inspection of the Member's irrigated agricultural operation.

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~~1. *All Members within a High Vulnerability Groundwater Area*~~
~~For Members located within a high vulnerability groundwater area, for which nitrate is identified as a constituent of concern, the Member must prepare and implement a certified Nitrogen Management Plan. The plan must be certified in one of the following ways:~~

~~i. Self-certified by the Member who attends a California Department of Food and Agriculture or other Executive Officer approved training program for nitrogen plan certification. The Member must retain written documentation of their attendance in the training program; or~~

~~ii. Self-certified by the Member that the plan adheres to a site-specific recommendation from the Natural Resources Conservation Service (NRCS) or the University of California Cooperative Extension. The Member must retain written documentation of the recommendation provided; or~~

~~iii. Certified by a nitrogen management plan specialist as defined in Attachment E of this Order. Such specialists include Professional Soil Scientists, Professional Agronomists, Crop~~

[21] Members with parcels that do not meet the Small Farming Operation definition (see Attachment E).

~~Advisors[22] certified by the American Society of Agronomy, or Technical Service Providers certified in nutrient management in California by the NRCS; or~~

~~iv. Certified in an alternative manner approved by the Executive Officer. Such approval will be provided based on the Executive Officer's determination that the alternative method for preparing the Nitrogen Management Plan meets the objectives and requirements of this Order.~~

~~***a. Deadlines for Members with Small Farming Operations***~~

~~By 1 March 2017, Members with Small Farming Operations shall prepare, and update by 1 March annually thereafter, a Nitrogen Management Plan. By 1 March 2018, and by 1 March annually, thereafter, Members with Small Farming Operations shall submit to the third-party the Nitrogen Management Plan Summary Report for the previous year.~~

~~***b. Deadlines for all other Members[23]***~~

~~By 1 March 2015, all other Members shall prepare, and update by 1 March annually thereafter, a Nitrogen Management Plan. By 1 March 2016, and by 1 March annually, thereafter, all other Members shall submit to the third-party the Nitrogen Management Plan Summary Report for the previous year.~~ 6

~~***c. Deadlines for Members re-designated from Low Vulnerability to High Vulnerability Groundwater Areas***~~

~~Members with parcel(s) re-designated from low vulnerability to high vulnerability groundwater areas must prepare a Nitrogen Management Plan in compliance with this section (VII.D.1).[24] The schedule for certifying the Nitrogen Management Plan and submitting the initial Nitrogen Management Plan Summary Report will be established by the Executive Officer.~~

~~After 1 March 2018, the Executive Officer may approve reduction in the frequency of submission of Nitrogen Management Plan Summary Reports, if the third-party demonstrates that year to year changes in Nitrogen Management Summary Reports are minimal and the Executive Officer concurs that the implemented practices are achieving the performance standard (see section IV.B.8).~~

~~***2. Members within a Low Vulnerability Groundwater Area***~~

~~By 1 March 2017, all Members within low vulnerability areas shall prepare, and update by 1 March annually thereafter, a Nitrogen Management Plan. The Member must use the Nitrogen Management Plan Template approved by the Executive Officer (see section VIII.C below), or equivalent. Certification of the Nitrogen Management Plan and submittal of a Nitrogen Management Plan Summary Report are not required.~~

E. Mitigation Monitoring

As specified in this Order, certain Members are required to implement the mitigation measures included in Attachment C. Such Members shall submit mitigation monitoring by 1 March of each year to the third-party. Mitigation monitoring shall include information on the implementation of CEQA mitigation measures, including the mitigation measure implemented, potential environmental impact the mitigation measure addressed, location of the mitigation measure [parcel number, county], and any steps taken to monitor the ongoing success of the measure.

~~[22] Should the California Department of Food and Agriculture and the California Certified Crop Adviser's establish a specific nitrogen management certification, any Certified Crop Adviser who certifies a nitrogen management plan must have a nitrogen management certification.~~

~~[23] Members with parcels that do not meet the Small Farming Operation definition (see Attachment E).~~

~~[24] The designation of the vulnerability area may change based on updates to the Groundwater Quality Assessment Report (see the MRP – Attachment B).~~

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F. Notice of Termination

If the Member wishes to terminate coverage under this Order and withdraw its membership from the third-party, the Member shall submit a complete notice of termination (NOT) to the Central Valley Water Board and the third-party. Termination of regulatory coverage will occur on the date specified in the NOT, unless the Central Valley Water Board specifies otherwise. All discharges of waste to surface water and groundwater shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of the California Water Code, unless other WDRs or waivers of WDRs regulate the discharge.

VIII. Required Reports and Notices – Third-Party

The Central Valley Water Board or the Executive Officer may require any of the reports and notices to be submitted electronically, as long as the electronic format is reasonably available to the third-party. The third-party shall submit reports and notices in accordance with section IX, Reporting Provisions. Due dates for third-party required reports are summarized in Table 2 at the end of this Order. The third-party must prepare the following reports:

A. Application to Serve as a Third-Party Representing Members

Within 30 days of the effective date of this Order, any group wishing to serve as a third-party must submit a letter to the Executive Officer requesting approval to serve as a third-party representing Members to carry out the third-party responsibilities. The Executive Officer will consider the factors listed below in determining whether to approve the request by issuing a Notice of Applicability (NOA) to the third-party. The NOA issued by the Executive Officer will identify the third-party geographic boundaries if the third-party requests to serve as a third-party for a portion of this Order's coverage area.

1. Ability of the third-party to carry out the third-party responsibilities identified in this Order, whether the third-party has clearly identified the geographic area proposed to be covered by the third-party, and should a third-party request to serve as a third-party for only a portion of this Order's coverage area, the reasonableness of the proposed boundaries.

2. Whether the third-party is a legally defined entity (i.e., non-profit corporation; local or state government; Joint Powers Authority) or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to its Members.

3. Whether the third-party has binding agreements with any subsidiary group (e.g., subwatershed group) to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done so transparently and with accountability to the third party and its Members. If the third-party will not rely on any subsidiary group to carry out any of its responsibilities, the third-party must state that in its application letter.

4. Whether the third-party has a governance structure that includes a governing board of directors composed in whole or in part of Members, or otherwise provides Members with a mechanism to direct or influence the governance of the third-party through appropriate by-laws.

5. Should the Central Valley Water Board terminate an organization's role as a third-party or should the third-party submit a notice of termination, the Executive Officer will apply the above factors in evaluating the request of any successor organization to serve as a third-party and determining whether to approve the request by issuing an NOA.

6. A new third party may form to represent growers in an existing third party area, or part of that area, after a NOA has been issued to the existing third-party. The Executive Officer will consider the factors in VIII.A.1-4 above in determining whether to approve the request by issuing an NOA to the new third-party. Prior to acting on the NOA, the Executive Officer will

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provide the existing third-party with an opportunity to comment on the application by the new third-party group. The new third-party and its Members must take all actions and submit subsequent reports required by the Order on the timeline originally established by the issuance of the NOA to the original third-party group for the area. The proposed new third party must demonstrate that it can comply with the original time schedule as part of its application to serve as a third-party representing Members. Any required report not submitted by the existing third-party, and due prior to application of the new third-party, must be submitted as part of the application package of the new third-party.

B. Membership (Participant) List

The third-party shall submit a list of its Members to the Central Valley Water Board within 180-days of receiving an NOA from the board and then annually by 31 July of each year (beginning the year following initial submission of the list). The membership list shall identify Members. The list shall also identify growers that have had their membership revoked and Members that are pending revocation. The membership list shall contain, at a minimum, the following information for each

member: all parcel numbers covered under the membership, the county of each parcel, the section, township, and range associated with each parcel, the number of irrigated acres for each parcel, the Member's name, mailing address, the contact name and phone number of the individuals authorized to provide access to the enrolled parcels, the name of the farm operator for each parcel, if different from the Member, and identification of each parcel that is part of a Small Farming Operation, if applicable. In lieu of providing Members' phone numbers as part of the membership list, the third-party may provide the office contact name(s) and phone number(s) of a representative of the third-party. Any listed third-party office contact must be available for Central Valley Water Board staff to contact Monday through Friday (except established state holidays) from 8 am to 5 pm.

C. Templates

The Executive Officer will provide templates to the third-party to distribute to its Members. The templates must be used to comply with the requirements of this Order, where applicable. Prior to providing the third-party with the templates, the Executive Officer will provide the third-party and other interested parties with thirty (30) days to comment on proposed templates. The following templates will be provided: Farm Evaluation; ~~Nitrogen Management Plan; Nitrogen Management Plan Summary Report~~; Sediment and Erosion Control Plan.

D. Groundwater Quality Assessment Report and Evaluation/Monitoring Workplans

This Order's strategy for evaluating groundwater quality and protection consists of 1) a Groundwater Quality Assessment Report, 2) a Management Practices ~~Evaluation~~ Implementation Program, and 3) a Groundwater Quality Trend Monitoring Program. Each of these elements has its own specific objectives briefly described below, with more detail provided in the attached MRP.

1. Groundwater Quality Assessment Report

The Groundwater Quality Assessment Report (GAR) provides the foundational information necessary for design of the Management Practices Evaluation Program, the Groundwater Quality Trend Monitoring Program, and the Groundwater Quality Management Plan. To accomplish this purpose, the GAR must include the following:

a. Assessment of all available, applicable and relevant data and information to determine the high and low vulnerability areas where discharges from irrigated lands may result in groundwater quality degradation,

b. Identify the areas where the groundwater is inherently saline and can have no practical beneficial use and would be in the public's best interest to continue to allow the current impacts of irrigated agriculture until such time as a workable drainage solution can be instituted,

c. Establish crop/commodity specific BMP's and BPTC's for the entire Western Tulare Lake Basin area to be instituted in the Management Practice Implementation Program,

a.d. Establish the on-farm costs required for Members to fully implement the BMP's and BPTC's,

b. Establish priorities for implementation of monitoring and studies within high vulnerability areas;

c. Provide a basis for establishing workplans to assess groundwater quality trends;

d. Provide a basis for establishing workplans and priorities to evaluate the effectiveness of agricultural management practices to protect groundwater quality; and

e. Provide a basis for establishing groundwater quality management plans in high vulnerability areas and priorities for implementation of those plans.

The GAR shall include the elements described in MRP section IV. The GAR shall be submitted to the Central Valley Water Board and Central Valley Salinity Coalition within one (1) year of receiving an NOA from the Executive Officer.

2. Management Practice Evaluation Program WorkplanManagement Practice Implementation Program

Upon Executive Officer approval of the GAR, the third-party shall develop, and institute either solely, or as a coordinated effort (see group option below), a Management Practice Evaluation Implementation Program Workplan. The workplan must meet the goals, objectives, and other requirements described in section IV of the attached MRP. The overall goal of the Management Practice Evaluation Implementation Program (MPEPMPIP) is to determine the effects, if any, irrigated agricultural practices have on groundwater under different conditions that could affect the discharge of waste from irrigated lands to groundwater (e.g., soil type, depth to groundwater, irrigation practice, crop type, nutrient management practice). A MPEP must address the conditions relevant to high vulnerability groundwater areas. The third-party may develop the workplan in accordance with one of the options described below.implement BMP's and BPTC's throughout the entire Western Tulare Lake Basin area using the schedule outlined below: 7

a. ***Management Practices Evaluation Program Group Option Implementation Program and Schedule***

The third-party may fulfill its requirements as part of a Management Practices Evaluation Program Group. A Management Practices Evaluation Program (MPEP) Group refers to an entity that is formed to develop and carry out the management practices effectiveness evaluations required of this and other Orders applicable to the irrigated lands in the Central Valley.

At the time the GAR is submitted, the third-party must submit a copy of the agreement of the parties included in the MPEP Group. The agreement must include a description of the roles and responsibilities of each of the organizations in the MPEP Group; identification of the technical experts who will prepare and implement the workplans, along with their qualifications; the person(s) responsible for the timely completion of the workplans and reports required by this Order; and an organizational chart showing the reporting relationships and responsibilities of the participants in the group.

The third-party may use the group option if approved by the Executive Officer. The Executive Officer may disapprove the use of the group option, if 1) the group fails to meet required deadlines or implement the approved workplans; 2) the agreement submitted is not complete; or 3) the agreement submitted is deficient.
The MPEP Group Workplan shall be submitted to the Central Valley Water Board within one (1)

~~year after written approval of the GAR by the Executive Officer. Alternatively, the third-party may indicate, as part of their GAR submittal, that the third-party is participating in an MPEP Group whose Workplan will be submitted in accordance with the time frame of another Order applicable to irrigated lands in the Central Valley.~~ Most Members within the Western Tulare Lake Basin area are currently using the BMP's and BPTC's identified in the GAR,and the stated purpose of the MPIP is to fully implement those BMP's and BPTC's. The Third-party will use a five (5) year "phased-in" approach (1/5 of full costs per year) for the full implementation that will be indexed to the annually published Central Valley Project (CVP) surface water allocation for the Members in the Western Tulare Lake Basin area. On any given year, the Member will be required to fund all or a portion of the costs associated with the BMP's and BPTC's for their operation based upon the CVP allocation; the CVP indexed schedule is as follows:

- 0-20% CVP allocation requires no BMP or BPTC expenditure that year,
- 21-40% CVP allocation requires one-third (1/4) of that year's expenditure,
- 40-60% CVP allocation requires one-half (1/2) of that year's expenditure,
- 61-80% CVP allocation requires three-quarters (3/4) of that year's expenditure,
- 81-100% CVP allocation requires all of that year's expenditure.

Any outstanding funding, after the 5 year phase-in will be made up in subsequent year(s) using the above CVP allocation index.

~~b. ***Third-party Only Management Practices Evaluation Program***~~
~~Under this option, the third-party MPEP Workplans shall be submitted to the Central Valley Water Board within one (1) year after written approval of the GAR by the Executive Officer.~~

3. Groundwater Quality Trend Monitoring Workplan

Upon Executive Officer approval of the GAR, the third-party shall develop a Groundwater Quality Trend Monitoring Workplan. The workplan must meet the goals, objectives, and other requirements described in section IV of the attached MRP. The overall objectives of groundwater trend monitoring are to determine current water quality conditions of groundwater relevant to irrigated agriculture and develop long-term groundwater quality information that can be used to evaluate the regional effects of irrigated agricultural practices. The workplan shall be submitted to the Central Valley Water Board within one (1) year after written approval of the GAR by the Executive Officer.

E. Surface Water Monitoring Plan

The Surface Water Monitoring Plan shall be submitted in accordance with the requirements described in section III.A of the MRP. The Surface Water Monitoring Plan shall be submitted to the Executive Officer for review and approval within 180 days of receiving the NOA. If the Executive Officer disapproves the Surface Water Monitoring Plan in whole or part, the Executive Officer may issue an MRP Order to the third-party, or amend the attached MRP Order, to include the surface water quality monitoring elements identified in section III.A. of the MRP.

F. Sediment Discharge and Erosion Assessment Report

The Sediment Discharge and Erosion Assessment Report shall be submitted to the Central Valley Water Board within one (1) year of receiving an NOA from the Executive Officer. Within 30 days of written acceptance of the Sediment Discharge and Erosion Assessment Report, the third-party shall inform those Members with parcels in areas identified in the report of their obligation to prepare a Sediment and Erosion Control Plan. The Sediment Discharge and Erosion Assessment Report shall include the elements described in MRP section VI.

G. Surface Water Exceedance Reports

The third-party shall provide exceedance reports if surface water monitoring results show exceedances of adopted numeric water quality objectives or trigger limits, which are based on

interpretations of narrative water quality objectives. Surface water exceedance reports shall be submitted in accordance with the requirements described in section V.D of the MRP.

H. Monitoring Report

The third-party shall submit the Monitoring Report to the Central Valley Water Board in accordance with the requirements in section V.C of the MRP.

I. Surface Water/Groundwater Quality Management Plan (SQMP/GQMP)

As the purpose of the SQMP/GQMP is to systematically determine if irrigated agriculture was a contributor to the exceedance and if so, catalog pesticide usage, soil type, irrigation schedule and type, and BMPs, etc. in the area(s) where the exceedance(s) took place. The end result is to encourage the grower to change to a BMP and BPTC that will mitigate the exceedance. Given that all Members in the Western Tulare Lake Basin area will be required to institute BMP's and BPTC's, SQMP/GQMP will not be required. With BMP's and BPTC's in place, any exceedances would be attributable to applicator error or failure to follow EPA labeling requirements. The Third-party will develop an outreach program to educate the growers and applicators involved with the exceedance. If the outreach program and direct contact with the Member does not cause the exceedances to cease, the Third-party will notify the Regional Board for any action(s) they deem appropriate.

~~1. **SQMP/GQMP General Requirements**~~

~~SQMP/GQMPs submitted by the third-party shall conform to the requirements provided in the MRP, Appendix MRP-1. Existing SQMPs that were developed and approved under the Coalition Group Conditional Waiver (Conditional Waiver Order R5-2006-0053) continue to apply under this Order and shall be implemented as previously approved. Changes to any management plan may be implemented by the third-party only after approval by the Executive Officer. The Executive Officer may require changes to a management plan if the current management plan approach is not making adequate progress towards addressing the water quality problem or if the information reported by the third-party does not allow the Central Valley Water Board to determine the effectiveness of the management plan. Members shall comply with the revised management plans once they are approved by the Executive Officer. SQMPs triggered by data gathered under Conditional Waiver Order R5-2006-0053 that were not completed or approved by the Executive Officer prior to adoption of this Order shall be completed in accordance with MRP-1 of this Order.~~ 8

~~For newly triggered SQMP/GQMPs, the third-party shall submit a SQMP/GQMP to the Central Valley Water Board within sixty (60) days. For any SQMP or GQMP that addresses salt or nitrates, the SQMP or GQMP shall also be submitted to the Chair of the CV-SALTS Executive Committee. This 60-day period begins the first business day after the third party's receipt of the field or laboratory results that reported the triggering exceedance. The Central Valley Water Board will post the proposed SQMP/GQMP for a public review and comment period. Stakeholder comments will be considered by Central Valley Water Board staff to determine if additional revisions are appropriate. The third-party may, at its discretion, implement outreach or monitoring contained in a proposed management plan before approval. Members shall comply with the management plans once they are approved by the Executive Officer.~~

~~The third-party shall ensure continued implementation of SQMP/GQMPs until approved as completed by the Executive Officer pursuant to the provisions contained in the attached MRP, Appendix MRP-1, section III. The third-party shall submit a status report in compliance with the provisions contained in the attached MRP, Appendix MRP-1, section I.F.~~

~~2. **Conditions Requiring Preparation of SQMP/GQMP**~~

~~***Surface Water Quality Management Plan (SQMP)***~~

~~A SQMP shall be developed by the third-party where: (1) an applicable water quality objective or applicable water quality trigger limit is exceeded (considering applicable averaging periods[25]) twice in a three year period for the same constituent at a monitoring location (trigger limits are described in section VII of the MRP) and irrigated agriculture may cause or contribute to the exceedances; (2) the Basin Plan requires development of a surface water quality management plan for a constituent or constituents discharged by irrigated agriculture, or (3) the Executive Officer 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)***~~

~~A GQMP shall be developed by the third-party where: (1) there is a confirmed exceedance[26] (considering applicable averaging periods) of a water quality objective or applicable water quality trigger limit (trigger limits are described in section VII of the MRP) in a groundwater well and irrigated agriculture may cause or contribute to the exceedance; (2) in high vulnerability groundwater areas to be determined as part of the Groundwater Quality Assessment Report process (see MRP section IV); (3) the Basin Plan requires development of a groundwater quality management plan for a constituent or constituents discharged by irrigated agriculture; or (4) the Executive Officer determines that irrigated agriculture may be causing or contributing to a trend of degradation of groundwater that may threaten applicable Basin Plan beneficial uses.~~

~~If the extent of Member contribution to a water quality exceedance(s) or degradation trend is unknown, the third-party may propose activities to be conducted to determine the cause, or eliminate irrigated agriculture as a potential source instead of initiating a management plan. Requirements for source identification studies are set forth in the MRP, Appendix MRP-1, section I.G.~~ 8

~~3.~~1. SQMP/GQMP Not Required

At the request of the third-party or upon recommendation by Central Valley Water Board staff, the Executive Officer may determine that the development of a SQMP/GQMP is not required. Such a determination may be issued if there is sufficient evidence indicating that Members discharging waste to the affected surface or groundwater are meeting the receiving water limitations given in section III of this Order (e.g., evidence indicates that irrigated agriculture does not cause or contribute to the water quality problem) or the Executive Officer determines that the exceedance is not likely to be remedied or addressed by a management plan.

~~4. Comprehensive Groundwater Quality Management Plan~~

~~In lieu of submitting separate groundwater quality management plans in the timeframe identified in section VIII.I.1, the third-party may submit a Comprehensive Groundwater Quality Management Plan along with its Groundwater Quality Assessment Report. With the exception of the timeframe identified in section VIII.I.1, all other provisions applicable to groundwater quality management plans in this Order and the associated MRP apply to the Comprehensive Groundwater Quality Management Plan. The Comprehensive Groundwater Quality Management Plan must be updated~~

~~[25] Exceedances of water quality objectives or water quality triggers will be determined based on available data and application of the appropriate averaging period. The averaging period is typically defined in in the Basin Plan, as part of the water quality standard established by the USEPA, or as part of the criteria being used to interpret narrative objectives. If averaging periods are not defined in the Basin Plan, USEPA standard, or criteria, or approved water quality trigger, the Central Valley Water Board will use the best available information to determine an appropriate averaging period.~~

~~[26] A "confirmed exceedance of a water quality objective in a groundwater well" means that the monitoring data are determined to be of the appropriate quality and quantity necessary to verify that an exceedance has occurred.~~

~~at the same time as the Management Plan Status Report (see attached MRP, Appendix MRP-1, section I.F) to address any constituents and areas that would have otherwise required submittal of a Groundwater Quality Management Plan.~~

~~**5. Comprehensive Surface Water Quality Management Plan**~~

~~In lieu of submitting separate surface water quality management plans in the timeframe identified in section VIII.I.1, the third-party may submit a Comprehensive Surface Water Quality Management Plan together with its Surface Water Quality Monitoring Plan. With the exception of the timeframe identified in section VIII.I.1, all other provisions applicable to surface water quality management plans in this Order and the associated MRP apply to the Comprehensive Surface Water Quality Management Plan. The Comprehensive Surface Water Quality Management Plan must be updated at the same time as the Management Plan Status Report (see attached MRP, Appendix MRP-1, section I.F) to address any constituents and areas that would have otherwise required submittal of a Surface Water Quality Management Plan.~~ 8

J. Technical Reports

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 technical reports be provided to determine the effects of irrigated agricultural operations or implemented management practices on surface water or groundwater quality.

K. Notice of Termination

If the third-party wishes to terminate its role in carrying out the third-party responsibilities set forth in section VIII of this Order and other applicable provisions, the third-party shall submit a notice of termination letter to the Central Valley Water Board and all of its Members. Termination of the third-party will occur 30-days from submittal of the notice of termination letter, unless otherwise specified in the letter. With its notice of termination sent to its Members, the third-party shall inform its Members of their obligation to obtain coverage under other WDRs or a waiver of WDRs for their discharges, or inform such Members that they shall cease all discharges of waste to surface and groundwaters.

L. Total Maximum Daily Load(TMDL) Requirements

Approved TMDLs in the Basin Plan that apply to water bodies within the third-party's geographic area and have allocations for irrigated agriculture shall be implemented in accordance with the applicable Basin Plan provisions. Where required, the third-party shall coordinate with Central Valley Water Board staff to develop a monitoring design and strategy for TMDL implementation. Where applicable, SQMPs shall address TMDL requirements.

M. Basin Plan Amendment Workplan

In its Groundwater Quality Assessment Report, the third-party may identify high vulnerability areas that do not meet water quality objectives and where groundwater quality likely would not support a designated beneficial use even in the absence of the discharge of waste. In such cases, the third-party has the option of pursuing a basin plan amendment (or identifying an existing basin plan amendment process) to address the appropriateness of the beneficial use. Should the third-party pursue this option, the third-party shall submit a Basin Plan Amendment Workplan (BPAW) to the Central Valley Water Board within 120 days of the approval of the Groundwater Quality Assessment Report. The BPAW must include a demonstration that the groundwater proposed for de-designation meets any criteria set forth in the Basin Plan that the Board considers in making exceptions to beneficial use designations. The BPAW must be prepared in accordance with the requirements in section V.E of the MRP.

IX. Reporting Provisions

1. Members and the third-party must submit required reports and notices in accordance with the requirements in this Order and attached Monitoring and Reporting Program Order R5-2013-XXXX, unless otherwise requested by the Executive Officer.

2. All reports shall be accompanied by a cover letter containing the certification specified in section IX.3 below. The cover letter shall be signed by a person duly authorized under California law to bind the party submitting the report.

3. Each person signing a report required by this Order or other information requested by the Central Valley Water Board shall make the following certification:

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

4. All reports prepared and submitted to the Executive Officer in accordance with the terms of this Order will be made available for public inspection at the offices of the Central Valley Water Board, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including the Public Records Act, California Water Code section 13267(b)(2), and the California Food and Agriculture Code. If the third-party or a Member of the third-party asserts that all or a portion of a report is subject to an exemption from public disclosure, it must clearly indicate on the cover of the report that it asserts that all or a portion of the report is exempt from public disclosure. The complete report must be submitted with those portions that are asserted to be exempt in redacted form, along with separately-bound unredacted pages (to be maintained separately by staff). The Member/third-party shall identify the basis for the exemption. If the Executive Officer cannot identify a reasonable basis for treating the information as exempt from disclosure, the Executive Officer will notify the Member/third-party that the information will be placed in the public file unless the Central Valley Water Board receives, within 10 calendar days, a satisfactory explanation supporting the claimed exemption. Data on waste discharges, water quality, meteorology, geology, and hydrogeology shall not be considered confidential. NOIs shall generally not be considered exempt from disclosure.

5. To the extent feasible, all reports submitted by Members shall be submitted electronically to irrlands@waterboards.ca.gov, unless the Member is unable to submit the report electronically. If unable to submit the report electronically, the grower shall mail or personally deliver the report to the Central Valley Water Board. All reports from the third-party shall be submitted electronically to its Central Valley Water Board-assigned staff liaison. Upon notification by the

Central Valley Water Board, all reports shall be submitted directly into an online reporting system, to the extent feasible.

X. Record-keeping Requirements

The Member and the third-party shall maintain any reports or records required by this Order for five years. Records maintained by the third-party include reports and plans submitted by Members to the third-party for purposes of complying with this Order. Individual Member information used by the third-party to prepare required reports must be maintained electronically and associated with the Member submitting the information. The maintained reports or records, including electronic information, shall be made available to the Central Valley Water Board upon written request of the Executive Officer. This includes all monitoring information, calibration and maintenance records of sampling equipment, copies of reports required by this Order, and records of all data used to complete the reports. Records shall be maintained for a minimum of five years from the date of sample, measurement, report, or application. This five-year period shall be extended during the course of any unresolved litigation regarding the discharge or when requested in writing by the Executive Officer.

XI. Annual Fees

1. California Water Code section 13260(d)(1)(A) requires persons subject to waste discharge requirements to pay an annual fee established by the State Water Resources Control Board (State Water Board).

2. Members shall pay an annual fee to the State Water Board in compliance with the Waste Discharge Requirement fee schedule set forth at 23 CCR section 2200. The third-party is responsible for collecting these fees from Members and submitting them to the State Water Board on behalf of Members. Any SWRCB fees attributable to individual Members outside the boundaries of the Westlands Water District and the Pleasant Valley Water District, the Regional Board shall directly invoice those individual Members; the named Districts do not have statutory or regulatory authority to invoice and demand payment from individuals outside their jurisdictions. 9

XII. Time Schedule for Compliance

~~When a SQMP or GQMP is required pursuant to the provisions in section VIII.I, the following time schedules shall apply as appropriate in order to allow Members sufficient time to achieve compliance with the surface and groundwater receiving water limitations described in section III of this Order. The Central Valley Water Board may modify these schedules based on evidence that meeting the compliance date is technically or economically infeasible, or when evidence shows that compliance by an earlier date is feasible (modifications will be made per the requirements in section VI of this Order).~~ Any applicable time schedules for compliance established in the Basin Plan supersedes the schedules given below (e.g., time schedules for compliance with salinity standards that may be established in future Basin Plan amendments through the CV-SALTS process, or time schedules for compliance with water quality objectives subject to an approved TMDL). 8

~~*Surface water:* The time schedule identified in the SQMP for compliance with Surface Water Limitation III.A must be as short as practicable, but may not exceed 10 years from the date the SQMP is submitted for approval by the Executive Officer. The proposed time schedule in the SQMP must be supported with appropriate technical or economic justification as to why the proposed schedule is as short as practicable.~~

~~*Groundwater:* The time schedule identified in a GQMP for compliance with Groundwater Limitation III.B must be as short as practicable, but may not exceed 10 years from the date the~~

~~GQMP is submitted for approval by the Executive Officer. The proposed time schedules in the GQMP must be supported with appropriate technical or economic justification as to why the proposed schedules are as short as practicable.~~ 8

This Order becomes effective XX XXXXXX 2013 and remains in effect unless rescinded or revised by the Central Valley Water Board.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on XX XXXXX 2013.

_____
PAMELA C. CREEDON, Executive Officer

_____
Date

TENTATIVE

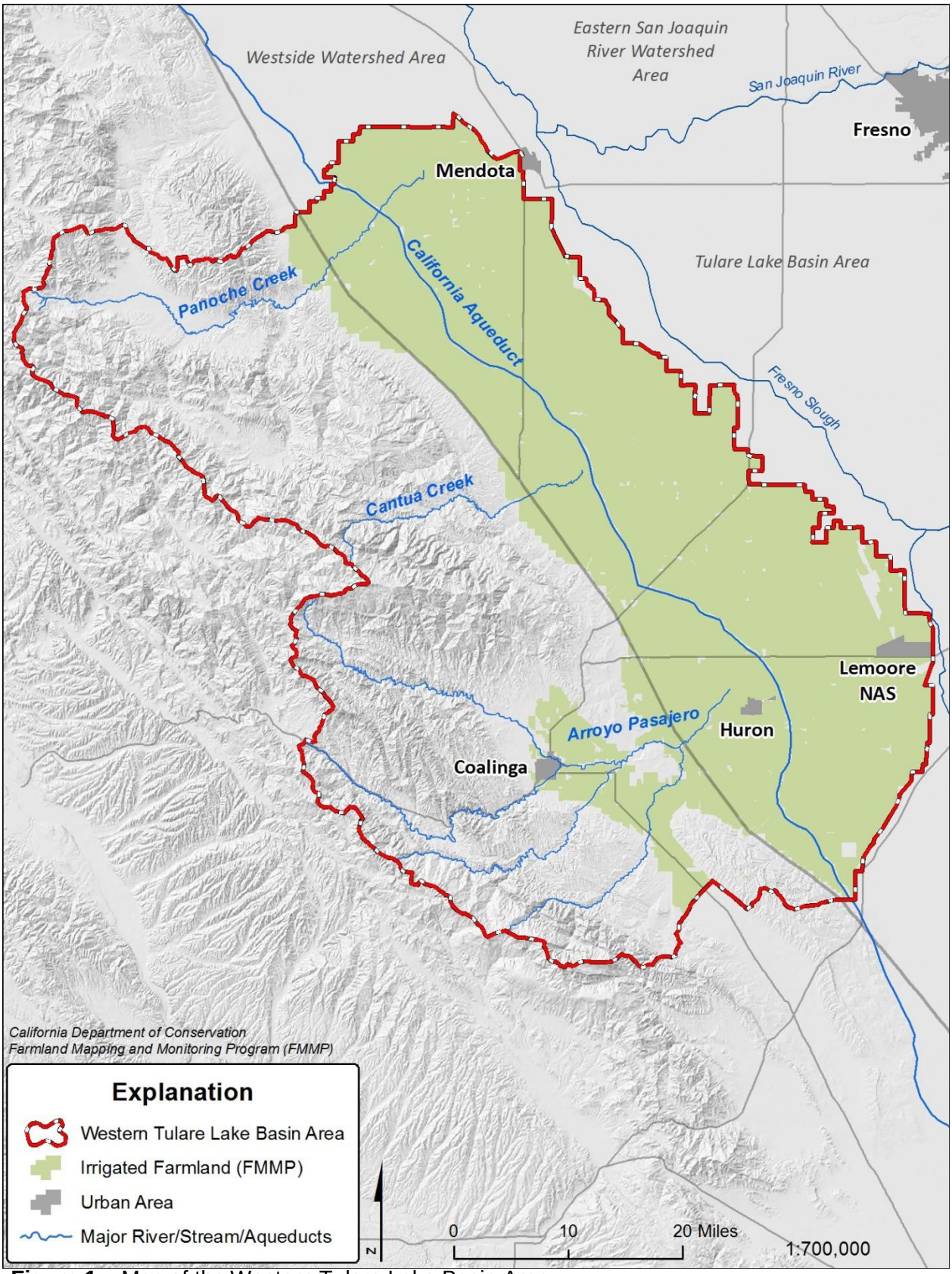

Figure 1 – Map of the Western Tulare Lake Basin Area

Report	Vulnerability	Farm Size	Due Date
Farm Evaluations	High	All	1 March 2015
	Low	Large (≥60 ac)	1 March 2016
		Small (<60 ac)	1 March 2018
Sediment and Erosion Control Plans	All farms identified in the SDEAR	Large	180 days from approval of SDEAR
		Small	1 year from approval of SDEAR
~~Nitrogen Management Plans~~	~~High~~	~~Large~~	~~1 March 2015~~
		~~Small~~	~~1 March 2017~~
	~~Low~~	~~All~~	~~1 March 2017~~

Table 1 – Member due dates for required reports

Report	Due Date	
Surface Water Monitoring Plan	180 days after Notice of Applicability (NOA)	
Sediment Discharge and Erosion Assessment Report (SDEAR)	1 year from issuance of NOA	
Groundwater Quality Assessment Report (GQAR)	1 year from issuance of NOA	
Management Practices ~~Evaluation~~ Implementation Workplan	~~Group option~~	~~1 years from GQAR approval~~
	Third-party only option	1 year from GQAR approval
Groundwater Quality Trend Monitoring Workplan	1 year from GQAR approval	

Table 2 – Third-party due dates for required reports

TENTATIVE

Westlands Water District
3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

July 15, 2013

Regional Water Quality Control Board
David Sholes, Senior Engineering Geologist
1685 "E" Street
Fresno, CA 93706

RE: Comments on Administrative Draft: Waste Discharge Requirements General Order for Western Tulare Lake Basin Area

Dear Mr. Sholes:

The Westlands Water District (Westlands) is providing the following comments on the Administrative Draft: Waste Discharge Requirements General Order for Western Tulare Lake Basin Area.

First, we commend you and your staff on your efforts to help craft Waste Discharge Requirements (WDR) that reflect the true nature of the hydrological and geological conditions in the Western Tulare Lake Basin; namely, the highly saline waters present in much of the unconfined aquifer, to wit' in paragraph 28 of the Findings section:

> *The board recognizes that some areas within the Western Tulare Lake Basin Area overlie groundwater containing naturally occurring constituents, including salts, that may exceed water quality objectives for specific beneficial use designations. In such cases, the use may be unattainable, even in the absence of any waste discharge, and de-designation or modification of the designated use may be appropriate. It is reasonable, under circumstances described below, to delay the imposition of monitoring and reporting associated with high vulnerability areas in these circumstances. This Order allows, with Executive Officer approval, portions of the high vulnerability areas identified within the Groundwater Quality Assessment Report (GAR) to temporarily operate under reduced monitoring and reporting requirements when 1) a third-party, board, or other group is actively pursuing a basin plan amendment to de-designate or modify the beneficial use; and 2) the third-party provides the required information indicating that it is reasonably likely that the beneficial use is not appropriate in the area of the proposed de-designation.*

Westlands appreciates the willingness to delay the imposition of the intense monitoring and reporting required in that "high vulnerability" area until a more suitable mechanism is in place that provides a reasonable solution to, both, the Regional Board and our Growers.

Nonetheless, we have some reservations about some of the provisions of the WDR that we strongly believe would prove too costly and overly burdensome to our Growers. Throughout the process of crafting the suite of General Orders that form the foundation of the Long-term

Irrigated Lands Regulatory Program (LTILRP), an over-arching theme from the Regional Board has been the need to "maintain consistency in the general regulatory approach[1]." While we do not dismiss regulatory consistency outright, the "regulatory consistency" emphasis has formed a "one size fits all" approach to regulating under the LTILRP. This approach is driven by the nitrate issue in drinking water on the east side of the San Joaquin Valley. Though important, this issue has overly influenced the WDR for the Western Tulare Lake Basin Area which does not have the same nitrate problems associated with drinking water. Very little groundwater in this area is used for drinking purposes. We would like to see a more robust set of Findings that would reflect the known and documented specifics of the groundwater in the Western Tulare Lake Basin Area. We would be pleased to sit down with you and your staff to discuss these specifics for inclusion in the WDR.

We believe the costs associated with the LTILRP identified in Attachment "A[2]" place an undue burden on Growers who have been deemed to be polluters before any data has been collected to verify that assumption. In several venues over the last few years, the Regional Board's Executive Officer has justified the LTILRP costs based on the Regional Board's need to collect data to see "if" a Grower is operating in a way that is not protective of Waters of the State. Again, we believe this thinking is driven by the negative impact to the Regional Board over the nitrate issue in the eastern Tulare Lake Basin Area. Western Tulare Lake Basin Growers are being made to comply with an extremely costly program in order to maintain consistency in the regulatory approach. Part of the matrix for the cost to a Grower is the need for the Regional Board to have the Grower produce a Farm Plan, Sediment and Erosion Control Plan, and a Nutrient Management Plan. These reports and documents demand data and information that exceeds the Regional Board's need to have a potential discharger provide a Report of Waste Discharge as codified in California Water Code §13260(3)(c).

Lastly, the WDR describes the Western Tulare Lake Basin Area as encompassing the upper watershed up to the crest of the Coast Range[3]. If irrigated agriculture is in existence there, and if Westlands were to become the Third-party representative, then Westlands would become the de-facto agent for the Regional Board as it pertains to collecting the State Water Resources Control Board's (SWRCB) administrative fee. The WDR says in part in paragraph 40 of the Findings section:

> *The cost estimates include estimated fees the third-party may charge to prepare the required reports and conduct the required monitoring, as well as annual permit fees that are charged to permitted dischargers for permit coverage. In accordance with the State Water Board's Fee Regulations, the current annual permit fee charged to members covered by this Order is $0.56/acre.*

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1 See *Attachment "A" Information Sheet;* page 3; paragraph 3.

2 Page 42; table 3.

3 Page 1; paragraph 3.

Currently, Westlands collects this fee from its Growers and passes it through to the SWRCB. It is in the best interests of our Growers for Westlands to perform this service and we have in place policies and procedures that allow us to collect these fees. In the case of the Pleasant Valley Water District, many of its Growers are also farming in Westlands and it is an easy nexus for the fee collection. However, Westlands does not have any authority to collect fees from someone outside of Westlands' current sphere of influence and the District does not wish to become involved with matters that are the exclusive purview of the Regional Board.

We appreciate the opportunity to address these comments with you and I look forward to helping you and your staff to craft a WDR that will benefit the Growers of the Western Tulare Lake Basin Area and the resources protected by the Regional Board as well.

Best Regards,

Jose Gutierrez, P.E.
Deputy General Manager - Resources

Comment Letter B

CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Sent via E-Mail
DSholes@waterboards.ca.gov

December 2, 2013

David Sholes
Central Valley Regional Water Quality Control Board
1685 "E" Street
Fresno, CA 93706-2007

Re: Comments on the Western Tulare Lake Basin Area Tentative WDRs/MRP for Discharges from Irrigated Lands

Dear Mr. Sholes:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to provide comments on the tentative draft of the Western Tulare Lake Basin Area Waste Discharge Requirements ("Tentative WDR") and Monitoring and Reporting Program ("MRP") for Discharges from Irrigated Lands and respectfully presents the following remarks. Many of the comments raised in Farm Bureau's earlier letter are still pertinent and are incorporated herein.

Upon reviewing the Western Tulare Lake Basin Draft WDR as well as the previously adopted Eastern San Joaquin River Watershed WDR and Tulare Lake Basin Tentative WDR, Farm Bureau is concerned that the general orders are not being individually developed and tailored, but rather are duplications of previously prepared orders with *minor* revisions. Each coalition represents unique geographic characteristics, including, but not limited, to rainfall, hydrology, drainage, commodities grown, and topography. Given all of these vast differences, each general order should be individually drafted specific to the region it regulates. 1

NANCY N. MCDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN · KAREN NORENE MILLS · CHRISTIAN C. SCHEURING · KARI E. FISHER · JACK L. RICE

General Order Page 1, Finding 1—Definition of "Waste"

The Tentative WDR seeks to regulate discharges of "waste" from irrigated lands. As referenced in the footnote to Finding 1, Attachment E defines the term "waste" to not only include the statutory definition found in Water Code section 13050(d), but also adds additional language to include the regulation of "earthen materials, inorganic materials, organic materials such as pesticides and biological materials" as wastes which "may directly impact beneficial uses or may impact water temperature, pH and dissolved oxygen." (Tentative WDR, Attachment E, p. 7.) No rationale is provided for the overly broad expansion of a statutorily defined term; as such, the term "waste" should be limited to its definition found in Water Code section 13050(d). 2

General Order Page 2, Finding 5—Regulation of Water Quality

The Tentative WDR amends the scope of regulatory coverage by including a broad and generic statement that does not include specific provisions limiting the regulation of water traveling through particular structures as included in past conditional waivers. (Draft WDR, p. 2.) The current scope of coverage causes concern regarding the regulation of on-farm conveyances and between-farm conveyances, causing potential ambiguity regarding the point of demarcation for regulation. In order to provide clarity, Finding 5 should be revised.[1] 3

General Order Pages 9-10, Findings 34-38—Compliance with the California Environmental Quality Act

The Tentative WDR relies upon the environmental analysis conducted in the Program Environmental Impact Report ("PEIR") and concludes that "[a]lthough the Order is not identical to any of the PEIR alternatives, the Order is comprised entirely of elements of the PEIR's wide range of alternatives." (Tentative WDR, p. 9, ¶¶ 35-36.) Relying on such analysis, the Tentative WDR further concludes "the PEIR identified, disclosed, and analyzed the potential environmental impacts of the Order" and the "potential compliance activities undertaken by the regulated Dischargers…fall within the range of compliance activities identified and analyzed in the PEIR." (*Id.* at ¶ 35.) The Tentative WDR is not sufficiently within the range of alternatives analyzed within the PEIR, but rather goes beyond those alternatives as it includes provisions substantially different from elements in those alternatives, especially alternatives 3 through 5. These new components, such as provisions creating end-of-field discharge limitations, the farm management performance standards, and the associated costs, do not represent merely a "variation" on the alternatives in the PEIR but rather are elements that were not thoroughly considered previously and are likely to result in the imposition of new burdens on irrigated agricultural operations that would have a significant and 4

[1] Finding 5 could be potentially revised to state: "This Order is not intended to regulate water in agricultural fields, including, but not limited to, furrows, beds, checks, and ancillary structures, contained on private lands associated with agricultural operations. This Order is not intended to address the lawful application of soil amendments, fertilizers, or pesticides to land."

cumulatively considerable impact on the environment. Thus, reliance on the PEIR for CEQA compliance is inappropriate.[2] 4

General Order Pages 10-12, Findings 41-42—California Water Code Sections 13141 and 13241

Pursuant to the Water Code, the Regional Board is obligated to consider costs associated with the entire Long-Term Irrigated Lands Regulatory Program, as well as each individual general order, such as the Western Tulare Lake Basin Area WDR. (Wat. Code, § 13141.) Finding 41 incorrectly concludes that any new cost analysis is unnecessary given that "the Basin Plan includes an estimate of potential costs and sources of financing for the *long-term irrigated lands program*." (Tentative WDR, pp. 10-11, ¶ 41, emphasis added.) Although the Basin Plan was amended to include costs associated with the *long-term irrigated lands program*, the Basin Plan Amendment did not include specific costs associated with the Western Tulare Lake Basin Area WDR as it was not in existence at the time nor were the specific program requirements analyzed (such as the templates and individual reporting summarized by the third-party). Given that this Tentative WDR proposes new costly regulatory components not previously analyzed during the environmental review stage or when adopted in the Basin Plan, the Regional Board must analyze, evaluate, and estimate all of the costs of these new regulatory requirements. 5

General Order Pages 13-14—Coordination and Cooperation with Other Agencies

Farm Bureau appreciates the provisions within the Tentative WDR that describe the Regional Board's coordination and cooperation with other agencies as well as how the implementation of the WDR will utilize such coordination and cooperation. Growers within the Western Tulare Lake Basin have a long-standing relationship with many agencies. To highlight these relationships, additional provision should be added, such as Provision 52 in the San Joaquin County and Delta Draft WDR regarding coordination with the United States Department of Agriculture's Natural Resources Conservation Service. 6

Additionally, Farm Bureau appreciates the revisions acknowledging the assessment of nitrogen management and control currently underway by the California Department of Food and Agriculture's Task Force as well as the soon to be convened State Water Resources Control Board's Expert Panel. (Tentative WDR, p. 14, ¶ 51.) Given the assessments and recommendations to be made by both processes to determine appropriate nitrogen tracking and reporting systems and management practices, amending

[2] Farm Bureau also questions the Regional Board's authority to require mitigation measures within the Tentative WDR for farm level activities. Implementation of management practices at the farm level, which is the heart of the WDR, is not subject to a discretionary approval by the Regional Board. (See Pub. Resources Code, § 21080, CEQA generally applies only to discretionary projects.) Mitigation measures that cannot be legally imposed need not be proposed or analyzed. (CEQA Guidelines, § 15126.4(a)(5).)

the nitrogen management plan deadlines to allow for the incorporation of future recommendations is both appropriate and appreciated. 6

General Order Page 18, Provisions III. A. and III. B.—Discharge Limitations

The use of "shall not cause *or contribute*" to an exceedance of applicable water quality objectives is overly expansive and creates an unreasonable standard that is undefined, ambiguous, and holds farmers and ranchers liable for even the smallest de minimus contribution. Accordingly, a qualifier should be added before "contribute" or the discharge limitations for both surface water and groundwater should be rewritten to state "wastes discharged from Member operations shall not cause an exceedence of applicable water quality objectives in surface water [or the underlying groundwater], unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance." 7

General Order Page 19, Provision IV. B. 8—Nitrogen Management Plans

Provision 8 requires all members to prepare and implement an annual nitrogen management plan. Such plans should analyze "nitrogen" application rather than "nutrient" application. (Draft WDR, p. 19, ¶ 8; see also Attachment A, Information Sheet, p. 18 stating "the Order requires that Members implement practices that minimize excess **nitrogen** application relative to crop need" (emphasis added).) As seen in previous drafts, only members in high vulnerable areas where nitrate is a constituent of concern were required to prepare annual nitrogen budgets and management plans. Rather than requiring all members to prepare nitrogen budgets and plans, as Provision 8 is currently written, the WDR should be revised to allow flexibility in the requirements for those areas that have no or a lower propensity to impact water quality. 8

General Order Pages 25-27, Provisions B, C, and D; Pages 17-21, 30; Attachment A, Information Sheet—Template Requirements for Farm Evaluations, Nitrogen Management Plans, Nitrogen Management Plan Summary Reports, and Sediment and Erosion Control Plans

The Draft WDR requires all coalitions and commodity groups to use the templates provided by the Regional Board (Draft WDR, p. 30) in order "to collect information consistently across irrigated agricultural areas and commodities and to minimize the costs for growers to provide that information." (Attachment A, p, 17.) Although Farm Bureau understands the rationale for requiring standardized information, the Regional Board should allow for flexibility and variability depending on the geographic area, the commodities grown, known water quality impairments, the propensity to impact water quality, and the size and scale of farming operations. Just as each WDR should be individually drafted specific to the region it regulates, the templates utilized by that coalition should also be individually developed and tailored, rather than duplications of previously prepared orders and templates. In the alternative, the Regional Board should allow each coalition to modify previously developed templates in order to address coalition-specific issues. Such tailoring will allow the Regional Board to obtain the most relevant information specific to the area being regulated while also allowing growers to 9

minimize costs. Farm Bureau suggests the inclusion of an additional provision, such as Provision VIII. C. (pages 33-34) of the Tentative Western San Joaquin River Watershed WDR, allowing for modification of templates as necessary. 9

General Order Page 35, Provision M.; Attachment B, MRP, Page 26, Provision V. E.—Basin Plan Amendment Workplan

Farm Bureau appreciates the inclusion of a process for the third-party to pursue a basin plan amendment to address the appropriateness of a beneficial use designation. 10

Attachment B, MRP, Pages 8-9, Provision III. B. 3—Toxicity Testing

As currently drafted, the Tentative MRP's language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. (See Tentative Attachment B, MRP, pp. 8-9, footnotes 5 and 6 stating that chronic and acute toxicity testing should be completed in accordance with U.S. EPA testing methods.) Since the inception of the Irrigated Lands Regulatory Program, surface water monitoring has occurred and has utilized acute aquatic toxicity testing, with no evidence of any shortcomings. If there is no U.S. EPA acute toxicity testing method for *Selenastrum capricornutum*, Farm Bureau recommends adding language to footnote 6 to specify that the use of chronic testing is appropriate *only* in this circumstance. 11

Attachment B, MRP, Page 24-25, Reporting Components 18 and 19[3]

Reporting Components 18 and 19 outline the process in which a third-party will collect data from members and report the data to the Regional Board at the township level. As currently drafted, Farm Bureau supports the generalized concept of reporting at the township level. Reporting at the township level allows coalition groups to properly compare crop data, evaluate management practice trends, and manage the data in an efficient and effective manner. The comparison of data at the field level, with or without the identification of a member's parcel, is not supported and would not result in an efficient use of resources or the ability to assess and evaluate trends. 12

Reporting Component 19, Summary of Management Practice Information, further requires a third-party to provide the individual data records to the Regional Board in addition to aggregating and summarizing information collected in the Farm Evaluations. (Tentative Attachment B, MRP, p. 25.) No explanation is provided in the MRP or WDR to support the necessity of needing the individual data records. Rather, the summary of management practices provided by the third-party will be more meaningful than the individual data records and will include the appropriate analysis needed by the Regional Board. Thus, Farm Bureau questions the need for third-parties to submit individual data records and suggests this addition to the management practices information reporting component be removed.

[3] See also Attachment A, Information Sheet, Pages 20-21—Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Regional Board on the Western Tulare Lake Basin Area WDR and MRP for Discharges from Irrigated Lands.

Very truly yours,

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