

Waste Discharge Requirements  
for Growers within the San Joaquin County and Delta Area  
that are Members of a Third-party Group  
Order Number R5-2014-xxxx

**RESPONSE TO COMMENTS**

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or “board”) has provided opportunity for the public to submit written comments on the tentative Waste Discharge Requirements for Growers within the San Joaquin County and Delta Area that are Members of a Third-party Group, Order R5-2014-xxxx (referred to as the “Tentative Order” or “Order”). This document contains written responses to comments that were timely received on the Tentative Order.

The Tentative Order was released for public review on 16 December 2013 with the comment period ending on 17 January 2014. Seven comment letters were received by the deadline.

They were submitted by:

1. San Joaquin County and Delta Water Quality Coalition
2. California Farm Bureau Federation
3. San Joaquin Farm Bureau Federation
4. California Sportfishing Protection Alliance and California Water Impact Network
5. Contra Costa Resource Conservation District
6. Lodi District Grape Growers Association, Inc.
7. Western Dairy Design

Several footnotes in the Tentative Waste Discharge Requirements (WDRs) were inadvertently left out of the original version of the tentative WDRs. Consequently, staff provided opportunity for the public to submit written comments on the footnotes by 16 February after staff edits. No additional comments were received by the 16 February deadline.

Prior to circulating the Tentative Order for public comment, the board circulated a “draft” Order for public review. The draft public review and comment process that the board engaged in is not required by law or policy, but was conducted to help the board work with dischargers and other interested parties to develop the best possible policies for the protection of water quality while maintaining the viability of the Central Valley’s agricultural industry. The draft review period began on 13 August 2013 and closed on 13 September 2013. The board staff did not develop written responses to comments on the draft Order, however comments were taken into account and multiple changes to the draft Order have been made, as reflected by the Tentative Order.

This response to comments on the Tentative Order includes responses that apply to broader issues addressing a theme recurring in multiple comments (general responses), and responses to individual comments (specific responses). The general responses are given first, followed by itemized comments and responses associated with each letter. Finally, this response to comments includes as an attachment a separate response to Exhibits contained within comment letter 4. This separate response was necessary because Board staff was unable to determine whether the CSPA exhibits were provided to support the contentions in CSPA’s comment letter or whether CSPA intended for the board to consider additional comments in the exhibits that were not reflected in the CSPA letter.

## GENERAL RESPONSE

### **1. Concerns regarding costs, and burden of implementing new requirements in the Order**

#### ***Comment summary***

Several comments were received related to costs and burden of the programs new and additional requirements. In particular:

- The new and additional requirements are burdensome and costly.
- Loss of farm acreage as a result of the program are not acceptable.
- If the program is not efficient, costs will be too high and the program will fail

#### ***General Response 1***

Commenters argue that farm evaluations will impose costly paperwork burdens that will not benefit water quality. The board staff disagrees, since the plans are needed to verify that growers are implementing relevant practices to protect water quality.

The suggestion that the Tentative Order is not reasonable is asserted, but not supported by any facts. The board staff believes that it is reasonable for the dischargers regulated by the Order to provide evidence or indication that they are complying with its provisions. As described in Attachment A of the Tentative Order, farm evaluations and nitrogen management plan summary reports provide information on overall implementation of practices to protect water quality, in some ways serving as a surrogate to individual water quality sampling. Many other board programs require individual sampling of waste discharges to assess impacts to water quality.

For the ILRP, the board has recognized that it may not be reasonable to require tens of thousands of growers to sample their waste discharge, where there is a less costly method for evaluating compliance. Also, the burden of such individual monitoring would be extensive (see analysis for Alternative 5, Economics Report). Consequently, the Tentative Order relies on a representative monitoring approach and evaluation of management practices at representative sites, coupled with farm-specific planning, evaluations, and reporting. Considering this, board staff disagrees that the Tentative Order's approach is unreasonable. To the contrary, the approach has been crafted considering the reasonableness of the requirements and the needs to consider the burden of reporting relative to the benefits of the reporting.

The Order takes a reasonable approach by tailoring the monitoring and reporting requirements to the potential constituents of concern and the water quality threat. The Order also requires key information to be provided by Members to the third party annually for summarization and submittal to the Regional Board in an annual report. The third-party reporting structure allows Members to submit information in a cost-effective manner.

In summary, the Order has been crafted in consideration of concerns raised regarding the cost of compliance and the potential effect on the viability of some irrigated agricultural operations. The Order will result in the collection of information necessary to confirm compliance by the regulated growers and includes enforceable requirements to ensure those growers implement the practices necessary to protect water quality. The commenters have not provided evidence that any of the proposed monitoring or reporting requirements are unreasonable or unnecessary.

## **2. Concerns regarding the annual membership list submittal and identification of growers**

### ***Comment summary:***

The Resource Conservation District is a non-regulatory organization that acts as the third party group for the San Joaquin County and Delta Water Quality Coalition. Commenters disagree with provision IV.C.9 that requires the third party to inform board staff when members have failed to provide the required information or otherwise maintain a good standing of their membership. Commenters also suggest the third-party should not identify Members whose membership has been revoked or is pending revocation (per section VIII.B. of the tentative Order). Commenters claim that it is unnecessary to ask the RCD to facilitate enforcement for the board. The term “good standing” is also unclear and not defined in the Order. Commenters would like the board to restore the provision’s language found in the administrative draft WDR to specifically report only those members that were dropped from membership with good cause.

### ***General Response 2***

The third-party group is not being asked to serve in a regulatory capacity or facilitate Central Valley Water Board enforcement. The third-party group is not being asked to impose any regulatory requirements on those Members that would be identified under section IV.C.9. or take any punitive action. However, as indicated in Finding 8, the third-party group is expected to assist its Members in complying with the requirements of this Order. In addition, the third-party group is responsible for fulfilling regional requirements and conditions as indicated in Finding 10.

When a third-party group has information that a Member has failed to comply with fundamental provisions of the Order (as described in section IV.C.9.), it is reasonable for the third-party group to convey this information to the board. The potential Member failures listed in section IV.C.9 are indicative of one of two fundamental problems: 1) the third-party group’s efforts to assist the Member in complying with the Order have not been adequate; or 2) the Member refuses to comply with the Order despite the best efforts of the third-party group to assist them. Whatever the case may be, it is clear that the Central Valley Water Board must begin working directly with that grower to bring them into compliance with the Order or to begin direct regulation of that grower through a different Order.

Without providing such information as described in section IV.C.9 to the board, it is unclear how the third-party can demonstrate that it is adequately fulfilling its responsibilities to assist its Members in complying with the Order. In addition, if no information is provided to the board regarding Members who are failing to implement practices specified in a management plan, respond to third-party information requests, or participate in third-party led studies, it is unclear how the third-party can demonstrate the third-party group is fulfilling its responsibilities to lead regional monitoring and regional management plan implementation efforts. The board would not know if lack of progress was due to failures of Members or failures of the third-party group. If the third-party group is aware of Members who have failed to meet one of the obligations identified in IV.C.9. and the third-party group is not providing that information to the Water Board, the third-party group is effectively acting to shield those Members from any meaningful follow-up or consequences associated with their non-compliance.

The requirement to identify Members whose membership has been revoked or is pending revocation (per section VIII.B.) is the mechanism by which the third-party group will report to those Members who failed to meet one of the obligations identified in IV.C.9. Absent this requirement, the board would have to conduct further investigations to determine why a Member was no longer on the Membership List or would potentially send enforcement orders to

Members who were mistakenly left off a Membership list. The referenced language in VIII.B. is necessary so that the board has definitive information as to why a Member is dropped and the board can conduct the appropriate follow-up with those dropped Members.

Staff believe the language in the tentative Order, which is similar to language in other third-party group Orders adopted by the board, is appropriate and necessary to ensure the board is aware of non-compliant Members. While the third-party is not required to “conduct enforcement activities,” it is required to report information to the board demonstrating that it is fulfilling its responsibilities and otherwise continues to be eligible to serve as a third-party. Providing this information to the board is a reasonable trade-off given the benefits Members receive from being part of a third-party group versus being directly regulated by the board.

## **SPECIFIC RESPONSES**

### **Comment Letter 1 – San Joaquin County and Delta Water Quality Coalition**

1-1. Reporting frequency and meeting attendance obligations are unduly burdensome and costly.

**Comment summary:** Permanent Crops represent half of the irrigated acreage in the Coalition area. There is also substantial alfalfa acreage, which is a 5-7 year crop. Annual Farm Evaluation reports are going to show virtually identical information for permanent crops and alfalfa. Reporting duplicative information each year is burdensome and costly. The commenter has also proposed an approach to collect Farm Evaluations in groups over a five-year period.

**Response:** The Order requires Members to submit their first Farm Evaluation by 15 June 2015, nearly 15 months after the Order’s anticipated adoption date. This extended timeline provides the third-party group with ample time to collect and process the Farm Evaluations. The third-party may implement web-based technology to allow direct entry, paperless submittals, and direct data base population for reporting to the board. A web-based system would reduce the overall burden on Members and costs of data entry. A Member will not have to fill out new paper forms every year, but would be able to make updates to indicate the practices that have changed or indicate that their practices have not changed. In addition, the use of a web-based system will reduce costs for the third-party associated with data entry.

Staff does not agree with the proposed approach to collect Farm Evaluations in groups over a five-year period. The tentative Order requires Members with parcels in low vulnerability areas to update their Farm Evaluation every five years, and Members in high vulnerability areas to update their Farm Evaluation annually. High vulnerability areas are those areas with identified water quality problems associated with irrigated agriculture.

First, the proposal is unnecessary because the Tentative Order already addresses the Coalition’s concern about submission of duplicative Farm Evaluations. The Tentative Order allows the Executive Officer to reduce the frequency of submission of Farm Evaluations after 15 June 2018, if the third-party demonstrates that year to year changes in the Farm Evaluations are minimal and implemented practices are achieving the performance standards established in the Order.

Next, the Coalition proposal would essentially treat all Members the same by instituting a five year cycle for submittal of Farm Evaluations. Near term actions are required to address those water quality problems. Members that are potentially contributing to those problems must examine and change their practices, as necessary, to protect water quality. In contrast to the suggestion of the commenter, the Water Board is expecting Members to change or adjust their management practices to address identified water quality problems.

Finally, staff disagrees with the implication that growers of permanent crops will not change practices and will not adjust or change their practices to address water quality problems. Members will need to verify through the Farm Evaluations that they are promptly implementing practices to protect water quality. Providing Farm Evaluations every five years in the high vulnerability areas would leave the board largely bereft of any information from Members regarding their efforts to comply with the Order and address identified water quality problems.

Please see General Response 1 regarding cost concerns.

1-2. Nitrogen Management Plan and Summary Reports are duplicative and costly.

**Comment summary:** The Tentative Order requires members to prepare a Nitrogen Management Plan (before the crop year) and a Summary Report (after the crop year). This duplicative requirement is unduly burdensome such that the cost of the duplication is not justified by the minimal benefit. Members should be required to learn about nitrogen budgeting and our coalition fully supports this education and outreach effort, but it is simply not achieved through a paperwork exercise. A single summary report, rather than a plan and a report in the same year, is enough reporting.

**Response:** The Nitrogen Management Plan is the mechanism by which a Member documents that they are meeting the performance standard to minimize excess nutrient (in this case nitrogen) consumption relative to crop need. The Nitrogen Management Plan Summary Report will not be duplicative, but will provide a subset of the information contained in the Nitrogen Management Plan. The Summary Report will provide important information that the board can use to determine whether the performance standard is being met in high vulnerability areas. The Nitrogen Management Plan will provide the back-up documentation and analysis for how the summary information was produced.

An alternative to providing this documentation is for the individual Members to conduct on-farm water quality monitoring to demonstrate they are meeting the Order's requirements, including its performance standards. Board staff believes that the reporting of practice information is a more cost effective approach to documenting compliance versus a comprehensive individual monitoring program. See General Response 1 and Response to Comment 4-14.

1-3. Language in Section IV.B.4 is ambiguous regarding how many outreach events a member must attend each year.

**Comment summary:** The commenter suggests that the tentative Order should be revised to use the prior language found in the administrative draft Order, which clarified the obligation to attend at least one outreach event per year.

**Response:** The language in IV.B.3 of the administrative draft Order read that each

member or their designee shall participate in at least one outreach event annually. The underlined portion in the previous sentence was revised in the Tentative Order IV.B.4 to read that each member or their designee shall participate in outreach events, at least annually. Both versions are intended to describe that members or their designees are required to attend an outreach event at least once per year. However, staff has revised the tentative Order to use the language in the Administrative Draft.

1-4. The annual event attendance requirement is burdensome and unreasonable and expensive.

**Comment summary:** Annual attendance at outreach events is unreasonable because advances in management practices do not happen so rapidly that there is new information to present annually. In addition, the cost of the events for the third party and members is high. Attendance at an event every other year would be more reasonable and useful.

**Response:** The tentative Order requires Members to confirm attendance at an annual outreach event only if they are in a high vulnerability area. Staff believes it is reasonable to require Members within a high vulnerability or SQMP/GQMP area to attend at least one outreach meeting per year, since it is imperative that Members within those areas are aware of water quality problems and the practices that should be implemented to address the problems. Absent such awareness, the Member is more likely to be out of compliance with the Order and potentially subject to enforcement action.

Under the existing conditional waiver, there are multiple outreach meetings held by the third party throughout the year. The third party generally schedules these meetings at times convenient for growers' schedules, which does not appear to impose an undue burden on Members. Once Members in the area have successfully addressed the identified water quality problems, Members will not be required to attend outreach events because the area will no longer be designated high vulnerability or subject to a management plan.

1-5. Tentative Order removes small farming operations. The San Joaquin County and Delta Water Quality Coalition supports this.

**Comment summary:** The distinction between small farms and those that are not has been removed from the Administrative Draft Order to streamline administration and keep costs down. The commenter supports the change.

**Response:** The commenter's support for the change is noted.

1-6. It is unnecessary and counterproductive to ask the Resource Conservation District to facilitate enforcement.

**Comment summary:** The Coalition is operated by the RCD which is viewed by farmers as a neutral party. This encourages farmers to join the Coalition and to be open about their practices. The Tentative Order will require the RCD and Coalition to inform the Central Valley Water Board when growers fail to maintain good standing. It is unnecessary to ask the RCD to facilitate enforcement for the Central Valley Water Board. The term "good standing" as used in the Order is unclear and not defined in the Tentative Order.

**Response:** See General Response 2.

1-7. Requirements for reporting membership list information should reinstate the approach from the administrative draft WDR

**Comment summary:** The administrative draft WDR required in Section IV.C.9 the Coalition to report both members in good standing and those dropped for cause, thus giving the board information needed to identify growers for enforcement action without requiring the Coalition to be part of the identification process. The tentative WDR has been unexpectedly revised. The Coalition requests that the administrative draft language be reinstated so that the Coalition is not part of the identification process. In addition, the board should remove the requirement in section VIII.B that the third party identify growers who have had their membership revoked and members whose membership is pending revocation. The membership list already provides members in good standing and when board staff reconciles the prior year's list, board staff can determine which members to enforce upon without asking the Coalition to do the board staff's work.

**Response:** In response to the comment regarding Section IV.C.9 and VIII.B of the Tentative Order, see General Response 2.

1-8. The Tentative Order recognizes that there are unique circumstances within the Delta

**Comment summary:** The commenter appreciates the recognition of the unique geographic attributes and the willingness to customize the regulation to address the requirements.

**Response:** The commenter's support for the provision is noted.

1-9. Specific comments and edits need to be considered for the Information Sheet

**Comment summary:** The commenter suggested specific edits to the Information sheet. The same comments were provided for the Administrative Draft Order.

**Response:** See response to comment 1-23.

1-10. Specific comments and edits need to be considered for the MRP attachment

**Comment summary:** The commenter suggested specific edits to the MRP. The same comments were provided for the Administrative Draft Order.

**Response:** See response to comments 1-24 through 1-29.

1-11. Nitrogen crop need versus consumption

**Comment summary:** The term crop "need" with respect to crop "consumption" are two different things and the distinction is important in implementation with the Order. See Information Sheet XIV.C.1.d. Applied nitrogen cannot equal crop consumption due to a variety of factors. Therefore, the amount a crop may need is greater than the amount the crop consumes.

**Response:** Growers are required to document how their fertilizer use management practices meet the requirement to minimize excess nutrient application relative to crop consumption. The board acknowledges that there is a difference between the two terms and that crop need may be greater than that of crop consumption. Further, the Order does not require that the applied nitrogen must equal crop consumption, only that the growers minimize excess nutrient application relative to crop consumption.

The commenter did not suggest a change to the tentative Order.

1-12. Increased geographic area in the Tentative Order

**Comment summary:** The Tentative Order proposes to expand the existing Coalition area boundaries to the east. The RCD that operates the SJC&DWQC does not anticipate that it will apply to be the third party for the expanded area. Thus, the language in section IV of the information sheet should be modified accordingly.

**Response:** The Notice of Applicability issued by the Executive Officer will identify the third-party geographic boundaries. Those boundaries may conform to the boundaries identified in the third-party group's application or the Executive Officer may identify different boundaries that the third-party must cover (e.g., if no other third-party groups apply). The Executive Officer will consider factors found in WDR Section VIII.A when evaluating any third-party group application, including the reasonableness of the proposed boundaries.

1-13. Exceedances must account for source water

**Comment summary:** Additional monitoring requirements, including management plans can be triggered with exceedances. In some cases, the discharge water will have an exceedance only because the source water applied to the farm for irrigation started with an exceedance. The commenter requests that Attachment B be modified to clarify when an exceedance can be traced to source waters, the test result will not be used for purposes of triggering additional monitoring requirements.

**Response:** The management plans include requirements to investigate sources, develop strategies to implement practices to ensure waste discharges are protecting water quality, and develop a monitoring strategy to provide feedback on the effectiveness of the management plan. If the third-party group can demonstrate that irrigated agriculture is not causing or contributing to the water quality problem then a management plan is not required (see section VIII.H.3. of the Tentative Order).

1-14. Use of Department of Pesticide Regulation Groundwater Protection Areas

**Comment summary:** The commenter agrees that some information compiled by DPR may be useful in the Groundwater Assessment Report and monitoring plan design, but significant care must be taken when using DPR data to generically characterize groundwater in an area as highly vulnerable or at risk of a discharge of waste from irrigated agriculture. DPR groundwater protection areas are designed for a specific constituent and are based on how that constituent travels through the soil and reacts with the soils types. Just because this area might be susceptible to contamination by a certain constituent does not extrapolate into it being vulnerable to fertilizers or nitrates.

**Response:** The groundwater protection areas are vulnerable to contamination from agricultural activities associated with specific pesticides (see discussion in Finding 14), unless those activities are regulated through pesticide use permits. DPR identifies those areas as vulnerable to groundwater contamination from the agricultural use of certain pesticides, based upon either pesticide detections in groundwater or upon the presence of certain soil types (leaching and/or runoff area) and a depth to groundwater shallower than 70 feet. Staff believes it is reasonable to consider the decades of work DPR has put into its groundwater protection efforts in identifying vulnerability areas under the Tentative Order. The Tentative Order includes consideration of DPR's vulnerability factors and groundwater protection areas by the third party in the determination of high vulnerability areas, but does not require that those vulnerability

considerations be applied to nitrate in groundwater.

1-15. The Executive Officer should be required to use all relevant information to make a determination of a groundwater protection area in the same manner as the Coalition.

**Comment summary:** Section IV.A.4, Attachment B. The commenter is concerned that as written, the language suggests that the Executive Officer would use DPR Groundwater Protection Areas as a default high vulnerability area for purposes of the Order if the report deadline is missed. If the default is used, the Executive Officer should be held to the same scientific standard as the Coalition in determining high vulnerability areas. The commenter requests that the second paragraph in Section IV.A.4, Attachment B be revised.

**Response:** The tentative Order (section IV.A.4 of the MRP) has been revised to clarify that the DPR Groundwater Protection Areas will be one of the sources of information considered by the Executive Officer in establishing vulnerability areas, in absence of a timely submittal of a Groundwater Quality Assessment Report by the third-party group.

1-16. Developing trigger limits and establishing water quality testing methods

**Comment summary:** The commenter is concerned that water quality triggers for pesticides that do not have a criteria already established will be developed by board staff with stakeholder input, but exclude a scientific process. The stakeholder input should be in the form of a technical committee comprised of stakeholder representatives. The commenter requests that the MRP (Attachment B) be revised to reflect the use of a committee to set water quality trigger limits.

**Response:** As part of the process of establishing trigger limits (see MRP B, section VII), interested parties, including the third-party group, will be given the opportunity to review and comment on the proposed trigger limits before the Executive Officer provides the final trigger limits. This process is consistent with the Basin Plan's *Policy for Application of Water Quality Objectives* discussion of evaluation of compliance with narrative water quality objectives. Compliance is evaluated using relevant information submitted by the discharger or other interested parties, and relevant numeric criteria and guidelines from other agencies or organizations.

The process suggested by the commenter could imply exclusion of comments from parties that were not part of the suggested technical committee, which would be contrary to the policy established in the Basin Plan. However, although staff do not believe it is necessary to require that a technical committee be used to vet all trigger limits, staff may establish such a committee for certain constituents where the science is less clear or a more formal process could be beneficial. However, staff would not exclude consideration of comments from any interested party.

It is important to note that if any interested party does not agree with a trigger limit provided by the Executive Officer, it can request the Board to review the Executive Officer's decision. In addition, should the board wish to enforce the trigger limit against an individual grower, the grower would be afforded due process through the applicable board proceeding to raise any objections regarding the trigger limit or provide evidence to support the grower's interpretation of the applicable narrative water quality objective.

1-17. CEQA compliance

**Comment summary:** The commenter does not agree that the regulatory program included in the Tentative Order, or its estimated costs, is sufficiently within the range of

the alternatives previously analyzed in the Programmatic EIR. To properly comply with CEQA, the Regional Board should prepare a supplemental EIR for this specific Tentative Order and should revise its costs estimates.

**Response:** As described in the Information Sheet to the Tentative Order (Attachment A), the requirements of the Order include regulatory elements that are also contained in the six alternatives analyzed in the Program Environmental Impact Report (PEIR); therefore, Staff believes that the Tentative Order is sufficiently within the range of alternatives evaluated in the PEIR. In addition, the estimated costs are within the range of costs of the alternatives evaluated in the PEIR.

A public agency may rely on a PEIR for CEQA compliance, for subsequent program activities if it “finds pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required.” CEQA Guidelines § 15168(c). Board staff has proposed the required finding in Attachment D of the tentative Order. The commenter provides the general concern that environmental impacts have not been adequately analyzed, but provides no substantive information on why it disagrees with the proposed finding (e.g. the types of unaddressed impacts or additional mitigation measures that may be necessary). Staff, therefore, does not agree that a supplemental EIR or revision in the cost estimates is necessary.

#### 1-18. Water Code sections 13141 and 13241

**Comment summary:** The commenter contends that the Tentative Order proposes new costly regulatory components, including individual reporting, not previously analyzed during the environmental review. The templates for the reporting were not available at the time board staff developed the costs. The board should update the costs study with the specifics of the Tentative Order.

**Response:** Board staff disagree that the Tentative Order proposes new regulatory components that were not considered during the environmental review. The economic analyses completed within the PEIR and subsequent incorporation of these cost estimates into the Basin Plan sufficiently addresses §13141 and §13241 of the California Water Code.

The State Water Board recently concluded that Water Code section 13141 is “applicable only to an agricultural water quality control plan that is adopted within a water quality control plan.”<sup>1</sup> Since staff is proposing that the Board adopt the agricultural water quality control plan within waste discharge requirements as opposed to the Board’s Basin Plan, the Tentative Order cannot violate Water Code section 13141 here, as the statute is not applicable.

Nevertheless, the Central Valley Water Board prepared a cost estimate for the long-term irrigated lands regulatory program, and added it to its Basin Plans prior to implementation of this Order. The State Water Resources Control Board approved these Basin Plan amendments on 17 July 2012. To estimate costs for the Tentative Order, the Board staff used the same study used to develop the Basin Plan amendments and supplemented the study based on the Tentative Order’s requirements. Finally, Board staff has confirmed that the estimated costs of the Tentative Order fall within the range included in the Basin Plan estimate. Adoption of

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<sup>1</sup> See State Water Board Order WQ 2013-0101, *In the Matter of the Review of Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0001*, at p. 15

the Tentative Order would not violate Water Code section 13141.

In addition, the Information Sheet includes a discussion of how costs were considered (see Section XV) and how those costs were derived from costs associated with elements of the PEIR alternatives. These costs include estimated costs associated with the plans and reports that are required from members and provided to them as templates to be completed. No further cost analysis is required by Water Code section 13241 and no evidence has been provided to demonstrate where the cost estimates are deficient.

1-19. Some section references and footnotes are incorrect.

**Comment summary:** Section references in the text should be double checked. For example, section VI, paragraph 5 (page 23) cross-references Finding 53. It appears this may be incorrect. The Tentative Order also includes several footnote references in the text, but the footnotes themselves are missing. This is the case for footnotes 5, 6, 15, 18, 22, 24, 25, 26, and 29.

**Response:** The cross reference to Finding 53 has been revised to Finding 56. The board staff has added the footnotes to the Tentative Order that were inadvertently left off of the proposed waste discharge requirements released by the Board on 16 December 2013. The footnotes were corrected in a revised Tentative Order released on 16 January 2014. No comments regarding the footnotes on the revised Tentative Order were received by the 16 February due date.

1-20. The Tentative Order should not assume that all water that leaves the crop root zone is a discharge or threatened discharge to groundwater that can and should be regulated.

**Comment summary:** The commenter requests that language in Finding 8 (“This Order regulates both landowners and operators of irrigated lands from which there are discharge of waste that could affect the quality of any waters of the state”) be added to Finding 5 to remove any implication that (1) the Regional Board intends to regulate water as it moves past the root zone when there is not a threat to waters of the state, or (2) that movement of water below the root zone is a de facto discharge of waste – which it is not.

**Response:** See response to comment 2-3.

1-21. The Tentative Order should not assume that best management practices can be clearly identified at the onset of the program

**Comment summary:** Throughout the Order there is an underlying assumption that the Regional Board and third parties will be able to identify the precise conditions in the groundwater basin and the management practices that are and are not protective of groundwater quality. The Order needs to recognize that this is not an exact science, but will be an on-going cooperative effort to learn and improve. It is more likely that we will learn that “best practicable treatment and control” is not a precise set of operational criteria for farming operations, but rather continued cooperative research to learn more.

**Response:** The Order assumes that the ongoing learning suggested by the commenter must occur. For groundwater water quality, the purpose of the Management Practice Evaluation Program is to provide the type of learning and knowledge suggested by the commenter. One of the reasons why staff believes the annual outreach and education opposed by the commenter (see Comment 1-4) is so

critical is that staff anticipates an ongoing learning process of what practices and operating parameters associated with those practices are most effective at protecting groundwater quality.

1-22. The cost of complying with the Order must be controlled or we will lose members and the program will fail

**Comment summary:** The board can obtain the same information relevant to its water quality goals at a lower cost. If the cost of this program on a per acre-basis doubles or triples we will lose too many members and this Coalition will no longer operate. We do not want the program to fail.

**Response:** See General Response 1. The Order has been designed to minimize costs while still ensuring the board receives sufficient information to evaluate compliance. Staff appreciates the commenter's desire to see that the program does not fail. It should be noted that growers who leave the Coalition will still need regulatory coverage and the costs will likely be much greater through direct regulation than through a third-party group.

1-23. Specific comments on the Information Sheet - Exhibit A of Comment Letter 1 – San Joaquin County and Delta Water Quality Coalition

The Coalition provided comments as Exhibit A that are duplicative to the informal comments remitted to board staff for the administrative draft Order's Information Sheet. Staff considered those comments prior to releasing the Tentative Order for public comment. Because staff has already addressed each comment listed in the Coalition's Exhibit A, they are no longer relevant, and no response is provided here.

1-24. Specific comments on the MRP - Exhibit B of Comment Letter 1 – San Joaquin County and Delta Water Quality Coalition

The Coalition provided comments as Exhibit B that are duplicative to the informal comments remitted to board staff for the administrative draft Order's MRP. Staff considered those comments while preparing the Tentative Order, and addressed each comment, where appropriate. Because most of these changes have already been made in the Tentative Order before releasing it for public comment, most of the comments are no longer relevant. Board staff has prepared responses to only those comments that apply to the Tentative Order. The following comments and responses 1-25 through 1-29 are applicable to the Coalition's Exhibit B.

1-25. MRP Section III.C.2, second paragraph. Request for language revision.

**Comment summary:** The second paragraph states, "For metals..." The sentence should read, "For metals applied by agriculture,..." . The commenter requests staff to revise the language to explicitly mean agricultural applications of metals.

**Response:** Staff does not agree with this change, since there may be cases in which agriculture does not "apply" a metal, but an agricultural practice results in an increase in concentration or load of that metal. That practice may need to be changed to address a water quality problem.

1-26. MRP Section III.C.3., third sentence. Request to include the Coalition as part of pesticide monitoring identification process

**Comment summary:** The pesticides identified as 'to be determined' (TBD) on Table 2 shall be identified as part of a process that includes input from qualified scientists and coordination with the Department of Pesticide Regulation." The stakeholders involved

in the process of determining the pesticides that the Coalition will monitor should include representatives of the Coalition.

**Response:** Board staff anticipates the third-party group will continue to employ qualified scientists to assist them with the monitoring program and such scientists would be part of the process to identify the pesticides to be monitored. In addition, section III.C.3. of the MRP indicates the third-party shall apply the evaluation factors developed through the process described to propose the pesticides to be monitored. Since the third-party will propose the pesticides to be monitored, staff does not believe a further change to the text is necessary.

1-27. MRP Section IV.A.5. Request for language change.

**Comment summary:** The last bullet point in section IV.A.5 makes reference to “relative toxicity.” It is not clear what relative toxicity means and the term should be dropped.

**Response:** In the context of MRP section *Prioritization of high vulnerability groundwater areas*, the third party may prioritize areas designated as high vulnerability areas to comply with the requirements of the Tentative Order earlier than others. The third party may therefore set priorities for the high vulnerability areas based on the relative toxicity of the constituents of concern as compared to the other constituents of concern identified with the high vulnerability areas. For example, if one constituent of concern in a high vulnerability area is more toxic than another constituent of concern in another high vulnerability area, the third-party group may prioritize working on the high vulnerability area with the relatively more toxic constituent. This section of the MRP has been revised to clarify the above points.

1-28. MRP, Page 19, Table 3. Request for language change regarding nitrate as nitrogen.

**Comment summary:** The table indicates “Nitrate as nitrogen” is the constituent to monitor. Although there is generally very little nitrite in groundwater, the constituent should be “Nitrate as nitrogen, or Nitrate+Nitrite as nitrogen.”

**Response:** Staff believes the language should remain, since it is consistent with references to nitrate as nitrogen throughout this and other ILRP Orders.

1-29. MRP Section V.C, report component 18. Request for clarity in statement.

**Comment summary:** The MRP states that “The summary of nitrogen management data must include a quality assessment of the collected information by township....” For clarity, the statement should read “The summary of nitrogen management data must include *an assessment of the quality of the collected* information by township ....”

**Response:** The suggested revision has been made.

## Comment Letter 2 - California Farm Bureau Federation

2-1. Similarities between the Tentative Order and other Long-Term ILRP WDRs

**Comment summary:** The commenter argues that the Tentative Order is a duplication of previously adopted Long-term ILRP WDR’s with only minor revisions. The commenter contends that each coalition unique geographic characteristics and that

each Long-term ILRP WDR should be individually drafted specific to the region it regulates.

**Response:** Board staff acknowledges similarities between the Tentative Order and other waste discharge requirements (WDR's) within the Long-term ILRP. The similarities in structure are purposeful, since these WDR's deal with discharges from irrigated lands to groundwater and surface water. It is appropriate for the general approach and regulatory structure for addressing similar discharges to be similar. The general approach of monitoring surface water and groundwater quality, conducting studies to determine whether practices are protective of groundwater quality, and reporting on key aspects of management practice implementation are fundamental to determining whether Members of the third-party are in compliance with the Tentative Order's requirements. The Tentative Order and other Long-term ILRP WDR's have a structure that includes treating high vulnerability areas and low vulnerability areas differently (more reporting and monitoring requirements are associated with high vulnerability areas).

While there are similarities between the Tentative Orders, there are key differences as well. For example, the surface water monitoring program is different in the Tentative Order than other ILRP WDRs. In addition, the reports provided by the third-party (e.g., the Groundwater Quality Assessment Report or GAR) will be based on the area-specific conditions, which in turn, will drive the regulatory approach (e.g., identification of the high vulnerability areas where growers need to submit nitrogen management plan summary reports). In addition, provisions have been added to the Tentative Order that acknowledge the unique saline groundwater conditions in some areas of the Order's coverage. Reduced requirements would apply if the third-party chooses to pursue a basin plan amendment to address those unique conditions.

The templates to be developed by the water quality coalitions and commodity groups for required reports are an example of a similarity that will benefit all growers by simplifying reporting requirements. There are also provisions in the Tentative Order that provide an opportunity for the third-party to submit comments on the templates regarding any changes that should be made to reflect the unique conditions in the area.

The commenter does not provide any examples or suggestions of what should be changed in the Tentative Order to tailor it to the area covered.

## 2-2. Definition of Waste

**Comment summary:** The commenter contends that the Tentative Order's definition of waste is an overly broad expansion of a statutorily defined term and the term waste should be limited to its definition found in §13050(d) of the California Water Code. To provide clarity the second sentence (Attachment E.48) should be revised to "Potential examples of wastes from irrigated lands...may conform to ...".

**Response:** Section 13050(d) of the Water Code specifies that "'waste' includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." The definition of waste in the Tentative Order repeats this language word for word and also provides a citation to the Water Code §13050(d). For clarity purposes, the Tentative Order also provides

examples of wastes that fall under the definition of waste in §13050(d). The commenters have not provided any evidence that the “wastes” potentially discharged from irrigated lands described in the Tentative Order would not fall within the Water Code §13050(d) definition of waste. All of the examples provided in the Tentative Order’s definition of waste are in liquid, solid, or gaseous form and could be discharged as a direct result of crop production, livestock production (i.e., irrigated pasture), or wetland management (i.e., the human “production” or creation of wetland habitat), which are all activities of human origin.

Staff does not agree with the proposed revisions. The commenter implies with the revisions that the examples provided may not conform to the statutory definition of waste and staff believes that they do. The introduction of uncertainty as to whether certain wastes from irrigated agriculture conform to the Porter-Cologne definition would imply that the board has no authority to regulate the discharge of those particular wastes. Such uncertainty would add confusion to the Order and potentially lead a regulated discharger to believe certain wastes are not subject to regulation, potentially leading the discharger to violate the Order.

2-3. Regulation of water quality: Irrigation conveyance structures

**Comment summary:** The commenter believes that the language in Finding 5 of the Tentative Order should be revised to include specific provisions limiting regulation of water traveling within on-farm conveyance structures and between farm conveyance structures, and water that moves past the root zone. The commenter also believes that the Tentative Order should not address lawful application of soil amendments, fertilizers, or pesticides.

**Response:** The Tentative Order does not exempt water in conveyance structures that are operated by multiple Members or that run through or along multiple Members’ properties and such an exemption is not intended or described by Finding 5. A discharge of waste by a Member into a channel that is used by other Members may result in a negative impact to the beneficial uses of that water for those other Members, or to other designated beneficial uses.

Once the water and any wastes associated with the water are out of the control of the Member or not being beneficially used by the crop, it is consistent with Porter-Cologne and appropriate for the board to subject that waste discharge to the requirements of the Order.

The request to stating that the Order is not intended to address soil amendments, fertilizers, and pesticides suggests that the discharge of those constituents to surface water and groundwater should not be regulated. Board staff disagrees. The purpose of the Tentative Order is to regulate discharges of waste that could affect water quality.

Staff believes the finding provides clear limitations on the application of the Order and does not agree with the changes that would effectively severely limit the scope of the Order.

2-4. Compliance with the California Environmental Quality Act (CEQA)

**Comment summary:** The Tentative Order is not sufficiently within the range of the Program Environmental Impact Report (PEIR) because it includes provisions substantially different from elements in the PEIR alternatives, such as end-of-field discharge limitations, farm management performance standards, and associated

costs. The commenter believes that reliance of the PEIR for CEQA compliance is inappropriate. The board should prepare a supplemental PEIR that analyzes new elements along with revised cost estimates.

**Response:** As described in the Information Sheet to the Tentative Order (Attachment A), the requirements of the Order include regulatory elements that are also contained in the six alternatives analyzed in the PEIR; therefore, Staff believes that the Tentative Order is sufficiently within the range of alternatives evaluated in the PEIR.

As a preliminary matter, Board staff disputes the commenter's contention that the Tentative Order's receiving water limitations would establish water quality objectives as "end-of-field" discharge limitations. The Tentative Order does not include "discharge limitations," but includes "receiving water limitations." The limitations establish that discharge from the field must not cause or contribute to exceedance of water quality objectives in receiving waters, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance. For example, consider a field discharging directly to a surface water body. If the field's discharge contains waste at a level greater than a water quality objective, but the surface water receiving the waste remains below the water quality objective, the limitation is not violated. However, if the same discharge causes the receiving water to exceed a water quality objective, the receiving water limitation would be violated. Similarly, if the same discharge is above water quality objectives and the receiving water is above objectives, that discharge is contributing to an exceedance of the water quality objective and, therefore would be violating the receiving water limitation. In the scenario where the waste discharge is below the water quality objective and the receiving water exceeds objectives, the receiving water limitation would not be violated.<sup>2</sup>

The potential environmental effects of implementation of receiving water limitations in the ILRP have been evaluated in the PEIR. Regulatory requirements for Alternatives 2-5 of the PEIR, on which the Tentative Order is based, include the requirement that dischargers prevent nuisance conditions and/or exceedance of water quality objectives in state waters associated with waste discharge from their irrigated agricultural lands. This requirement is similar to the Tentative Order's receiving water limitations.

Even assuming, for the sake of argument, that the receiving water limitations were not already analyzed in the PEIR, the commenter still has not demonstrated that reliance on the PEIR is improper. A public agency may rely on a program EIR for CEQA compliance, for subsequent program activities if it "finds pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required." CEQA Guidelines § 15168(c). Board staff has proposed the required finding in Attachment D of the Tentative Order. The commenter provides the general concern that environmental impacts have not been adequately addressed, but provides no substantive information on why it disagrees with the proposed finding (e.g. the types of unaddressed impacts or additional mitigation measures that may be necessary).

The remaining concern that the Tentative Order's farm management performance standards would apply requirements not analyzed in the PEIR, potentially leading to additional environmental impacts, is also unfounded. The commenter does not

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<sup>2</sup> Note that this scenario could be more complicated for certain cases, such as a bioaccumulative substance, for which the concentration of the discharge may not be as important in determining whether beneficial uses are protected as the mass discharged

provide justification or examples supporting the claim that farm management performance standards are outside of the scope of the PEIR and that costs associated with farm management performance standards were not considered during the economic analysis portion of the PEIR.

Even assuming, for the sake of argument, that the performance standards were not already analyzed in the PEIR, the commenter still has not demonstrated that reliance on the PEIR is improper. A public agency may rely on a program EIR for CEQA compliance, for subsequent program activities if it “finds pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required.” CEQA Guidelines § 15168(c). Board staff has proposed the required finding in Attachment D of the Tentative Order, along with a listing of potential environmental impacts, the written findings regarding those impacts consistent with CEQA Guidelines, and the explanation for each finding. The commenter provides the general concern that environmental impacts have not been adequately addressed, but provides no substantive information on why it disagrees with the proposed finding (e.g. the types of unaddressed impacts or additional mitigation measures that may be necessary).

The commenter also provides the concern that the board does not have the authority to require certain CEQA mitigation measures under the Tentative Order. These very mitigation measures are identified in the PEIR and were unsuccessfully challenged on the same grounds in Sacramento Superior Court. On 21 May 2013, the Superior Court issued a final ruling that rejected the claim that the identified mitigation measures were legally deficient, on the stipulation that “additional CEQA review” means that “if a future discretionary approval by the Board would require additional CEQA review, such review will be undertaken.” The Tentative Order relies on those lawful mitigation measures, which have been clarified consistent with the final ruling. The Board staff continues to rely on the PEIR’s mitigation measures, absent a final court ruling that they are legally deficient. *Kriebel v. City Council* (1980) 112 Cal.App.3d 693, 702.

#### 2-5. California Water Code Section 13141 and 13241

**Comment summary:** Section 13141 of the California Water Code states in part 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”. The commenter states that Finding 40 incorrectly concludes that a new cost analysis is unnecessary given that the Basin Plan includes an estimate of potential costs and sources of financing for the Long-term ILRP. The commenter contends that the Tentative Order proposes new costly regulatory components not previously analyzed during the environmental review or when adopted in the Basin Plan. For example, the farm evaluation, sediment and control plan, and nitrogen management plan templates were not available when the cost study was performed and could not have been accounted for in the environmental review.

**Response:** Board staff disagrees that the Tentative Order proposes new regulatory components that were not considered during the environmental review (see Responses 1-18 and 2- 4 above).

#### 2-6. Nitrogen management and control

**Comment summary:** The commenter appreciates the acknowledgement of assessment of nitrogen management and control currently underway by the California

Department of Food and Agriculture's task force, as well as the State Water Resources Control Board's expert panel.

**Response:** Comment noted. The commenter's support of the provision is noted. |

2-7. Discharge Limitations

**Comment summary:** 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. The commenter proposes "wastes discharged from Member operations shall not cause an exceedance of applicable water quality objectives in surface water or the underlying groundwater" in Provisions III.A and III.B of the Tentative Order.

**Response:** The Tentative Order does not include discharge limitations (see Response 2-4 above). In light of the discussion in Response 2-4, board staff disagrees that the receiving water limitations make irrigated agriculture accountable for de-minimus discharges. Only discharges causing or contributing to the exceedance of the objective would be in violation of the receiving water limitation. De-minimus discharges (e.g., below water quality objectives) can actually improve receiving water quality for the constituent of concern.

2-8. Nitrogen Management Plans

**Comment summary:** Rather than requiring all growers to prepare a nitrogen management plan, the Tentative Order should be revised to allow growers that are not located within designated high vulnerability areas flexibility in the nitrogen management planning requirements.

**Response:** Board staff disagrees that nitrogen management planning requirements should be reduced for growers outside high vulnerability areas. Low vulnerability areas are not "no vulnerability" areas. The potential to discharge waste that could affect groundwater from irrigated agricultural operations exists in these areas even if physical or hydrologic site conditions do not warrant a high vulnerability designation. The impacts from irrigated agricultural application of nitrogen need to be addressed in all areas of the Tentative Order regardless of groundwater vulnerability designation. Nitrogen management planning is an efficient farming practice as well as a management practice that should help growers meet the requirement to minimize excess nutrient application relative to crop consumption. The Nitrogen Management Plan is kept on-site and Members in low vulnerability areas do not have to submit a Nitrogen Management Plan Summary Report to the third-party.

2-9. Membership participant list

**Comment summary:** Farm Bureau joins the concerns raised by San Joaquin County and Delta Water Quality Coalition regarding reporting members who are not in good standing, thus placing the Coalition in the role as the enforcer.

**Response:** See General Response 2.

2-10. Template requirements for Farm Evaluations, Nitrogen management Plans, and Sediment and Erosion Control Plans

**Comment summary:** The Tentative Order removes the ability for the Coalition to provide modified templates and replaces it with the ability to solely provide comments.

The board must allow flexibility for the Coalition' geographic area. The commenter requests that the language in the previous draft WDR be reinstated and that the last two sentences in Section VII.D of Attachment A be deleted.

**Response:** The board recognizes that templates may require modifications for different geographic areas. Per section VIII.C. of the Order, the third-party and other interested parties will have 30 days to provide comments on the proposed templates. This comment step will occur prior to the Executive Officer providing the final templates. Once those templates are provided (with potential modifications based on comments), the Tentative Order requires the Member to use those provided templates. This process allows for some flexibility while ensuring that similar data is reported to the board in a consistent format. Staff does not agree that the proposed revisions are necessary.

2-11. Spatial resolution reporting of Nitrogen Management Plan and Farm Evaluation Information MRP page 22-23. Info sheet page 30-31

**Comment summary:** The commenter supports the reporting of data from Members to the Regional Board at the township level only. Reporting at the field level is not supported and would not result in any more meaningful information than that of the township level. The commenter questions the need for individual records as required in reporting component 19, *Summary of Management Practice Information*.

**Response:** Board staff disagrees with the commenter that the summary information is more meaningful than the individual data records of management practices information and the comment that no explanation is provided as to why this information is needed. The data are needed to verify that growers are implementing relevant management practices to protect water quality. Submittal of farm evaluations will provide information on individual grower implementation of practices to protect water quality, in lieu of water quality sampling of individual farming operations. Further discussion of the basis for this requirement can be found in the Information Sheet in the section "Spatial Resolution of Nitrogen Management Plan and Farm Evaluation Information".

2-12. Toxicity testing

**Comment summary:** As currently drafted, the Tentative Monitoring and Reporting Program (MRP) language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests. The commenter recommends adding a footnote to section III.B.3 of the MRP to specify that the use of chronic testing is appropriate only for toxicity testing for *Selenastrum capricornutum*.

**Response:** Board staff disagrees with the commenter that the language could be interpreted that both acute and chronic toxicity testing is required for all toxicity tests and does not believe that the proposed footnote would provide further clarification.

### Comment Letter 3 – San Joaquin Farm Bureau Federation

3-1. Duplicative Nitrogen Reporting

**Comment summary:** The Nitrogen Management Plan and Nitrogen Summary report are duplicative. The WDR should be revised to only require the summary. There is little information that can be gleaned from the management plan that would not also be included in the summary.

**Response:** The Nitrogen Management Plan and Nitrogen Summary Report serve separate purposes. The Nitrogen Management Plan is a budgetary tool to help the member consider site specific conditions and identify steps and practices that will be taken to minimize nitrate movement through surface water runoff and leaching past the root zone. Simply put, it forecasts the nitrogen application amounts. The Nitrogen Summary Report reports what the member applied in the previous year. The summary report, not the budget, will be submitted to the third party for compilation and reporting to the board. The two reports are not duplicative. See also, response to comment 1-2.

3-2. Nitrogen Plan certification is unnecessary and unduly expensive

**Comment summary:** The WDR requires growers to have a nitrogen plan certified in high vulnerability areas. Requiring that a grower not only create a nitrogen management plan, but that it must be certified as well, is an expensive and time consuming requirement and serves no purpose that would be helpful in assessing risks to groundwater quality.

**Response:** Staff disagrees that the certification of plans serves no purpose. High vulnerability areas associated with nitrates are either impacted or potentially impacted by elevated nitrate levels that threaten drinking water uses. A trained third-party with approved certification credentials or Member who has received training to self-certify provides additional assurance that the Nitrogen Management Plan is both accurate and of high quality. The additional training will provide the individual certifying the plan with heightened awareness of the water quality consequences of applying excess nitrogen, as well as exposure to tools and techniques that can be used to maintain a crop while minimizing excess nitrogen application. Based on the greater threat to groundwater quality in high vulnerability areas and anticipated water quality benefits of having a plan prepared and certified by an individual with specialized training, certification serves an important role in ensuring appropriate practices are implemented to protect water quality.

3-3. Self-certification requirements should be clarified

**Comment summary:** The commenter is concerned that the only specific programs explicitly outlined in section VII.D.1 of the WDR lack adequate resources to either offer certification for every plan or to offer enough educational trainings so that growers may certify their plans themselves. While there are other opportunities available, those are subject to the discretion of the Executive Officer. We recommend that the WDR include objective curriculum for all required classes so that other local agencies and companies may offer self-certification classes as well.

**Response:** Board staff does not believe it would be appropriate for the Order to include the specific objectives or topics for a self-certification training program. The training program would, at a minimum, need to be designed to ensure Members can properly prepare the required plans. However, the board recognizes that such training programs may include information to assist the grower in more effectively and profitably manage their crop. Specifying the topics to be covered might unduly restrict (or be interpreted to restrict) what can be covered in a training program geared to allow growers to self-certify their plans.

3-4. The WDR should not require the RCD to have an enforcement role

**Comment summary:** The commenter disagrees with section IV.C.9, which requires the third party, as a part of membership list submittal, to turn in a list of names of noncompliant members. This may cause tension in the community and change the

image of the RCD from an agency that provides outreach and education to an agency that conducts enforcement. The information that is required by the regulation could easily be obtained by board staff when comparing the membership list from one year to the next.

**Response:** See General Response 2.

3-5. Maintenance of plans on site

**Comment summary:** The commenter appreciates the clarity regarding the requirement to maintain the member's reports on site that are subject to inspection by board staff.

**Response:** Comment noted. The commenter's support for the provision is noted.

3-6. The WDR improperly assumes farmers are guilty until proven innocent and threaten the health of the agricultural industry. Increased costs will lead to loss of farms.

**Comment summary:** The commenter states that farmers are true stewards of environmental resources and over the past two decades major advancements to agricultural techniques have improved water efficiency causing a dramatic decrease in runoff. Some growers are in danger of losing valuable acres due to the costs of compliance with new irrigation practices, nitrogen management plan certification, and increased Coalition fees.

**Response:** The commenter does not explain how the Order assumes farmers are "guilty until proven innocent" and does not make any recommendations on changes to the Order to address their concern regarding costs. Staff believes that this Order is structured in a manner to minimize costs to those regulated by the Order, while ensuring the board receives the information it needs to evaluate compliance. Please see General Response 1.

#### **Comment Letter 4 – California Sportfishing Protection Alliance and California Water Impact Network**

4-1. Regional [Surface Water] Monitoring Inadequate

**Comment summary:** Regional [surface water] monitoring cannot provide a sound basis for curtailing and preventing pollution from farms. Data collected so far proves "folly" of relying exclusively at not looking at individual discharges. Downstream monitoring stations cannot and do not measure water quality occurring five miles upstream.

**Response:** See response to comment 4-14.

4-2. Staff watered down program based on unreasonable fears

**Comment summary:** Staff has watered down the program based on fears that they don't want to air the dischargers' "dirty laundry" or in response to a fear of being sued by third-parties.

**Response:** The tentative Order has been designed based on a reasoned consideration of applicable laws and policies, along with board direction regarding this Order and the irrigated lands regulatory program in general. The characterization of the basis of the program is inaccurate and without foundation. The tentative Order does not include any

discussion related to not airing “dirty laundry” or concerns about lawsuits from third-parties.

4-3. Staff have failed to demonstrate that farm-specific monitoring and more direct control over dischargers involve unreasonable costs

**Comment summary:** Staff “hides behind a rhetoric of poverty”. The farms in the permit area generate billions of dollars in profits. Staff has “failed to articulate any evidence demonstrating that farm specific monitoring and more direct control over the west-side dischargers involve unreasonable costs.”

**Response:** Staff has relied on the cost and economic analysis conducted as part of the Program Environmental Impact Report, with some minor modifications (e.g., change in fees), to evaluate the costs and potential economic impact of the proposed Order. The analysis included estimates of the change in the value of production; change in net revenue; and change in irrigated acreage from existing conditions for the five programmatic alternatives analyzed in three basins – the Sacramento River Basin; the San Joaquin River Basin; and the Tulare Lake Basin. That analysis showed that the costs associated with universal farm-specific monitoring and direct oversight by the Central Valley Water Board (Alternative 5) had the most significant negative impact in terms of reductions in value of production; net revenue; and irrigated acreage compared to all other alternatives (Alternatives 1-4), including the third-party led alternatives.

Using the results from the Economics Report (Table 2-22) for the San Joaquin River basin, the projected cost of Alternative 5 (similar to the Commenter’s farm specific approach) is an average of \$186.11 per acre per year, with a projected \$47.98 per acre annual cost for monitoring and \$8.88 per acre for administration (primarily board staff costs). The estimated average cost of this Order is \$123.56 per acre annually with an estimated average annual cost of \$4.58 per acre for monitoring. For the approximately 582,000 acres in the San Joaquin County and Delta area, the additional \$62.55 per acre average annual cost for an individual monitoring/direct regulatory oversight approach would increase costs for the whole watershed by approximately \$36 million per year, or an over 50 percent higher estimated annual cost.

The costs associated with Alternative 5 would result in a projected loss of 68,000<sup>3</sup> acres of irrigated lands, as compared to the estimated loss associated with this Order of approximately 42,000 acres (see Attachment D, page 19). The Economics Report and PEIR also include estimates of the state staffing levels approximately eighteen times higher to manage thousands of dischargers directly versus working with a third-party group.<sup>4</sup>

The additional costs and potential additional loss of Important Farmland associated with direct, individual regulation can be avoided should growers be able to successfully protect water quality under the proposed third-party administered Order. The successful monitoring, reporting, and outreach efforts by the Coalition and the improvements in water quality under the Coalition Group waiver suggest that providing a less costly

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<sup>3</sup> The potential loss of agricultural land for Alternative 5 is calculated from Table 5.10-6, Volume I of the draft PEIR based on the ratio of irrigated lands covered by the tentative Order to the total irrigated lands in the San Joaquin River Basin (this is the same methodology as described in Attachment D, pages 18 and 19 for calculating potential loss of Important Farmland under the tentative Order).

<sup>4</sup> From Table 2-16 of the Economics Report comparing Alternatives 2 and 5.

alternative for a grower to comply with Porter-Cologne is reasonable, appropriate, and has a strong likelihood of success.

The characterization of a “rhetoric of poverty” is inaccurate and without foundation. Staff has not provided any discussion regarding income levels of farmers relative to poverty levels as a basis for any of the requirements in the tentative Order.

The Commenter suggests that staff is obligated to demonstrate that farm specific monitoring and more direct control involve unreasonable costs. Staff is not aware of any legal requirement to select the most costly regulatory option, unless it can be shown that those costs are unreasonable.

The tentative Order represents a less costly approach (as compared to Commenter’s suggested approach) for achieving the board’s policy goals and meeting its legal obligations. However, the tentative Order includes numerous provisions for additional field specific monitoring and reporting of individual grower information, if the third-party and their Members are not successfully protecting water quality (e.g., inadequate progress in implementation of a surface water quality management plan can field studies; on-site verification of practices; or revocation of coverage under the tentative Order).

In addition, the board has already adopted a general WDR to regulate growers individually, along the lines of the approach the Commenter has suggested. This more costly regulatory approach is available to be applied immediately to individual dischargers or areas, if dischargers under the third-party based tentative Order are not meeting the Order’s requirements.

4-4. Evidence not sufficient for findings supporting authorization of degradation

**Comment summary:** There is not sufficient evidence to support authorizing degradation of every surface and groundwater throughout the WDR area.

**Response:** The rationale for allowing degradation of high quality waters as proposed in the tentative Order is justified and well described in the findings and Information Sheet. Additional discussion of the support for findings related to degradation can be found in subsequent responses to the commenter’s more specific comments presented below.

4-5. As Proposed, The Order Would Not Waive Filing of Reports of Waste Discharge By All Dischargers Within the WDR Area.

**Comment summary:** The exclusive means for avoiding the requirement for a discharger to file a Report of Waste Discharge is to issue conditional waiver pursuant to Water Code section 13269. Unless the Central Valley Water Board proposes to adopt a conditional waiver pursuant to Water Code section 13269, the Board must require each discharger covered under the Order to file a Report of Waste Discharge.

**Response:** Board staff disagrees with the commenter’s interpretation of Porter-Cologne. While staff agrees that the Board would be authorized to waive the requirement to file a report of waste discharge if it issued a conditional waiver pursuant to Water Code section 13269 (as it has done historically since 2003), the plain language of the Porter-Cologne provides separate authorization for the Board to issue waste discharge requirements to dischargers in the absence of receiving a report of waste discharge from the discharger.

As acknowledged by the commenter, Water Code section 13263(d) reads, “the regional board may prescribe [waste discharge] requirements although no discharge report has been filed.” The plain language of this provision means that the Board is explicitly authorized to issue waste discharge requirements where, as here, it has not received reports of waste discharge from the growers regulated by the general waste discharge requirements. General waste discharge requirements are authorized pursuant to Water Code section 13263(i). The separate authorizations for issuing conditional waivers or general waste discharge requirements in the absence of reports of waste discharge are located in different sections of the Water Code. The placement of each explicit authorization in different locations of the Code is not significant, and does not support the commenter’s argument that the regulating these discharges in the absence of reports of waste discharge is exclusively reserved to conditional waivers. In fact, this Board, the State Water Board, and other Regionals Boards throughout the state have, as a matter of practice, issued general waste discharge requirements that authorize discharges without requiring reports of waste discharge to be submitted in compliance with Water Code section 13260.

The commenter tries to assign significance to Water Code section 13264 as signaling that reports of waste discharge are required for General WDRs but not for conditional waivers. That section, which applies to the initiation of a new or materially changed discharge, does not appear to apply to the discharges to be regulated by the tentative Order, which have been ongoing for several decades and have previously been regulated under a conditional waiver.

4-6. The Regional Board Has No Authority To Deputize Third-Parties To Hold Section 13267 Reports For The Regional Board And Insulate The Reports From Public Disclosure.

**Comment summary:** The farm evaluations report must be provided directly to the board, and not to a deputized third-party. Requiring a report to be submitted to a third-party violates the requirement that reports prepared pursuant to Water Code section 13267 be submitted directly to the Regional Board.

**Response:** Board staff disagrees that the tentative Order’s requirement for Members to prepare farm evaluation reports, have them available for regional board review upon request, and to have them submitted to their third party representative violates the Water Code. Requiring dischargers to keep records and make them available to the Board upon request has been common practice among State Water Board and the regional boards for decades and does not violate Porter-Cologne. In fact, Water Code section 13383 (applicable to NPDES permits), explicitly authorizes the regional boards to “establish monitoring, inspection, entry, reporting, *and recordkeeping requirements.*” (italics added).

The commenter asserts that the language of Water Code section 13267(b)(1) requiring a discharger to “furnish, under penalty of perjury, technical or monitoring reports which the regional board requires” eliminates the Board’s discretion to impose recordkeeping requirements, and instead require all reports to be submitted directly to the Board. Board staff disagrees, and is has a different interpretation of the cited language. The tentative Order requires members to prepare the report, which “shall be maintained at the Member’s farming operations headquarters or primary place of business, and must be produced upon request by Central Valley Water Board staff.” The proposed requirement is therefore authorized by Water Code section 13267, as it requires the member to furnish the report in the manner “which the regional board requires” (i.e. maintained at the business, and be available for production upon Board request). The tentative Order

imposes a recordkeeping requirement, and those records must be furnished upon request. The commenter's interpretation would result in the absurd result that recordkeeping requirements are authorized by Porter-Cologne for Board's NPDES program, but are prohibited by the other sections of the Porter-Cologne Act.

In addition to staff's position that the recordkeeping requirements are authorized by Porter-Cologne, it also asserts that it is appropriate to require these reports to be submitted to the third-party in addition to being available upon request. Since 2003, the Board has used a coalition approach to regulating discharges from irrigated agriculture. This approach was reviewed by the State Water Board in 2004, and was allowed to remain in place. (State Water Board Order 2004-0003). The requirement to submit farm evaluation reports reflects the advancement of the program to require members to submit more detailed information to its third-party representative. It is appropriate that the third-party representative receive and review the information contained within each members' farm evaluation report. The additional requirement to submit the report to the third-party representative in no way supersedes or eliminates each member's obligation to maintain the report at its business, or to produce the report upon request from the Board. If the Board staff receives a copy of the report, it would be subject to public disclosure under the California Public Records Act.

- 4-7. If the Regional Board Makes the Findings Under the High Quality Waters Policy to Allow Degradation in Both Surface and Ground Waters Throughout The 500,000 Acre WDR Area, the Regional Board Will Have Abused Its Discretion and Proceeded in a Manner Inconsistent With the Law.

**Comment summary:** As detailed below in the letter, the tentative Order violates the State's Antidegradation Policy.

**Response:** This is a general introductory comment introducing more detailed comments that follow. In response, Board staff maintains that the tentative Order fully complies with the State Antidegradation Policy. The responses to the detailed comments are provided below.

- 4-8. The Regional Board Cannot Allow Degradation Under the High Quality Waters Policy Prior to Identifying the High Priority [sic, High Quality] Waters in the WDRs' Geographic Area.

**Comment summary:** Neither board nor staff have reviewed the available data and determined which waterbodies are high quality waters. Because board does not know which waters are high quality waters, the board lacks the information necessary to apply the antidegradation policy balancing test. The board must first identify which of the waters in the order area are high quality waters; there should be a search of the data to determine the best water quality for every segment in the watershed.

**Response:** Nothing in the State Antidegradation Policy itself, its guidance documents, or published appellate decisions indicates that the regional board must determine the best quality of the receiving waters that have existed since 1968, and from that compile an inventory of all high quality waters within the permit area for all constituents of concern. The commenter cites *Asociacion de Gente Unide por el Agua v. Central Valley Water Board [AGUA]* (2012) 210 Cal.App.4th 1255, 1271 in support of its position. However, that court decision did not specifically require the Central Valley Water Board to conduct an inventory of high quality waters. Nor did the court prepare an inventory itself. Instead, the court assumed that the State Antidegradation Policy applied throughout the region for nitrate based on its finding that "at least some of the water affected by the Order is high quality water." This is essentially the same approach taken by the tentative Order,

which proposes to apply BPTC and “best efforts” equally to high quality waters and already degraded waters.

Appendix A to the PEIR and the tentative Order’s Information Sheet (Attachment A) describe in detail the Central Valley Water Board’s approach to compliance with the Anti-Degradation Policy. As mentioned in the PEIR, very little guidance has been provided by the State Water Board with respect to applying the State Antidegradation Policy to a general permit where multiple water bodies are affected by various discharges, some of which may be high quality waters and some of which may have constituents at levels have exceeded water quality objectives at all times since 1968. In the context of the tentative Order, which aims to regulate discharges to a very large number of water bodies, each with numerous constituents, making comprehensive determinations as to water quality a near impossible task. There is no comprehensive, waste constituent-specific information for all receiving water bodies in the permit area. As a result, the Central Valley Water Board did not prepare an inventory of all ‘high quality receiving waters’ within the permit area. Although the commenter claims such an exercise is legally required, they do not provide any discussion, reference, or State Board or Regional Board guidance supporting their claim, other than the *AGUA* case discussed above.

4-9. Staff’s Proposal Would Have the Regional Board Determine That Degradation is Authorized Even for Parameters and Waterbody Reaches That, Although High Quality, Discharges are Not Currently Degrading

**Comment summary:** The comment alleges that the tentative Order proposes a blanket authorization for farms in the WDR area to degrade waters even for pollutants at the monitoring locations that they cannot show any reason degradation is necessary for the public benefit or any other reason. The commenter asserts that the tentative Order would authorize degradation even where there is no discernable discharge degrading high quality waters.

**Response:** The commenter asserts the tentative Order, including its receiving water limitations, provides a “blanket authorization” for degradation. The Central Valley Water Board disagrees that the tentative Order authorizes a “blanket” amount of degradation of high quality waters. That assertion misreads the tentative Order by viewing in isolation the Receiving Water Limitations (which prohibit discharges that cause or contribute to exceedances of water quality objectives) to the exclusion of all other waste discharge requirements contained in the tentative Order.

To the contrary, and as described below, the tentative Order, when viewed as a whole, establishes requirements that will limit degradation of high quality waters (where applicable) through the implementation of BPTC by all covered dischargers (e.g., through farm management performance standards, nitrogen planning, farm planning, and feedback monitoring). The receiving water limitations provide additional restrictions that overlay the other requirements. This provides a regulatory ceiling that prohibits all discharges, including discharges to waters that are not high quality, from causing or contributing to exceedances of water quality objectives.

While the receiving water limitations establish a ceiling for degradation, the tentative Order’s farm management performance standards, and management practice implementation requirements will limit and reduce the waste discharges that may result in the degradation of high quality waters. Farm management performance standards (listed in the Information Sheet) and other requirements of the tentative Order provide

additional requirements that will further limit degradation. For example, the performance standards require all members to implement practices to minimize waste discharge to surface water even where a discharge is currently meeting water quality objectives. In other words, there is no exemption from this performance standard for members that are in compliance with the tentative Order's receiving water limitations. As another example, the nutrient performance standard requires minimization of nutrient application relative to crop consumption regardless of the concentrations of nutrients in the receiving groundwater. Therefore, where underlying groundwater is of high quality for nutrients, the tentative Order requires minimization of nutrient application relative to crop consumption, which will minimize waste discharge to groundwater and surface water and any associated potential degradation through the implementation of best practicable treatment or control. This minimization requirement is in stark contrast with the commenter's assertion that the tentative Order provides a "blanket authorization" for the degradation of high quality waters. Other examples of farm management performance standards or related prohibitions include minimization of sediment discharges and percolation of waste to groundwater, the protection of wellheads from surface water intrusion, and prohibitions against discharging waste into groundwater through backflow or groundwater well casings.

With respect to the commenter's implication that more stringent requirements should apply in situations where there is "no discernable discharge degrading water," Board staff disagrees. As noted in the tentative Information Sheet, "Resolution 68-16 does not require Members to use technology that is better than necessary to prevent degradation. As such, the board presumes that the performance standards required by this Order are sufficiently achieving BPTC where water quality conditions and management practice implementation are already preventing degradation. Further, since BPTC determinations are informed by the consideration of costs, it is important that discharges in these areas not be subject to the more stringent and expensive requirements associated with SQMPs/GQMPs. Therefore, though Members in 'low vulnerability' areas must still meet the farm management performance standards described above, they do not need to incur additional costs associated with SQMPs/GQMPs where there is no evidence of their contributing to degradation of high quality waters." The tentative Order triggers requirements for additional management practices (through management plan requirements) when trends of degradation that threaten beneficial uses are detected. This is the appropriate trigger and avoids requiring technology better than necessary to prevent degradation.

4-10. The Regional Board Does Not Have Sufficient Evidence to Establish that Any Given Discharger's Degradation of Surface and Ground Waters Throughout the WDR Area Will Maximize Benefits to the People of California.

**Comment summary:** The commenter asserts that the board's analysis of whether the degradation of high quality waters authorized by the Order is in the maximum benefit to the people of the state must be quantitative and specific to each particular discharger. The Board is not in an evidentiary position to apply the factors relevant to maximum public benefit and to declare any degradation acceptable under the Antidegradation Policy. A region-wide basis for economic analysis does not provide any evidence relevant to whether authorizing a discharge from any particular farm in the order area will be consistent with the maximum benefit to the people of California. Monitoring will not be able to discern water quality changes upstream and as such cannot be used to make a finding that any such changes will be of maximum benefit to the people of California.

**Response:** As documented in the Information Sheet, Board staff has conducted an analysis of whether the potential degradation of high quality waters authorized by the tentative Order is consistent with the maximum benefit to the people of California. The analysis is qualitative. The commenter's assert that the board's analysis must be quantitative and specific to each particular discharger. The suggested approach is infeasible for a general order that authorized by Water Code section 13263(i) and is set to regulate thousands of individual dischargers.

Because of the widespread nature of irrigated agriculture and the numerous water bodies potentially affected, it is infeasible for the board to quantitatively review each potential waste discharge and receiving water scenario (tens of thousands) throughout the Central Valley, quantify its potential degradation of high quality waters, and determine whether that quantified degradation is consistent with the maximum benefit to the people of California. Instead, board staff conservatively assumed that there are high quality waters receiving irrigated agricultural wastes that may be degraded by continued discharge. Operating under this supposition, the tentative Order applies requirements to minimize such degradation not just for those operations discharging to a high quality water, but all operations; requirements to implement best practicable treatment or control or "best efforts"; and requirements to ensure that waste discharge is not above an applicable water quality objective.

Despite the quantitative limitations inherent to general orders, Board staff has proceeded to propose a "maximum benefit" determination in consideration of factors listed in State Water Board guidance documents. As described in the tentative Order and its attachments, board staff has considered (1) past, present, and probable beneficial uses of the water (specified in Water Quality Control Plans); (2) economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, (3) environmental aspects of the proposed discharge; and (4) the implementation of feasible alternative treatment or control methods, which are the factors listed in the State Water Board's 1995 Question and Answers document recommended for consideration in determining the "maximum benefit to the people of the state." That guidance document acknowledges that the determination is "based on considerations of reasonableness." The commenter's suggestion that the analysis must be made on a discharger-by-discharger basis is not reasonable for a general order regulating thousands of dischargers. Staff's qualitative analysis of compliance with the State Antidegradation Policy is reasonable under the circumstances.

4-11. The Regional Board Cannot Authorize Degradation of all Waters Within the WDR Area Because the Proposed WDR Conditions, Even if Complied With, Will Only Further Demonstrate That the Authorized Discharges will Result in Water Quality Less Than the Basin Plan's Water Quality Objectives.

**Comment summary:** The tentative Order will not ensure compliance with applicable water quality objectives as evidenced by the tentative Order's proposed ten-year compliance schedule. Furthermore, the monitoring scheme is not sufficient to detect violations of water quality objectives for large expanses of the watersheds upstream of the monitoring stations.

**Response:** The tentative Order proposes a finding that the discharges to high quality waters authorized by the tentative Order comply with the State Antidegradation Policy. Specifically, the Information Sheet reads: "The receiving water limitations in section III of the Order, the compliance schedules in section XII, and the Monitoring and Reporting Program's requirements to track compliance with the Order, are designed to ensure that

the authorized degradation will not cause or contribute to exceedances of water quality objectives, unreasonably affect beneficial uses, or cause a condition of pollution or nuisance.” This statement is fully supported by evidence in the record.

The receiving water limitations in the tentative Order, combined with the time schedule provisions, are intended to bring a Discharger into compliance with water quality objectives as quickly as possible once violations are detected. This process, along with the performance standards and other requirements of the tentative Order, will ensure that all Dischargers reduce their waste discharges in the short-term, while fully complying with water quality objectives in the long-term.

Antidegradation requirements do not require instantaneous compliance or otherwise provide time limitations on achieving policy objectives; i.e., to ensure that best practicable treatment or control is in place and that degradation is not allowed above applicable water quality objectives. The Water Code, however, clearly provides the board with the discretion to prescribe time schedules within waste discharge requirements [section 13263(c)]. Further, the State Board’s regulations encourage time schedules in situations like these where it appears that not all growers covered by the tentative Order can immediately meet the tentative Order’s receiving water limitations.<sup>5</sup> Using time schedules to implement antidegradation requirements was explicitly recognized and endorsed by the California Court of Appeal, who wrote with respect to the Central Valley Water Board’s Dairy Waste Discharge Requirements that “[a] phased approach... is reasonable, and is authorized by section 13263, which allows the requirements of a regional water quality control board to contain a time schedule.” *AGUA v. Central Valley Water Board*, 210 Cal.App.4th 1255, 1277.

The diffuse nature of nonpoint source pollution may not allow the board or dischargers to immediately determine the practices causing or contributing to the exceedance of objectives, nor to determine the most effective and practicable remedies. Therefore, the compliance time schedules provide up to 10 years for the determination of which practices are protective and a process for establishing timelines to implement those practices (through Groundwater Management Plans, Surface Water Quality Management Plans, or the Management Practices Evaluation Program). However, the 10-year timeframe is a maximum and does not default to 10 years. Instead, the tentative Order would require the discharger to propose a schedule that is as short as practicable with appropriate technical and economic justification. It would be unreasonable to require immediate compliance prior to generating the information needed to understand how to address the problem and providing time to implement the corrective actions.

The Board’s monitoring and reporting system is representative and is designed to detect whether members are causing or contributing to exceedances of water quality standards. For a discussion of the adequacy of the representative monitoring approach, see response to comment 4-14.

4-12. The Regional Board Does Not Have Sufficient Evidence to Establish that All Dischargers Within the WDR Area are Implementing the Best Practical Treatment Controls for Discharges to Surface Waters and Ground Water.

**Comment summary:** Without requiring information about what each individual discharger is implementing for management practices and data regarding the practices’

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<sup>5</sup> See 23 Cal.Code.Reg., section 2231, subd.(a).

effectiveness to control pollutants, there is no evidence upon which the Board can base a finding that each discharger will implement BPTC.

**Response:** As required by the Antidegradation Policy when authorizing degradation of high quality waters, the Tentative Order proposes a finding that the Order will result in the implementation of BPTC. This proposed finding is appropriate and supported by evidence in the record. The commenter has not shown otherwise.

The Information Sheet (under the heading “Consistency with BPTC and the ‘Best Efforts’ Approach”) goes into great detail explaining the proposed finding that the tentative Order will result in the implementation of BPTC where applicable.

BPTC is not defined in Resolution 68-16. However, the State Water Board has provided guidance in its 1995 Question and Answers document on the numerous factors the Boards may consider in determining BPTC: “To evaluate [BPTC], the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; *and/or* consider the method currently used by the discharger or similarly situated dischargers.” The costs of the treatment or control “should also be considered.” Board staff considered each factor to the extent applicable in determining that the tentative Order will result in the implementation of BPTC.

In the Information Sheet, the staff explained the multi-step approach it took in determining that the tentative Order will result in the implementation of BPTC. The first step in the approach was to analyze the minimum performance standards and other requirements that all Members enrolled under the under must meet. First in comparing the tentative Order’s proposed performance standards with published federal and state management measures for irrigated agriculture, the Information Sheet reflects consideration of “existing proven technology,” “methods currently used by similarly situated dischargers,” and of “promulgated technologies,” three factors recommended by the State Water Board guidance for the determination of BPTC.

As described in the Information Sheet, the second step of staff’s BPTC analysis considered the General Order’s iterative requirements for implementation, planning, studies, and reporting. This iterative aspect of the Order results in additional planning and implementation measures in areas where water quality problems are observed. For example, the Order requires development of water quality management plans (surface or groundwater) that must be implemented by growers where irrigated agriculture is causing or contributing to exceedances of water quality objectives or where degradation trends are observed that threaten to impair a beneficial use. The management plans include requirements to investigate sources, develop strategies to implement practices to ensure waste discharges are protecting water quality, and develop a monitoring strategy to provide feedback on the effectiveness of the management plan. Under these plans, additional practices will be implemented in an iterative manner, following the results of the studies and investigations required for management plans. This mechanism further supports the Board’s finding that BPTC will be implemented, as these requirements will facilitate the collection of information necessary to demonstrate the performance of the practices. Furthermore, the management plans will facilitate the “evaluation of performance data” as suggested by State Water Board guidance in the determination of BPTC. The Management Practices Evaluation Program (MPEP) required by the General Order in groundwater areas defined as “high vulnerability”

requires a similar set of additional requirements that will be implemented based on the evaluation of performance data.

Finally, the Information Sheet describes the tentative Order's overall costs and its impacts to the agricultural economy prior to its adoption. Consideration of costs is one of the factors listed in State Water Board guidance for determination of BPTC. Staff's consideration of costs and economics – as suggested by State Board guidance - was integrated throughout its analysis of the tentative Order, and further support the proposed determination that the practices and actions required by the Order constitute BPTC.

The robust monitoring and reporting requirements of the tentative Order, combined with the Board's enforcement tools, provide further assurance to the board that BPTC will be implemented by growers. In addition to the representative surface water monitoring, the tentative Order contains requirements for the growers to produce reports to demonstrate how they are meeting the farm management performance standards (Farm Evaluations; Nitrogen Management Plans; Nitrogen Management Plan Summary Reports and Sediment Discharge and Erosion Control Plans). The third-party will produce evaluations of management practices and conduct additional monitoring or studies as part of the management plan process. The third-party will also assess areas vulnerable to sediment discharge and erosion. In addition, board staff has in the past and will continue to conduct inspections of individual growers to evaluate compliance with the proposed Order. The board will, therefore, have a great deal of information available to it (in addition to the results from the representative surface water monitoring efforts) to evaluate individual grower compliance. These factors provide further evidence supporting the finding that the tentative Order will result in the implementation of BPTC where applicable.

4-13. The Proposal to Authorize Degradation Admits That Implementation of the Proposed WDRs Will Continue to Degrade Water.

**Comment summary:** The proposed Order abandons any effort to avoid degradation of high quality waters and therefore violates the State Antidegradation Policy. Also, the proposed Order violates the State Antidegradation Policy because requirements are not geared to address degradation but exceedances of water quality objectives. Finally, the proposed Order inappropriately allows the Executive Officer to relieve the third party of management plan requirements if members meet applicable water quality objectives or if management plans will not likely remedy the exceedance.

**Response:** As discussed in various responses above, Board staff maintains that its antidegradation analysis fully complies with the State Antidegradation Policy. That degradation may occur under the tentative Order is not determinative. Board staff agrees that degradation of high quality waters may occur. The tentative Order authorizes such potential degradation under the terms and conditions of the Order. The potential degradation of high quality waters authorized by the tentative Order fully complies with the State Antidegradation Policy.

The commenter asserts that the tentative Order's requirements are not geared towards addressing degradation but exceedances of water quality objectives. Staff disagrees. As described in detail in response to comment 4-9, the tentative Order will limit degradation of high quality waters (where applicable) through the implementation of BPTC by all covered dischargers (e.g., through farm management performance standards, nitrogen planning, farm planning, and feedback monitoring). The receiving

water limitations provide additional restrictions by prohibiting all discharges, including discharges to waters that are not high quality, from causing or contributing to exceedances of water quality objectives.

In addition to the requirements that will apply universally to limit degradation of high quality waters, the tentative Order requires the third party to prepare management plans (groundwater or surface water) whenever "irrigated agriculture is causing or contributing to a trend of degradation of surface water that may threaten applicable Basin Plan beneficial uses." Management plans can therefore be triggered even in the absence of exceedances of water quality objectives, and will further limit degradation when trends that threaten beneficial uses are identified. As described in response to comment 4-9, however, additional practices are not required by the antidegradation policy when the existing practices and water quality practices are preventing degradation.

Finally, the tentative Order includes specific provisions that should alleviate the commenter's concern that the Executive Officer may relieve the third party of management plan requirements under specific conditions. First, contrary to the commenter's assertion, the tentative Order does not include a provision allowing the Executive Officer to determine that a management plan is not required if management plans will not likely remedy the exceedance. Next, staff has responded to the commenter's concern that management plans may not be required in areas with trends of degradation exist but are not causing or contributing to water quality exceedances. In response to that concern, staff has proposed language clarifying that management plans will be required as long as the problem that triggered the management plan requirement has not been resolved. That clarification preserves the Executive Officer's ability to determine that a management plan triggered by exceedances of water quality objectives is not required if irrigated agriculture does not cause or contribute to exceedances of water quality objectives. Management plan requirements would no longer be appropriate in a situation where evidence shows that irrigated agriculture is not causing or contributing to a water quality problem.

4-14. Monitoring Surface or Ground Waters Many Miles Downstream of Pollution Sources Will Neither Detect Nor Prevent Degradation or Upstream Exceedances of Water Quality Objectives.

**Comment summary:** Monitoring stations in the tentative order are the same as under the conditional waiver, and those stations cannot and will not detect violations of WQO or degradation beyond a short distance upstream. Upstream violations and degradation will go undetected, which is not in compliance with the antidegradation policy.

**Response:** <sup>6</sup> The commenter has incorrectly represented the surface water monitoring program; has applied conclusions and statements made on the Conditional Waiver and Dairy Order that are inapplicable to the specific facts related to this Order; and has failed to consider all information that will be available to the board to evaluate compliance and all requirements imposed on the growers to prevent unauthorized degradation and exceedances of water quality objectives.

Contrary to the commenter's assertion, the representative monitoring program is not meant to ensure that one site exactly duplicates another site. Board staff has never

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<sup>6</sup> Note that the comment heading refers to groundwater, however, the commenter presents no argument or discussion related to the requirements of the groundwater program. Therefore, the staff response does not include a discussion of the groundwater program.

asserted one monitoring station “measures” water quality at another monitoring station, nor does the tentative Order rely on one monitoring station measuring water quality at another monitoring station. The monitoring program is designed to include a sufficient number of sites, parameters, and frequency of monitoring to be able to identify water quality problems and be representative of the effect of irrigated lands discharges on receiving waters. The monitoring program was developed in consideration of “critical questions” developed by the previous conditional waiver.<sup>7</sup>

The commenter has not considered that the land use around all of the monitored sites is primarily, if not exclusively, agriculture. The land use immediately upstream of the monitored sites is agriculture and the mix of crops around the monitored sites is similar to the crop mix in unmonitored areas. Therefore, it is reasonable to use the results from the monitored sites to draw conclusions regarding water quality impacts in areas with similar crops and similar practices that are not being monitored.

Under the tentative Order, if a water quality problem (e.g. exceedance of a water quality objective) is detected at a core monitoring site, it is assumed that those same problems exist in the sites represented by the core site. In that scenario, the third party is required to continue core monitoring and evaluate the potential for similar threats or risks in the areas represented by the core monitoring site. If pesticide use information or other factors indicate a threat or risk, then the third party must either perform monitoring at represented waterbodies for at least two years or, if site access is not available, implement management plan activities in that area. If additional exceedances are observed during the two years at the represented site then the parameter will be monitored in accordance with the Management Plan and management practices associated with the Management Plan for that area must be implemented.

If a management plan is triggered by monitoring results at the core site, the remedial activities required at the core monitoring site are, with one exception described below, required in all represented watershed areas. However, the third-party may provide water quality data or other analysis for the area represented by the core site indicating that the water quality problem is not likely to occur in the represented area. If the Executive Officer concurs with the evaluation, management plan activities associated with the Core site do not need to be implemented at the represented site. More information on monitoring strategy can be found in section VI.A of the Information Sheet.

As a general matter, such inductive reasoning is applied to results from all monitoring programs (both regulatory and scientific studies), since it is not possible to monitor all locations at all times for all constituents. The design of any monitoring program requires some judgment (based on a reasoned evaluation of available information) of how best to answer the questions of interest by determining what to monitor, how frequently to monitor, where to monitor, when to monitor, and the quality of the information needed. There are no hard and fast rules on monitoring program design and different technical

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<sup>7</sup> Tentative Order, Attachment B, Section III. Those critical questions are: (1) Are receiving waters to which irrigated lands discharge meeting applicable water quality objectives and Basin Plan provisions? (2) Are irrigated agricultural operations causing or contributing to identified water quality problems? If so, what are the specific factors or practices causing or contributing to the identified problems? (3) Are water quality conditions changing over time (e.g., degrading or improving as new management practices are implemented)? (4) Are irrigated agricultural operations of Members in compliance with the provisions of the Order? (5) Are implemented management practices effective in meeting applicable receiving water limitations? and (6) Are the applicable surface water quality management plans effective in addressing identified water quality problems?

experts can come to reasonable conclusions that differ in terms of what constitutes an appropriate monitoring design to meet certain objectives or answer certain questions.

As discussed in the Information Sheet at section VI.A, the surface water monitoring program has been carried over in part from the preceding conditional waiver, which also required creation of a representative monitoring program explicitly required to enable such determinations to be drawn. The Coalition Group was required to provide technical justification and identify which representative sites in an MRP Plan that was to be approved by the Executive Officer. This specific plan was approved by the Executive Officer as complying with all the requirements of that Monitoring and Reporting Order, which required this sort of representative monitoring to be sufficient to give adequate information about water quality throughout the Order area. Neither the commenter nor any other party has challenged this previous determination by the Executive Officer or the current MRP Order under which the Coalition is currently operating.

The tentative Order continues to explicitly require the representative monitoring program to enable such determinations to be drawn. MRP, Section III provides that, "The third-party must collect sufficient data to describe irrigated agriculture's impacts on surface water quality and to determine whether existing or newly implemented management practices comply with the surface water receiving water limitations of the Order." This will be accomplished by conducting surface water monitoring in the third party area. There are three different types of monitoring sites: 1) Core sites; 2) Represented sites; and 3) Special Project sites. These sites shall be located to characterize water flow, quality, and irrigated agricultural waste discharges within the entire third-party area. That section also specifies that "Any area with irrigated agricultural waste discharge that does not contain a monitoring site due to issues of access or location downstream of urban influence must be represented by the Core site(s) in that zone." In this way, the program under the tentative Order is able to produce information about water quality throughout the area, without the third-party going to the expense of putting a monitoring site at the edge of every field. If it turns out that a given representative site fails to adequately represent the effect of discharges from irrigated lands on receiving waters, the site would not meet the Order's requirements, and the monitoring plan would have to be adjusted to be consistent with the Order.

Evidence in the record supports the efficacy of the surface water monitoring requirements proposed by the tentative Order. The representative monitoring program required by the previous waiver has already identified many of the major surface water quality problems, having triggered multiple management plans for a number of constituents. Although not universally positive, many of the general trends suggest there have been improvements in water quality (see Figures 7, 8, 9 of the Information Sheet). There have also been changes in management practices that appear to generally correspond with the improvement in water quality (see Information Sheet discussion). These results suggest that the monitoring design is robust enough to identify water quality problems and that the types of water quality problems are similar throughout the San Joaquin County and Delta area. In light of those results, a representative monitoring approach is sufficient and the individual monitoring approach proposed by the commenter is unlikely to reveal any new issues that have not already been identified.

The commenter suggests that the board will not know which particular farms are responsible for the water quality problem. This statement, and the general argument in the comment, suggests that for a nonpoint source problem, where the pollutant sources are often diffuse and difficult to identify, the only legally or technically valid approach

under the Antidegradation Policy is to track down individual sources through an intensive individualized monitoring program. Board staff disagrees, as the requirements of the Antidegradation Policy, must be harmonized with the Water Code's requirement that any monitoring required be reasonable and cost-effective. (See Wat. Code, § 13267, subd. (b)(1).)

The individualized monitoring approach was extensively studied when developing the Program EIR. Pages 94 of Appendix A, PEIR, provides the following discussion regarding individual field monitoring and regional monitoring approaches.

*"...the waste discharge characteristics of runoff from each farm would be determined [under farm-based monitoring]. However, with this approach, it will be difficult to characterize the actual effects agricultural waste discharges are having on receiving water bodies. A good example is where a farm discharges to a large river. Farm-based monitoring would not necessarily provide enough information to tell whether the discharge is affecting the river's water quality."*

As described in the PEIR, monitoring only discharges from fields would not provide the needed information to determine the effects on receiving water bodies. This is a concern because water quality objectives do not apply to field effluent, but to receiving waters. State policy and law require that waste discharge requirements implement water quality objectives, which apply within receiving waters. To address this problem, the commenter's recommended field monitoring program may also need to sample receiving waters to determine the effects of each field's discharge on the receiving waters ([field]+[upstream receiving water]+[downstream receiving water]). The board considered this individual monitoring program as one of the long-term ILRP alternatives –PEIR Alternative 5.

In evaluating Alternative 5, the board found that the cost of individual monitoring coupled with the increased board staffing to regulate individual Member fields in the commenter's suggested approach would impose a substantial cost on the industry and staff resources. This is significant in light of the Water Code's requirement that any monitoring required be reasonable and cost-effective. (See Wat. Code, § 13267, subd. (b)(1).) The economic analysis of the alternative revealed that the increased cost could cause widespread impacts to the industry, including loss of land in production, value of production, revenue; and decreased employment. For these reasons, the alternative was found inconsistent with ILRP Goal 3, to maintain the economic viability of agriculture.<sup>8</sup>

In contrast to the significantly more costly approach advocated by the commenter, the tentative Order will enable the Board to assure, as required by the Antidegradation Policy, that water quality objectives will not be exceeded and degradation will not be authorized in the absence of BPTC. This is a more reasonable approach because it focuses resources on changing practices that are contributing to the problem; track the implementation of those improved practices; evaluate the effectiveness of those practices; and track changes in water quality to determine whether the problem is being addressed. This approach harmonizes antidegradation requirements with the reasonableness requirements of the Water Code section 13267.

The reasonableness of this approach is reflected in surface water quality management plan the third-party will develop and growers are obligated to implement when a water

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<sup>8</sup> PEIR, Appendix A, pages 127-129

quality problem is identified. The third-party will identify potential sources, the types of practices required to address the problem, evaluate the effectiveness of those practices, report on the practices that have been adopted, establish a specific schedule with performance goals and milestones, and report on progress in addressing the water quality problem.

As stated in the tentative Order, if inadequate progress is being made through the third-party led effort, then the Executive Officer will take additional action. Those actions may include field specific monitoring studies; on-site verification of implementation of practices; or requiring growers in the impacted area to be regulated directly by the board. The board staff believes the approach outlined in the tentative Order is reasonable, since it starts with an approach that can address the identified problem at a lower cost, but still includes a process for a more stringent regulatory regime if needed.

The commenter has introduced testimony from the Conditional Waiver proceedings, including testimony from a board staff person during the 2003 CEQA scoping meetings. Board staff believes such testimony is only tangentially related to the proposed Order. The Conditional Waiver and the proposed Order are significantly different in many respects, including many of the monitoring and reporting requirements and new obligations in the proposed Order imposed on growers and the third-party that were not included in the Conditional Waiver. For example, under the proposed Order, there are more obligations for growers to report on their practices (i.e., the Farm Evaluations) and document their efforts to protect water quality (e.g., Nitrogen Management Plans, Sediment Discharge and Erosion Control Plans), along with the monitoring and evaluation requirements of the third-party.<sup>9</sup>

In addition, the testimony on the Conditional Waiver was applicable to the Central Valley as a whole and not directed to the unique conditions of the area governed by this Order or the area specific requirements of the proposed Order. It is not at all clear that those providing testimony or written comments on the Conditional Waiver and its perceived shortcomings would reach the exact same conclusions considering the new and different requirements in the proposed Order.

The commenter also draws inappropriate parallels between the *AGUA* Court's conclusions regarding the adequacy of the groundwater monitoring program under the Dairy General Order and the surface water monitoring described in the proposed Order. The court in *AGUA* made factual findings based on uncontroverted evidence in the record before it, that monitoring of domestic and agricultural supply wells alone was not an accurate or timely way of determining whether degradation was occurring, in a case where the board assumed that no degradation would occur without conducting an antidegradation analysis. (See *AGUA, supra*, 210 Cal.App.4th at p. 1275). That program is unlike the representative monitoring required by the Tentative Order. There is substantial evidence in the record demonstrating that the Tentative Order requires monitoring from representative sites to provide a complete assessment of the conditions of waters of the State within the permit area. Surface water quality monitoring is not

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<sup>9</sup> The monitoring and evaluation requirements of the third-party include, but are not limited to preparing: 1) a Sediment Discharge and Erosion Assessment Report; 2) a Groundwater Quality Assessment Report; 3) a Management Practices Evaluation Report; 4) semi-annual Monitoring Reports, which will include reporting and assessing water quality data and management practices; 5) Management Plan Status Reports, which include evaluation of the degree of implementation of management practices and their effectiveness.

analogous to monitoring groundwater supply wells. The waste discharges to surface waters monitored in the Tentative Order will have a travel time from the field to the monitored site on the order of hours or days (depending on the location of the field relative to the monitoring site), whereas, monitoring results from a groundwater supply well may represent the effects of land use activities that occurred weeks, years, or decades before.

In conclusion, the proposed monitoring requirements provide the Board with the information necessary to detect exceedances of water quality objectives and unauthorized degradation of high quality waters. While this approach differs from the individualized monitoring regime advocated by the commenter, it achieves compliance with the Antidegradation Policy, while harmonizing the reasonableness requirements of the Water Code and achieving the goal of the tentative Order to protect water quality while maintaining the economic viability of agriculture.

4-15. The Proposed WDRs fail to rely on the weight of the evidence that the WDRs are consistent with Key Element 1 of the NPS Policy.

**Comment summary:** The implementation program does not demonstrate that nonpoint source pollution will be addressed in a manner that achieves and maintains water quality objectives and beneficial uses, and complies with antidegradation requirements. The board does not and will not know the specific management practices implemented anywhere in the order area as farm evaluations will not include any maps. Regional water quality monitoring will not allow correlation of implemented management practices and water quality requirements, except in portions where water quality standards are violated.

**Response:** The key element 1 of the NPS policy is that the purpose of the program must be stated and the program must address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements. As described in the Information Sheet, the program goals and objectives are stated in the ILRP Program Environmental Impact Report, Final and Draft. The requirements of this Order include requirements to meet applicable water quality objectives and the requirements of State Water Board Resolution 68-16 (antidegradation requirements) as discussed in the responses to the issues raised by the commenter regarding the antidegradation requirements.

The commenter also suggests that the Superior Court's decision regarding the Conditional Waiver's and the NPS Policy is directly applicable to the proposed Order. The parallel the commenter wishes to draw is inapplicable, since the Superior Court found the total absence of groundwater related provisions to be inconsistent with the NPS Policy. The Superior Court has not evaluated an Irrigated Lands Regulatory Program Order that includes groundwater provisions, as found in the proposed Order.

The comment also incorrectly states that the Farm Evaluation "...will not include any maps of the respective dischargers." The Farm Evaluation includes a requirement to prepare a farm map. The farm map must be produced by the Member upon request from the board. The commenter also incorrectly states that the board will not know what management practices are being implemented. Management practices being implemented will be reported by the grower to the third-party and then reported to the board. In addition, the board can demand that an individual grower produce their farm evaluation or require the third-party to provide management practice information identifiable to individual growers.

The comments regarding the representative monitoring have been addressed in the prior responses.

4-16. The Proposed WDRs fail to rely on the weight of the evidence that the Proposed WDRs are consistent with Key Element 2 of the NPS Policy

**Comment summary:** There is no evidence to suggest that the monitoring requirements can detect violations of water quality standards upstream, or evaluate the effectiveness of management practices to prevent such violations upstream of monitoring locations. There is no evidence to demonstrate the effectiveness of any management practices in the Central Valley to achieve discharges that comply with water quality standards.

**Response:** The commenter is referred to prior responses to the contention that the representative monitoring approach is not adequate.

The commenter incorrectly states that there is no monitoring of receiving waters adjacent to where the farms are discharging. The board staff has revised the Information Sheet to include a map with the location of the monitoring sites and surrounding land uses. The “core” and “representative” monitoring sites are surrounded by agricultural land and receive any surface water discharges from those lands.

The commenter is referred to the discussion in the Information Sheet regarding the NPS Policy and Key Element 2. Board staff believes the discussion in the Information Sheet demonstrates that the proposed Order is consistent with the NPS Policy and Key Element 2.

4-17. The Proposed WDRs fail to rely on the weight of the evidence that the Proposed WDRs are consistent with Key Element 4 of the NPS Policy.

**Comment summary:** There are no confirmed feedback mechanisms that will be used to verify that management practices are being properly implemented and are achieving program objectives, no mechanisms exist to detect or react to violations of WQO upstream of monitoring sites, or effort to determine what the existing water quality is and identify high quality waters. After eight years, the Coalition has produced no information describing the location of management practices actually in place, and the farm evaluations will remain sequestered in the third-party files.

**Response:** The feedback mechanisms required by the tentative Order are consistent with Key Element 4. To provide feedback on whether water quality goals are being achieved, the tentative Order requires surface water and groundwater quality monitoring, tracking of management practices, and evaluation of effectiveness of implemented practices. The feedback provided by the tentative Order’s monitoring requirements and SQMP requirements are discussed extensively in response to comment 14-4 and are not reproduced here.

Since 2009 and the submittal of management plan updates, the San Joaquin County and Delta Water Quality Coalition has assembled and provided maps showing agricultural practices in select subwatersheds. While farm evaluations submitted by Members will indeed be retained by the third-party, the tentative order does require submission of summaries of management practices information reported on farm evaluations, as well as individual data records used to prepare the summaries (in a format compatible with ArcGIS, and identified to at least the township level). In addition, the board can demand that an individual grower to produce their farm evaluation or

require the third-party to provide management practice information identifiable to individual growers.

The commenter is referred to the discussion in the Information Sheet regarding the NPS Policy and Key Element 4. Board staff believes the discussion in the Information Sheet demonstrates that the proposed Order is consistent with the NPS Policy and Key Element 4.

4-18. Various Plans and Reports Identified As Subject Only to Review and Approval by the Executive Director Should Be Presented to the Regional Board for Review and Approval

**Comment summary:** Considerable discretion is delegated to the Executive Director [sic] to review and approve third-parties and various plans, or waive requirements to prepare management plans. Plans constitute WDRs in themselves and must be reviewed and approved by the board itself.

**Response:** The commenter contends that the tentative Order violates Water Code section 13223 by delegating specific tasks to the Executive Officer as opposed to having the Board approve those future tasks itself. The challenged delegations include those giving the Executive Officer authority to (1) approve third parties to serve as grower representatives [tentative Order at section VIII.A), (2) approve Sediment and Erosion Control Plans [tentative Order at section VIII.C), (3) approve Nitrogen Management Plans [tentative Order at section VIII.D), (4) approve Management Plans [tentative Order at section VIII.H.1], (5) determine that a management plan is not required [tentative Order at section VIII.H.3], and (6) approve time schedules within management plans [tentative Order at section XII].

Under the Water Code, the Central Valley Water Board may delegate tasks to the Executive Officer, as long as the delegation is not specifically prohibited by Water Code Section 13223. This delegation authority allows the Board to accomplish a number of important tasks necessary under the Water Code, tasks which might not be accomplished if the Board itself needed to formally approve their completion at board meetings scheduled approximately once every two months. Section 13223 does not prohibit the delegation of authority to set or implement monitoring or reporting requirements pursuant to Water Code section 13267. Nor does Section 13223 prohibit the Board from having the Executive Officer administer, enforce or implement permit requirements. Finally, Section 13223 does not prohibit the Executive Officer from establishing a method for determining compliance with the order. *Russian River Watershed Committee v. City of Santa Rosa* (9th Cir. 1998) 142 F.3d 1136; *CASA v. City of Vacaville* (2012) 208 Cal.App.4th 1438.

It is the common practice of the Executive Officer and Board staff, to periodically update the Board on progress, issues, and successes achieved in the implementation of Board approved orders, and this practice has been and will be implemented with all of the Irrigated Lands Regulatory Program orders, including the order if it is adopted. Such updates are done as part of public meetings at which interested persons can raise any issues of which they would like the board to be aware, in addition to the published Executive Officer's Report. In addition, the tentative Order includes additional information (see Attachment A, Information Sheet) regarding the ability of an interested person to seek board review regarding any plans or reports approved by the Executive Officer under this Order. The board may exercise its discretion to initiate the review of any document and decision.

Water Code section 13223 does not prohibit the Central Valley Water Board from delegating to its Executive Officer the tasks challenged by the commenter (see above numbered list). For Task 1 (approval of third party representative), the tentative Order would assign the Executive Officer the authority to determine and certify whether the eligibility criteria for third parties (set forth in the tentative Order) have been met. Because it pertains to administration of the tentative Order, assignment of this task to the Executive Officer does not violate Water Code 13223.

The commenter has mischaracterized tasks 2 and 3, as Sediment and Erosion Control Plans and Nitrogen Management Plans are not approved by the Executive Officer; instead they are prepared by the grower as required by the tentative Order. The templates to be approved by the Executive Officer will establish a particular format in which the plans are to be prepared, but do not establish the plans themselves. The plans themselves are a form of reporting required pursuant to Water Code section 13267 to document how their fertilizer use management practices meet the requirement to minimize excess nutrient application relative to crop consumption or how their sediment or erosion control complies with the Order's requirements.

Tasks 4, 5, and 6 all relate to preparation and approval of management plans and are not prohibited for delegation. Task 4 allows the Executive Officer to approve a management plan, which is triggered when sampling results indicate that growers associated with the monitoring site may be violating of the tentative Order's receiving water limitations. The management plans are reports that propose how growers in the relevant area will come into compliance with the receiving water limitations. These provisions therefore pertain to implementation and enforcement of the receiving water limitations in tentative Order.

For task 4 (approval of management plans), as described in the tentative Order and the Information Sheet, the approval of management plans is directly related to evaluation of compliance with and enforcement of receiving water limitations and the time schedule for compliance. If the information submitted in the management plan reports is sufficient and meets the requirements of the Order, and the Executive Officer is assured that the growers in the area are taking appropriate action to come into compliance with the receiving water limitations within the allowable time schedule for compliance, the Executive Officer will not pursue enforcement. In fact, the revised language is modeled after receiving water limitation language contained in State Water Orders WQ 2013-0101 and 99-05, which are precedential State Water Board Orders instructing the Regional Boards how to pursue an iterative approach towards compliance with water quality objectives. Allowing the Executive Officer to approve management plans is therefore an authorization to approve a method of determining compliance with the receiving water limitations in the affected area in accordance with the board established Time Schedule for Compliance. This is not prohibited by Water Code section 13223. *Russian River Watershed Committee v. City of Santa Rosa* (9th Cir. 1998) 142 F.3d 1136; *CASA v. City of Vacaville* (2012) 208 Cal.App.4th 1438.

Task 5 (determination that a management plan is not required) is an outgrowth of the Task 4 compliance/enforcement task and is similarly not implicated by Water Code section 13223. Section VIII.H.3 of the tentative Order specifies the conditions on which a management plan is not required because compliance with the receiving water limitations is being achieved. Task 5 provides a formal avenue for the Executive Officer to communicate with the third party that the conditions of the Order no longer require a management plan. As mentioned in response to comment 4-13, the language for

section VIII.H.3 of the tentative Order makes it clear that management plans are required as long as the problem that triggered the management plan requirement has not been resolved. Nevertheless, as discussed in regards to Task 4, the compliance determinations associated with the management plan reports are not implicated by Water Code section 13223.

Finally, Task 6 (approval of time schedule) is not prohibited by Water Code section 13223 because it simply instructs the Executive Officer to implement the time schedules within the Order itself. As authorized by Water Code section 13263(c), the tentative Order would set a time schedule for compliance with the receiving water objectives. That time schedule is specified in section XII of the tentative Order as follows: "the time schedule must be as short as practicable, but may not exceed 10 years from the date the [management plan] is submitted for approval by the Executive Officer. The proposed time schedule in the [management plan] must be supported with appropriate technical or economic justification as to why the proposed schedule is as short as practicable." As described in response to comment 4-11, the time schedule authorized by the Board is reasonable and consistent with time schedule provisions in the State Water Board's regulations. In allowing the Executive Officer to approve the proposed time schedule, the tentative Order would essentially be giving the Executive Officer narrow discretion to implement the tentative Order's requirement to attain the receiving limitations in a timeframe that is as short as practicable, but in no more than 10 years from when a water quality problem is identified.

#### **Comment Letter 5 – Contra Costa Resource Conservation District**

5-1. Third party groups required to identify growers that have failed to maintain good standing in the third party group

**Comment summary:** The Coalition is operated by the RCD and has made improvements in water quality because of the great relationships with growers. This relationship is very different than other organizations implementing the ILRP because the RCD is a non-regulatory organization. Growers can discuss resource issues more freely with RCD staff without being concerned about fines. Provision C.9 of the order requires the Board to act as a regulator. The RCD is unable to act as an enforcement agency by identifying and reporting to the board which growers have failed to maintain good standing in the third party group.

**Response:** See General Response 2.

#### **Comment Letter 6 – Lodi District Grape Growers Association, Inc.**

6-1. The reporting frequency is excessive and costly to growers and the Coalition.

**Comment summary:** The commenter states that the annual Farm Evaluation reporting requirement in high vulnerability areas of 15 June 2015 and annually thereafter is excessive. Permanent crops, including winegrapes in San Joaquin County account for 100,000 acres, and farming activity on permanent crops vary little year to year. Consequently, the Farm Evaluation will show virtually the same information each year. The commenter suggests that if Coalition members were divided into groups, with 1/5 of the members scheduled to report each year, the Coalition's annual

workload would be reduced and could be managed by a smaller staff, therefore reducing costs.

**Response:** See response to comment 1-1.

### Comment Letter 7 – Western Dairy Design, David Avila

#### 7-1. Cooperation with NRCS

**Comment summary:** The Board should cooperate with the Natural Resources Conservation Service (NRCS) to enhance the overall results of their efforts.

**Response:** One of the objectives of the Irrigated Lands Regulatory Program, as stated in the Program EIR, is to “promote coordination with other regulatory and non-regulatory programs associated with agricultural operations to minimize duplicative regulatory oversight while ensuring program effectiveness.” As explained in findings 48 through 52, the Board has identified other agencies, including the NRCS, whose work directly or indirectly serves to reduce waste discharges from irrigated lands to waters of the State. Those efforts will continue, and will be supported by implementation of the Order. The Board will continue to cooperate with the NRCS to enhance the results of their efforts, and NRCS efforts will continue to enhance the results of the Order if adopted.

#### 7-2. Takings

**Comment summary:** The Tentative Order, if adopted, would amount to a form of an unconstitutional taking without just compensation because the farmer has no remedy but to spend money to comply with its provisions.

**Response:** The Tentative Order, if adopted, would not amount to a taking of the Member's property. While the Tentative Order would apply to owners and operators of irrigated lands that discharge to waters of the State, the Tentative Order in no manner aims to have the Board take ownership of those properties. Because of that, the Board is not required to provide any compensation to the landowners.

The commenter asserts that it has no remedy but to spend money to comply with the Tentative Order's programs. This is factually inaccurate. The Member could choose to enroll under the Board's General Order for Irrigated Lands that are Not Participating in a Third-Party Group (Order R5-2013-0100), or could apply for individual waste discharge requirements. Alternatively, landowners could stop discharging wastes to waters of the state, in which case they would not be subject to the terms of the Tentative Order or the Water Code. In any event, even if costs are unavoidable, the commenter has not established that a taking of property has occurred. Ample federal and state constitutional law case authorities support the principle that regulations do not amount to takings unless the regulations deprive all economically beneficial or productive use of property. See, e.g. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015. Nothing in the comment indicates that the Tentative Order, if adopted, would represent a regulatory taking.

7-3. Violation of Federal Clean Water Act

**Comment summary:** The Tentative Order violates the federal Clean Water Act because it would regulate discharges excluded from regulation under that act as "non-point source discharges."

**Response:** Board staff agrees with the commenter that the Tentative Order would regulate non-point source discharges, discharges which are not subject to regulation under the federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES). See 33 U.S.C. section 1342 et seq. While the discharges from irrigated lands are not subject to the NPDES program because they are not "point source discharges," the federal Clean Water Act preserves the rights of States to prevent, reduce, and eliminate water pollution. 33 U.S.C. section 1251(b). Further, the federal Clean Water Act contemplates that non-point source discharges to Waters of the United States will be regulated by the States pursuant to their required Non Point Source Control Programs. (See 33 U.S.C. 1329). Regulation of irrigated lands discharges does not violate the federal Clean Water Act.

7-4. Violation of Federal Constitutional Rights

**Comment summary:** Adoption of the Order would make it a crime for dischargers of waste from irrigated lands to exercise rights guaranteed by the Fourth, Fifth, Seventh, Ninth, and Fourteenth Amendments to the federal Constitution.

**Response:** Without more information, Board staff is unable to provide a detailed response to this comment. The commenter has not pointed to any particular language in the Tentative Order stating that violations of the Order are considered to be a crime. Similarly, the commenter has not explained how adoption of the Tentative Order would violate any of the enumerated constitutional rights.

7-5. Water Rights

**Comment summary:** The Tentative Order infringes on the landowner's rights to use water for agricultural purposes. The State of California does not own the Waters of the State.

**Response:** The Tentative Order does not regulate the quantity of surface water a landowner may be entitled to use. Generally speaking, such decisions are made by local water districts, local agencies, or the State Water Resources Control Board, as the case may be. Similarly, the Tentative Order does not assert that the State or the Regional Board owns the Waters of the State

Instead, the Tentative Order regulates the discharge of waste to Waters of the State, and is intended to protect the beneficial uses of those Waters as specified in the Board's Basin Plan. See Findings 24 and 25. In terms of a landowner's right to discharge waste to waters of the State. The Legislature has stated clearly: "All discharges of waste into waters of the state are privileges, not rights." Water Code section 13263(g). Accordingly, the Tentative Order does not infringe on any right that landowners may have to discharge waste.

7-6. Jurisdiction

**Comment summary:** The commenter asks the Board to explain its jurisdiction to issue the Tentative Order.

**Response:** As explained in Finding 18 of the Tentative Order, the Board derives its jurisdiction to regulate the discharge of waste that could affect the quality of waters of the state from the Porter-Cologne Water Quality Control Act (California Water Code section 13000 et seq.)

7-7. Use of the Word "May" in the Tentative Order

**Comment summary:** The commenter asks whether use of the word "may" in the Tentative Order is intended to comply with *City of Dallas v. Mitchell* (1922) 245 S.W. 944.

**Response:** The commenter cites an opinion issued by the Texas Supreme Court in 1922. Because Texas state courts do not exercise any jurisdiction over the Board, Board staff did not draft the terms of the Tentative Order with the cited court opinion in mind. Generally speaking, Board staff used the word "may" in the Tentative Order to describe items of a permissive, not mandatory, nature. The proper meaning of the word, however, will be dictated by the specific context of the sentence or phrase. Because the commenter has requested further explanation from staff regarding any specific use of the word "may," staff is unable to provide further clarification on its meaning.

7-8. Fees as a form of extortion

**Comment summary:** The regulatory fees contemplated to be collected by the State Water Resources Control Board amount to extortion within the meaning of 18 U.S.C. 1951.

**Response:** The annual fees to be collected by the State Water Board are established by regulations. In California, regulations may be established if done so in compliance with the Administrative Regulations and Rulemaking Chapter of the California Government Code (Government Code sections 11340 et seq.). California law explicitly authorizes the State Water Board to assess annual fees from persons subject to waste discharge requirements, as long as the "total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement

of waste discharge requirements and waivers of waste discharge requirements.” Water Code, Section 13260(d). The annual fees are remitted to the State Water Board, not to any particular employees of that board.

The claim that the State Water Board’s collection of annual fees constitutes the crime of federal extortion is without merit. That crime applies to individual public officials that take money not due to them for the performance of official duties. *Evans v. United States* (1992) 504 U.S. 255. Since the annual fees are legally required, and because employees of the State Board do not individually receive annual fees, there cannot possibly be any claim for criminal extortion against any of the State Water Board’s employees for collection of annual fees.

7-9. Question Regarding Possible Litigation Against the Board or its Agents Under 42 U.S.C. 1983

**Comment summary:** The commenter asks Board staff how it would defend the agency against a lawsuit alleging violation of 42 U.S.C. 1983 (Civil Action for Deprivation of Rights).

**Response:** The Board generally does not discuss pending or current litigation outside the courtroom or the pleadings. It is not appropriate to discuss how the board might respond to this hypothetical action. If such an action were brought, it would be discussed by the Board members and the Board’s attorneys. Such discussions would be protected by the attorney/client privilege and are not appropriate for discussion in this response to comments document.

## ATTACHMENT RESPONSES TO COMMENT LETTER 3 EXHIBITS

Board staff was unable to determine whether the California Sportfishing Protection Alliance (CSPA) exhibits were provided to support the contentions in CSPA’s letter or whether CSPA intended for the board to consider additional comments in the exhibits that were not reflected in the CSPA letter. Therefore, the responses to the exhibits include both responses to comments made regarding the adequacy of the Order and the technical analysis. Comments that are similar to or redundant of comments made in CSPA’s letter are not repeated and the reader is referred to the staff responses to the CSPA letter. Board staff did not attempt to duplicate the summaries of or manipulation of data reflected in the exhibits.

### Exhibit A – Memo from Steve Bond to Mike Lozeau

A-1. Proposed WDRs lack a representative monitoring program

**Comment summary:** The proposed Waste Discharge Requirements lack a representative monitoring program and as a result are not protective of the beneficial uses within the San Joaquin County and Delta Area watershed.

**Response:** Board staff contends that the proposed Order is, in fact, structured to include a representative monitoring program [see responses to CSPA comment 4-14]. Staff would like to point out that the written testimony from CSPA’s consultant suggests that a representative monitoring program would be acceptable, although CSPA’s consultant contends that such a program is not reflected in the Order. This suggestion that a representative monitoring program

is acceptable is in contrast to CSPA's letter, which indicates that individual discharger monitoring is the only acceptable approach to evaluating compliance.

A-2. Monitoring major downstream watercourses

**Comment summary:** Monitoring only the major watercourse at the downstream-most position of the watershed completely disregards the protection of the beneficial uses of all but the lowest elevations of these waterways.

**Response:** The selected monitoring sites are surrounded by agricultural land with minimal urban or other land uses and are representative of the subwatershed. The commenter's opinion that monitoring only occurs on major water courses at the lowest elevations is accurate in only the context that the Delta is low in elevation. Upper reaches of the Delta within the scope of the Order's geographic boundary has little agriculture. The Order includes provisions to prioritize watersheds and conduct Special Project monitoring to determine the source of water quality problems if they are identified. These may be determined in the upper watershed of a downstream location.

The monitoring sites are all located in areas surrounded by irrigated agricultural lands and management plans triggered by results from those sites are applied throughout the watershed except where the studies indicate that the problem is not occurring. Where available, monitoring sites have been chosen that are exclusively agricultural drainage (e.g., Union Island drain, Terminous Tract Drain, Roberts Island). The commenter has failed to point out which sub-watersheds or tributaries would suffer impacts from lack of adequate monitoring, since the management plan generally directs corrective actions for the whole watershed. Since the corrective actions are broadly applied unless studies support no action in a specific area, no portion of the watershed represented by a monitoring site will be disregarded.

In addition, the commenter has not provided a technical justification as to how additional monitoring sites of agriculturally dominated waters would reveal any additional water quality problems or need for any other corrective actions not already identified in the management plans.

A-3. Field discharge must be monitored to evaluate the effectiveness of management practices

**Comment summary:** Evaluating the effectiveness of a technology or a practice requires that the change in water quality attributable to the specific practice or technology be verified. To do that a reference sample from the point of discharge and then a comparison sample taken from the same location after the technology or practice is implemented must be collected and analyzed.

**Response:** The proposed Order has provisions for field studies or individual monitoring, where necessary, but also allows for the evaluation of management practices using other approaches. The suggestion that taking multiple samples through discharge monitoring is the only method for evaluating whether a management practice is effective is inaccurate. Examples of other methods for evaluating the effectiveness of a management practice, include, but are not limited to:

1) Results from field studies or other research – field studies or research results can be used to estimate the effectiveness of a management practice. If multiple field studies have been done that demonstrate similar results for a practice under the same conditions experienced by a grower implementing that practice, it would be reasonable to assume similar effectiveness of that practice.

2) Application of accepted conservation standards (e.g., Natural Resource Conservation Service standards designed to address a given water quality issue) – the NRCS has conducted extensive research and has decades of experience in developing technical standards for conservation practices. Those standards provide valuable information and feedback regarding effective management practices.

3) Visual observation – for some practices visual observation may be sufficient – e.g., confirming a tailwater return pond pump is working and water is being returned to the head of a field; confirming that outer spray nozzles are off when spraying the outside row of an orchard with pesticides.

4) Evaluation of receiving water information combined with information on management practices implemented – correlations can be made between changes in the types of management practices being implemented in a watershed and the changes in water quality.

5) Common sense approaches – a field previously discharging tail water would not discharge tail water with the installation of a drip irrigation system. In that case, there would be no discharge to measure. If a grower no longer uses a pesticide identified as causing a water quality problem, there would be no justification to require the grower to monitor for that pesticide (for those pesticides that breakdown in the environment relatively rapidly).

The suggestion that sampling the discharge is the only method for evaluating effectiveness is flawed when the pathway for the pollutant to reach surface water is not via discharge of water from the site. For example, pesticides are at times sprayed onto crops in a manner that can lead to aerial drift. The pollutant pathway to surface water is through the air with subsequent deposition directly in the waterway or on the land (but not necessarily on the discharger's land). The effectiveness of the management practices that would be employed to address drift would not be captured by measuring the discharge, and could, in fact, miss an important pollutant pathway contributing to a water quality problem.

A-4. Conclusions from the Coalitions Annual Monitoring Reports

**Comment summary:** The conclusions of the Annual Monitoring Reports for the Coalition confirm that beneficial uses are not being protected and that the sources of pollutants cannot be determined.

**Response:** Board staff does have evidence that some, but not all, beneficial uses are being protected. The commenter is referred to Table 50 of the 2013 San Joaquin County and Delta Water Quality Coalition's Annual Monitoring Report. As discussed in responses 4-11 and 4-14, the Tentative Order is designed to protect beneficial uses to require investigation of potential pollutant sources.

**Exhibit B – Memo from Richard McHenry to Mike Lozeau**

- B-1. Objectives are not being met and existing high quality waters are not being maintained.

**Comment summary:** Findings and information in the WDRs indicate that represented irrigated lands are not meeting objectives, existing high quality waters are not being maintained, and representative practices are not protective of water quality.

**Response:** Staff does not claim nor does the Tentative Order suggest that objectives are met in all instances or that practices in place are protective of water quality in all cases. The Order is structured in a manner to address those water quality problems identified by the commenter, and limit potential degradation of high quality waters in compliance with the Antidegradation Policy.

- B-2. Representative monitoring is not capable of determining an exceedance or effectiveness of management practices.

**Comment summary:** Sample collection at 15 “representative” surface water locations is not capable of determining if any single discharge is the cause of downstream water quality standard exceedance, stream impairment, or whether agricultural management practices are effective. In order to determine if any single wastewater discharge exceeds water quality standards, it would be necessary to sample that discrete discharge.

**Response:** See response to comment A-3. Also, see staff’s responses to related CSPA comments.

- B-3. Farm discharges upstream would be diluted by other farm discharges before reaching the monitoring site.

**Comment summary:** The third party area has approximately 618,000 acres of cropland under irrigation and 6,000 growers with waste discharges from irrigated lands. One can only conclude that farm discharges may be many miles upstream from a “representative” sampling location and that interlying farm discharges would cause significant dilution to any pollutants discharged.

**Response:** There is no evidence presented that would suggest downstream farm discharges are going to consistently be of higher quality than upstream farm discharges, and, therefore dilute any pollutants before reaching the sampling location. The commenter is referred to the Information Sheet, responses to Comment 4-14, and responses to comments in Exhibit A, and other staff responses to CSPA’s characterization of the representative monitoring approach.

- B-4. Failure to analyze samples for sublethal effects precludes determination of compliance with the Basin Plan Water Quality objective for toxicity.

**Comment summary:** Failure to analyze samples for sublethal effects precludes determination of compliance with the Basin Plan Water Quality objective for toxicity. It is also not possible to conclude that any samples collected were not toxic since sublethal effects were apparently not analyzed.

**Response:** Conducting chronic toxicity testing can provide more information regarding the condition of a water body, but staff does not agree that lack of chronic toxicity testing precludes determination of compliance with toxicity

objective. The Basin Plan discusses evaluation of the toxicity objective, but does not mandate the use of chronic toxicity testing to determine compliance (pages III-8.01, III-9.00, IV-16.00 to IV-18.00). The Tentative Order includes a process for establishing trigger limits to interpret the narrative toxicity objectives consistent with the Basin Plan provisions.

**B-5. Lowest observed hardness should be used for evaluation of metals.**

**Comment summary:** The proposed WDR reports water quality objectives for hardness dependent (sic) metals as being “variable”. For permitting situations, the State Board ruled long ago that variability in limitations for hardness dependent (sic) metals was unacceptable.

**Response:** Board staff believes the commenter is referring to establishing effluent limits for NPDES permits, which is not applicable to an evaluation of a specific sample result relative to the applicable criteria. The metals criteria vary with hardness. Since hardness was analyzed from the same sample as the metals analysis, it is appropriate to evaluate the metals results for the criteria applicable to that hardness value.

**B-6. Statements related to the proposed Order and degradation.**

**Comment summary:** The proposed WDR contains no restriction on degradation of surface waters up to the point of meeting water quality standards. Individual discharges are not regulated under the proposed WDR. It would seem impossible to state that best practicable treatment and control of a discharge is being provided when water quality has, and is, significantly degraded and there is no knowledge of what “treatment or control”, if any, is being provided at any individual farm. It cannot possibly be in the interest of the people of California to have to trade the quality of their water for the interests of agriculture.

**Response:** The commenter’s statement regarding lack of restrictions on degradation up to meeting water quality standards is not correct (see response to comment 4-9). The commenter’s statement indicating individual discharges are not regulated is incorrect. The Order applies to each individual discharger and the discharges from their land. The commenter incorrectly implies that the proposed Order or staff is suggesting that best practicable treatment or control is currently being provided in all instances. The proposed Order requires farming operations to meet the identified farm management performance standards. Those performance standards, in addition to the other planning and implementation requirements of the other, reflect best practicable treatment or control, and the tentative Order proposes an appropriate finding that the Order will result in the implementation of BPTC as applicable. (see response to comment 4-12) . Through the Farm Evaluations, growers will be reporting on the practices they are implementing to comply with the proposed Order. Finally, the proposed Order includes requirements that will lead to improvements in water quality. It is, therefore, not accurate to suggest the proposed Order requires a trade-off between better water quality and the “interests of agriculture”. Staff also believes that the comment suggests a stark separation of interests that does not exist, since the farmers governed by this proposed Order are included in “the people of California” and the people of California rely on farmers governed by this proposed Order to provide a reliable and safe supply of food and fiber.

**Exhibit C – Memo from Bill Jennings to Mike Lozeau**

Staff would like to note that Exhibit C presents opinions from Bill Jennings of CSPA regarding agricultural economics. The Agricultural Economists and other consultants on the cost of agricultural management practices retained by the Board to develop the Economics Report include their credentials demonstrating their expertise in those areas. It is not clear that Mr. Jennings is an agricultural economist or has expertise related to agricultural management practices.

- C-1. **Comment summary:** The commenter contends that there is no information that justifies the conclusion that individual monitoring is an unreasonable financial burden. The cost of individual monitoring for large farms is \$30.94 per acre. The potential costs of management practice implementation is more than 3.7 times the cost of monitoring to determine whether management practices are working or necessary. The Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program is not a comprehensive benefit/cost analysis.

**Response:** As discussed in previous responses (see, e.g. Response to Comment 4-3, and 4-14), the board is not obligated to select the most costly monitoring program available to evaluate compliance; instead monitoring requirements should be reasonable. In response to this Exhibit and comment 4-3, the Information Sheet has been updated to include greater detail regarding the projected cost of directly regulating growers. The commenter provided an estimate of surface water monitoring costs, but ignores other costs that would increase for the grower under an individual discharge monitoring program, including, but not limited to, the cost of preparing a quality assurance project plan, costs associated with individual groundwater monitoring, costs associated with the additional board staff that would be required to administer such a program. In addition, the commenter focused on “large farming and small operations”, but the Tentative Order does not have separate requirements for large and small operations.

Finally, the statement that management practice implementation would be 3.7 times the monitoring costs does not account for the management practice cost being an average cost, while the proposed individual monitoring would be imposed on every grower. Those growers who are already implementing effective practices would have the same level of monitoring as those growers not implementing effective practices. The growers already implementing effective practices would have no additional management practice costs, but would have a large monitoring cost imposed.

The commenter indicates that the economic analysis is not a comprehensive benefit/cost analysis. The board had no statutory obligation, under either CEQA or the Water Code to conduct a comprehensive benefit/cost analysis.