





















27. Pursuant to Public Resources Code section 21167.6(b), Petitioners have elected to prepare the record of proceedings in this matter, and are simultaneously filing their notice of intent to prepare said record of proceedings with this complaint. A true and correct copy of Petitioners' Notice of Intent to Prepare Record is attached hereto as Exhibit B.

**STATEMENT OF FACTS**

28. Discharges from agricultural lands include irrigation return flow; flows from tile drains; and storm water runoff from fields, managed wetlands, nurseries, and water districts that accept agricultural discharges. These discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Many surface water bodies in California are impaired because of pollutants from agricultural sources. Groundwater bodies also have suffered serious pesticide, nitrate, and salt contamination.

**Surface Water Pollution**

29. According to the *Revised Draft of the 2007 Review of Monitoring Data for the Irrigated Lands Conditional Waiver Program*, 12 July 2007, between 2003 and 2007, agricultural coalitions and the U.C. Davis Irrigated Lands Monitoring Project collected data from 313 sites throughout the Central Valley. Coalitions or individual water agencies monitored 148 sites and U.C. Davis monitored the remaining 165 sites. Toxicity to aquatic life was present at 63% of the sites monitored for toxicity (50% were toxic to more than one species). Pesticide water quality standards were exceeded at 54% of sites monitored for pesticides (many for multiple pesticides). One or more metals violated criteria at 66% of the sites monitored for metals. Human health standards for bacteria were violated at 87% of sites monitored for coliform. More than 80% of the locations reported exceedances of general parameters (dissolved oxygen, pH, salt, TSS).

30. Section 303(d) of the Federal Water Pollution Control Act, 33 U.S.C. § 1313(d), requires States to identify all waters that are not achieving water quality standards and protecting beneficial uses. In California, the 303(d) list identifies some 730 pollutant/waterbody combinations in the Central Valley that are impaired. Agriculture is the largest identified source of that impairment responsible for impairing 269 segments covering 1,572 waterway miles plus 96,147 acres of open

1 water. By comparison, urban runoff and municipal point sources have caused or contributed to 55 or  
2 7.5% of impairments.

3 31. Of the 257 impaired segments attributable to unknown sources, the majority are in  
4 agricultural areas. Pollutants common to agricultural activities cause 225 of these impairments. For  
5 example, Spring Creek in Colusa County is identified as impaired by aldicarb, chlorpyrifos, diazinon,  
6 dissolved oxygen, salinity, sediment toxicity and unknown toxicity but sources are unidentified. The  
7 map shows this segment is an agricultural area. Indeed, 64 segments comprising over 1,600 miles  
8 and over 40,000 acres are identified as impaired for unknown toxicity by unknown sources. Most of  
9 these lie in agricultural areas.

10 32. Agricultural pollution causes 37% of all impairments and 57% of impairments where  
11 sources are identified. Subtracting resource extraction (primarily mercury from historic mining  
12 activities that is difficult, if not impossible to control), agriculture is responsible for 80% of  
13 impairments from identified sources that can be reasonably controlled.

14 **Groundwater Pollution**

15 33. Data from the State and Regional Boards, the United States Geological Survey,  
16 California Department of Health, California Department of Pesticide Regulation (“DPR”) and others,  
17 demonstrate that groundwater in the Central Valley has been severely degraded. California  
18 Department of Water Resources (“DWR”) has stated that three-fourths of the impaired groundwater  
19 in California was contaminated by salts, pesticides, and nitrates, primarily from agricultural practices.  
20 Thousands of public drinking water wells have been closed because of pollution. Many of  
21 California’s more than 71,000 agricultural irrigation wells are degraded or polluted. USGS data  
22 collected over a ten-year period in Fresno County showed that some 70% of the wells sampled  
23 exceeded the secondary MCL and agricultural goal for total dissolved solids. Kings County was even  
24 worse, with 87% exceeding criteria. Even the State Board’s own data indicates that more than one  
25 third of the areal extent of groundwater assessed in California is so polluted that it cannot fully  
26 support at least one of its intended uses, and at least 40 percent is either impaired by pollution or  
27 threatened with impairment.

1           34.     Studies show that one potential negative environmental impact of a management  
2 measure that stores polluted water as a means of protecting surface water quality is an acceleration of  
3 the pollutants discharged into groundwater through recharge or existing pathways such as wells.  
4 Nevertheless, the Renewed Waiver fails to address these pollution discharges from irrigated lands.  
5 See Staff Report, p. 115 (“Alternative 1 [the Renewed Waiver] would not implement the iterative  
6 BPTC and monitoring process for addressing degradation to groundwater”).

7           35.     DWR has concluded that water from California’s groundwater basins “has been the  
8 most important single resource contributing to the present development of the state’s economy.”  
9 Between 25% and 40% of California’s water supply comes from groundwater. That figure can rise to  
10 as much as two-thirds during critically dry years. Fifty percent of California’s population depends  
11 upon groundwater for all or part of their drinking water.

12                                 **The Renewed Waiver of Waste Discharge Requirements for**  
13   **Polluted Discharges from Irrigated Lands**

14           36.     Resolution No. R5-2011-0032 renews and extends for two-years a conditional waiver  
15 adopted by the Regional Board in 2006 known as the *Coalition Group Conditional Waiver of Waste*  
16 *Discharge Requirements for Discharges from Irrigated Lands*. The Resolution made some changes  
17 to the 2006 Waivers monitoring provisions but, generally left the provisions of the 2006 waiver  
18 unchanged.

19           37.     The Renewed Waiver conditionally waives waste discharge requirements (“WDRs”)  
20 and reports of waste discharge for discharges of waste from irrigated lands to surface waters within  
21 the Central Valley Region.

22           38.     The Renewed Waiver relies upon the creation of voluntary organizations dubbed  
23 “Coalition Groups” comprised of irrigated lands dischargers and other interested entities. Rather than  
24 regulating the dischargers directly through a general waiver or WDRs, the Regional Board opted to  
25 recognize and establish requirements for the coalitions. The coalitions themselves are not  
26 dischargers. A Coalition Group can be any group of dischargers, participants, and/or organizations  
27 that form to comply with the Conditional Waiver. Coalition Groups can be organized on a  
28 geographic basis or can be groups with other factors in common such as commodity groups. Most

1 appear to be set up as informal associations, rather than as non-profit corporations or governmental  
2 entities. The Coalition Groups are not responsible for enforcing the Water Code.

3 39. Under the Renewed Waiver, individual dischargers may enroll their facility in a  
4 Coalition in order for their discharges to be covered by the Waiver. Dischargers may comply with  
5 the Water Code by participating in a Coalition Group, by filing for coverage under the Individual  
6 Discharger Conditional Waiver, by filing a RWD to obtain individual or general WDRs, or by  
7 ceasing to discharge.

8 40. Coalition Groups wishing to operate pursuant to the Renewed Waiver must file a  
9 Notice of Intent (“NOI”) with the Regional Board. The NOI is required to include, among other  
10 things, an electronic list of landowners and/or operators of irrigated lands that discharge waste to  
11 waters of the State, who are knowingly participating in the Coalition Group. In addition to the  
12 owners and operators’ names, the list must identify the parcel number and size and mailing address.

13 41. Once an NOI is submitted, the Coalition Groups then submit a General Report. The  
14 General Report must identify the lead agencies and/or organizations that will develop a watershed or  
15 sub-watershed program, the key contact(s), a description of the watershed, a commitment to work  
16 with the Water Board to satisfy the conditions of the Waiver, and funding mechanisms. The General  
17 Report also must provide a detailed map of the area included within the Coalition Group identifying  
18 individual parcels and/or districts participating in the Coalition Group.

19 42. Once the NOI is approved by the Regional Board’s Executive Officer, the Executive  
20 Officer issues a Notice of Applicability (“NOA”) extending coverage to the Coalition Group under  
21 the Conditional Waiver.

22 43. Upon receipt of an NOA, a Coalition Group must submit and implement a Monitoring  
23 and Reporting Program (“MRP”) Plan as specified in Coalition Group MRP Order No. R5-2005-  
24 0833, as amended. The purposes of the MRP Plan include, but are not limited to, the following: 1) to  
25 determine whether the discharge of waste from irrigated lands within the Coalition Group boundaries  
26 causes or contributes to exceedances of applicable water quality standards or causes nuisance; 2) to  
27 provide information about the Coalition Group area characteristics, including but not limited to, land  
28 use, crops grown, and chemicals used; 3) to monitor the effectiveness of management practices

1 implemented to address exceedances of applicable water quality standards; 4) to determine which  
2 management practices are most effective in reducing wastes discharged to surface waters from  
3 irrigated lands, 5) to specify details about monitoring periods, parameters, protocols, and quality  
4 assurance, 6) to support the development and implementation of the Conditional Waiver, 7) to verify  
5 the adequacy and effectiveness of the Conditional Waiver's conditions, and 8) to evaluate the  
6 Coalition Group's compliance with the terms and conditions of the Conditional Waiver.

7 44. Although one of the purported purposes of the MRP Plan is to monitor the  
8 effectiveness of management practices, the Renewed Waiver does not require a MRP Plan to identify  
9 any specific discharger's management practices or their specific location. The Renewed Waiver does  
10 not require any direct monitoring of the effectiveness of any management practice. The only  
11 monitoring required and included in a MRP Plan as of the date the Regional Board issued the  
12 Renewed Waiver were of downstream locations unfocused on any specific discharger.

13 45. When a Coalition Group or dischargers determine, based on their ambient monitoring  
14 programs, that a discharge is causing or contributing to an exceedance of an applicable water quality  
15 standard, the Coalition Group or Discharger shall promptly notify the Central Valley Water Board in  
16 writing. Upon the subsequent written notice of the Executive Officer, the Coalition Group must  
17 submit a "Management Plan" to the Regional Board. A Management Plan also must be submitted  
18 when there has been more than one exceedance of a water quality standard in three years, unless the  
19 Executive Officer determines that the exceedance is not likely to be remedied or addressed by a  
20 Management Plan.

21 46. The Management Plan is required to evaluate the effectiveness of existing  
22 management practices in achieving applicable water quality standards, identify additional  
23 management practices or education outreach that the Coalition Group and/or its Participants propose  
24 to implement to achieve applicable water quality standards, and identify how the effectiveness of  
25 those additional actions will be evaluated. The Management Plan must include a waste specific  
26 monitoring plan and a schedule to implement additional management practices to achieve applicable  
27 water quality standards.  
28

1           47.     Several Management Plans were prepared prior to the Regional Board's issuance of  
2 the Renewed Waiver. Despite the feasibility of Coalition Groups and dischargers to identify the type,  
3 location and effectiveness of management practices, no such information was gathered by the  
4 Regional Board or otherwise submitted to the administrative record for the Renewed Waiver.

5           48.     Each approved Coalition Group had to submit an electronic map showing both  
6 participants and non-participants, including their (a) assessor parcel number; (b) parcel size; (c)  
7 parcel owner or operator name; (d) parcel owner or operator mailing address, and (e) whether the  
8 owner or operator of the parcel is knowingly participating in the Coalition Group.

9           49.     The Renewed Waiver generally requires that dischargers who are participating in a  
10 Coalition Group shall implement management practices, as necessary, to achieve best practicable  
11 treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that  
12 will achieve compliance with applicable water quality standards, protect the beneficial uses of waters  
13 of the state, and prevent nuisance. However, in issuing the Renewed Waiver, the Regional Board did  
14 not review individual dischargers' management practices. Nor does the Renewed Waiver provide  
15 any mechanism for the Regional Board to identify individual dischargers' management practices and  
16 determine whether such measures achieved the best practicable treatment or control at the time the  
17 Renewed Waiver was issued.

18           50.     The Renewed Waiver generally prohibits dischargers who are participating in a  
19 Coalition Group from discharging any waste not specifically regulated by the Conditional Waiver,  
20 causing new discharges of wastes from irrigated lands that impair surface water quality, or increasing  
21 discharges of waste or add new wastes that impair surface water quality not previously discharged by  
22 the discharger. However, the administrative record for the Renewed Waiver does not include any  
23 evidence of the pollutants that individual dischargers currently are discharging. The Renewed  
24 Waiver does not require an individual discharger to sample or disclose the pollutants they have  
25 discharged or will discharge.

26           51.     The Renewed Waiver generally requires that Dischargers shall not cause or contribute  
27 to an exceedance of any applicable water quality standard. However, the administrative record for  
28 the Renewed Waiver does not include any evidence of the levels of any pollutants that individual

1 dischargers currently are discharging. The Renewed Waiver does not require an individual  
2 discharger to sample and analyze the pollutants they discharge.

3         52. The various Coalition Groups do not have any enforcement authority over discharges.  
4 Individual dischargers do not have to allow any Coalition Group representative to inspect their  
5 property. An individual discharger is not required to report any management practices to a Coalition  
6 Group. Individual dischargers often do not report changes to their management practices to a  
7 Coalition group. An individual discharger need not conduct any sampling. An individual discharger  
8 need not allow a Coalition Group representative to take a sample of a waste discharge from its  
9 property. A Coalition Group cannot mandate that an individual discharger implement or install any  
10 specific management practice. A Coalition Group does not have the authority to approve the  
11 sufficiency of an individual discharger's management practices to achieve water quality standards. A  
12 Coalition Group may only recommend management practices. Individual dischargers that are  
13 members of a Coalition implement management practices on a voluntary basis.

14         53. For individual dischargers that choose not to join a Coalition Group, the Regional  
15 Board has determined that individual farm reports describing the management practices and farm-  
16 specific monitoring are necessary to implement the Water Code. A non-Coalition discharger must  
17 submit a Farm Evaluation Report to the Regional Board. The Farm Evaluation Report shall include:  
18 1. The discharger's name, address and phone number (owner and/or operator); 2. Map(s) of irrigated  
19 lands generating the discharge to surface waters, including points of discharge (surface or subsurface  
20 discharges); 3. Crops commonly grown; 4. Chemicals (pesticides, fertilizers, etc.) commonly  
21 applied in a manner that may result in the material coming in contact with irrigation water or storm  
22 water; 5. Management practices utilized for reducing or eliminating adverse discharges of  
23 constituents of concern; 6. Identification of water bodies receiving the discharge(s); and 7.  
24 Description of any subsurface drainage collection system.

25         54. A non-Coalition discharger also must submit a Monitoring and Reporting Program  
26 ("MRP") Plan including 1. a summary of the water quality historical data for the farm; 2. Monitoring  
27 site(s); 3. Land Use description; 4. Monitoring periods and start date of monitoring program; 5.  
28 Monitoring parameters, including minimum and site specific; 6. A Quality Assurance Project Plan



1 (“QAPP”); 7. Documentation of monitoring protocols including sample collection methods and  
2 laboratory quality assurance manual; and, 8. Management Practice monitoring elements to determine  
3 effectiveness in meeting the conditions of the Waiver. A non-Coalition discharger also must submit  
4 an annual report.

## 5 LEGAL BACKGROUND

### 6 California Environmental Quality Act

7 55. CEQA requires that an agency analyze the potential environmental impacts of its  
8 proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances).  
9 See, e.g., Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD*  
10 (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the  
11 Legislature intended the act to be read so as to afford the fullest possible protection to the  
12 environment within the reasonable scope of the statutory language.” *Communities for a Better*  
13 *Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

14 56. CEQA requires that a lead agency prepare and certify an EIR for any discretionary  
15 project that may have a significant adverse effect on the environment. Pub. Res. Code §§ 21002.1(a),  
16 21100(a), 21151(a); 14 Cal. Code Regs. (“CEQA Guidelines”) §§ 15064(a)(1), (f)(1), 15367 (“lead  
17 agency” is the “public agency which has the principal responsibility for carrying out or approving a  
18 project”).

19 57. CEQA has two primary purposes. First, CEQA is designed to inform decision makers  
20 and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs.  
21 § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental  
22 consequences of their decisions before they are made. Thus, the EIR ‘protects not only the  
23 environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors*  
24 (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose  
25 purpose it is to alert the public and its responsible officials to environmental changes before they  
26 have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port*  
27 *Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32  
28 Cal.App.3d 795, 810.

1           58.     Second, CEQA requires public agencies to avoid or reduce environmental damage  
2 when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation  
3 measures. CEQA Guidelines § 15002(a)(2) and (3); *See also Berkeley Jets*, 91 Cal.App.4th 1344,  
4 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564. The EIR serves to provide agencies and the public  
5 with information about the environmental impacts of a proposed project and to “identify ways that  
6 environmental damage can be avoided or significantly reduced.” Guidelines §15002(a)(2). If the  
7 project will have a significant effect on the environment, the agency may approve the project only if  
8 it finds that it has “eliminated or substantially lessened all significant effects on the environment  
9 where feasible” and that any unavoidable significant effects on the environment are “acceptable due  
10 to overriding concerns.” Pub.Res.Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

11           59.     “An accurate, stable and finite project description is the *sine qua non* of an informative  
12 and legally adequate EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192;  
13 *Berkeley Jets*, 91 Cal.App.4th at 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.  
14 App. 3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App.  
15 4th 182, 201. “[A] curtailed or distorted project description,” on the other hand, “may stultify the  
16 objectives of the reporting process. Only through an accurate view of the project may affected  
17 outsiders and public decision-makers balance the proposal’s benefit against its environmental costs,  
18 consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the “no project”  
19 alternative) and weigh other alternatives in the balance.” *Id.* *See also*, CEQA § 15124; *City of*  
20 *Santee v. County of San Diego*, 263 Cal.Rptr 340 (1989).

21           60.     CEQA requires that an EIR consider a no project alternative. CEQA Guidelines §  
22 15126.6(e)(1) (“The specific alternative of ‘no project’ shall also be evaluated along with its  
23 impact”). “The purpose of describing and analyzing a no project alternative is to allow  
24 decisionmakers to compare the impacts of approving the proposed project with the impacts of not  
25 approving the proposed project.” *Id.* “The ‘no project’ analysis shall discuss the existing conditions  
26 at the time the notice of preparation is published, or if no notice of preparation is published, at the  
27 time environmental analysis is commenced, as well as what would be reasonably expected to occur in  
28 the foreseeable future if the project were not approved, based on current plans and consistent with

1 available infrastructure and community services.” CEQA Guidelines § 15126.6(e)(2). “The [no  
2 project] description must be straightforward and intelligible, assisting the decision maker and the  
3 public in ascertaining the environmental consequences of doing nothing; requiring the reader to  
4 painstakingly ferret out the information from the reports is not enough.” *Planning & Conservation*  
5 *league v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892, 911.

6 **Porter-Cologne Water Quality Control Act**

7 61. Porter-Cologne has the explicit goal to protect all California waters for use and  
8 enjoyment by the people of the State. Porter-Cologne maintains “that activities and factors which  
9 may affect the quality of the waters of the state shall be regulated to attain the highest water quality  
10 which is reasonable ....” Water Code § 13000.

11 62. The highest level of water quality that is reasonable within the Central Valley is set  
12 forth in the Basin Plan. Pursuant to Porter-Cologne, the Regional Boards must develop basin plans to  
13 “ensure the reasonable protection of beneficial uses” of waters and setting forth “water quality  
14 conditions that could reasonably be achieved....” Water Code § 13241. The beneficial uses of  
15 Central Valley waters that must be protected include, but are not limited to, drinking water use,  
16 recreational use, and aquatic habitat use. Among other water quality objectives necessary to protect  
17 these uses, the Basin Plan prohibits “toxic substances in concentrations that produce detrimental  
18 physiologic responses in human, plant, animal, or aquatic life.” Basin Plan, p. III-8.aa.

19 63. Porter-Cologne authorizes Respondent to issue permits, or waste discharge  
20 requirements (“WDRs”), for any discharge to the state’s waters by prescribing requirements to meet  
21 water quality objectives in order to protect the beneficial uses of those waters. Water Code §  
22 13263(a).

23 64. The Regional Board may only waive reports of waste discharge (“RWDs”) and/or  
24 WDRs if the agency determines, after a hearing, that “the waiver is consistent with any applicable  
25 state or regional water quality control plan and is in the public interest.” Water Code § 13269(a).

26 65. Respondent's waiver authority is limited to waiving only two requirements: the filing  
27 of RWDs and the issuance of WDRs. Water Code section 13269 does not authorize Respondents to  
28

1 waive compliance with any water quality objectives and policies or the state and federal anti-  
2 degradation policies.

3 **Anti-degradation Policy**

4 66. Pursuant to California’s anti-degradation policy, as set forth in State Board Resolution  
5 No. 68-16 and as adopted in the Basin Plan, the state is required to maintain existing high quality  
6 water conditions. Existing high quality waters include all waters that were of higher quality than  
7 applicable water quality objectives as of October 28, 1968. Respondent’s actions must ensure the  
8 maintenance of water quality from water found upstream or up-gradient of the discharge, unaffected  
9 by other discharges. State Board Resolution No. 68-16 provides: “ ... existing high quality will be  
10 maintained until it has been demonstrated to the State that any change will be consistent with  
11 maximum benefit to the people of the State, will not unreasonably affect present and anticipated  
12 beneficial use of such water and will not result in water quality less than that prescribed in the  
13 policies.”

14 67. Resolution No. 68-16 requires specific steps to protect high quality waters, including  
15 mandating the use of WDRs through specified technology-based effluent limitations. Resolution No.  
16 68-16, ¶ 2. The Antidegradation Policy provides, in relevant part, that:

17 Any activity which produces or may produce a waste or increased volume or  
18 concentration of waste and which discharges or proposes to discharge to existing high  
19 quality waters will be required to meet waste discharge requirements which will result  
20 in the best practicable treatment or control [“BPTC”] of the discharge necessary to  
21 assure that (a) a pollution or nuisance will not occur and (b) the highest water quality  
22 consistent with maximum benefit to the people of the State will be maintained.

21 Resolution No. 68-16 (Oct. 28, 1968).

22 68. “In determining BPTC, the discharger should compare the proposed method to  
23 existing proven technology; evaluate performance data (through treatability studies), compare  
24 alternative methods of treatment or control, and consider the method currently used by the discharger  
25 or similarly situated dischargers.” *See* Irrigated Lands Regulatory Program Long-Term Program  
26 Development Staff Report (July 2010) (“Staff Report”), p. 62 (citing SWRCB Order Nos. WQ 81-5,  
27 WQ 82-5, WQ 90-6, and WQ 2000-07).



1 quantifiable milestones designed to measure progress toward reaching the specified requirements.”  
2 NPS Policy, p. 13. However, the Regional Board has no authority to include schedules of  
3 compliance in either WDRs or conditional waivers because the Central Valley Basin Plan does not  
4 include any such authority in its program to achieve the applicable water quality standards. *See*  
5 Water Code § 13242(b) (program to achieve standards must include “[a] time schedule for actions to  
6 be taken” – if no time schedule provided in Basin Plan, no authority); Basin Plan, p. IV-16  
7 (compliance schedules only authorized for NPDES permits). The Board’s authority is limited to  
8 adopting time schedules through enforcement orders.

9 75. Key element 4 requires that “[a]n NPS pollution control implementation program must  
10 include sufficient feedback mechanisms so that the Regional Water Board, dischargers, and the  
11 public can determine whether the program is achieving its stated purpose, or whether additional or  
12 different management practices or other actions are required.” NPS Policy, p. 13. “In all cases the  
13 NPS control implementation program should describe the measures, protocols, and associated  
14 frequencies that will be used to verify the degree to which the MPs are being properly implemented  
15 and are achieving the program’s objectives, and/or to provide feedback for use in adaptive  
16 management.” *Id.* “[I]f the program relies upon dischargers’ use of MPs, there should be a strong  
17 correlation between the specific MPs implemented and the relevant water quality requirements.” *Id.*,  
18 p. 12.

19 76. Key element 5 requires that “[t]he Regional Water Board must make clear, in advance,  
20 the potential consequences for failure to achieve a nonpoint-source pollution control implementation  
21 program’s stated objectives.”

### 22 **Procedural Background, Environmental Review, and Approval**

23 77. The irrigated lands regulatory program was initiated on January 1, 2003 with the  
24 Regional Board’s December 5, 2002 adoption of the Conditional Waiver of Waste Discharge  
25 Requirements for Discharges from Irrigated Lands within the Central Valley Region (“Conditional  
26 Waiver”).

27 78. On February 19, 2003, the Regional Board issued a notice of preparation of an  
28 environmental impact report addressing its agricultural waste discharge program. The notice

1 contemplated issuance of a draft EIR by June 1, 2004 and completion of an EIR by February 2005.  
2 Petitioners submitted comments on the scope of the contemplated EIR.

3 79. On July 10, 2003, the Regional Board adopted an order that rescinded its previous  
4 decisions in December 2002 adopting the Waiver. On July 11, 2003, the Regional Board issued a  
5 revised Waiver.

6 80. A revised Conditional Waiver was adopted in July 2006.

7 81. On May 26, 2006, CSPA submitted written comments on the Draft Central Valley  
8 Existing Conditions Report, released in February 2006 and finalized in December 2008.

9 82. In 2007, CSPA and Baykeeper filed a petition for writ of mandate challenging the  
10 2006 Waivers and Regional Board's adoption of a Negative Declaration. The parties entered into a  
11 stipulated judgment requiring Regional Board staff to present the final PEIR to the Regional Board  
12 for certification by April 8, 2011.

13 83. On May 30, 2008 CSPA submitted scoping comments on the Long-term Irrigated  
14 Lands Regulatory Program and Associated Programmatic Environmental Impact Report.

15 84. A Notice of Availability of the Draft EIR was circulated for a 60-day public review  
16 and comment period from July 28, 2010 until September 27, 2010.

17 85. On September 27, 2010, Petitioners submitted extensive written comments to the  
18 Regional Board identifying numerous deficiencies in the Draft EIR's analysis of alternatives,  
19 significant impacts, and cumulative impacts, among other issues. The comments were prepared with  
20 the assistance of expert economists and expert soil and water quality consultants, and identified  
21 widespread surface water pollution and toxicity from pollution and pesticide discharges from  
22 irrigated lands.

23 86. On March 21, 2011, Petitioners submitted written comments on Regional Board  
24 Staff's Recommended Irrigated Lands Regulatory Program Framework ("ILRP Framework"), which  
25 proposed to weaken existing ILRP regulations of dischargers. Petitioners' comments identified  
26 minimum changes to the existing irrigated lands program necessary for the Regional Board to comply  
27 with the State's Antidegradation Policy (SWRCB Resolution No. 68-16), the State's Nonpoint  
28



1 Source Policy, and the Regional Board's mandate to implement regulatory programs that comply  
2 with the applicable water quality objectives.

3 87. The Final PEIR was released in March 2011. The Final PEIR failed to adequately  
4 respond to public comments on the Draft EIR, including those of Petitioners, and failed to correct the  
5 deficiencies identified in those comments.

6 88. On April 7, 2011, the Regional Board held a public hearing and adopted Resolution  
7 No. R5-2011-0017 approving the Final PEIR. Petitioners submitted written and oral comments at the  
8 April 7, 2011 hearing opposing the adoption and certification of the PEIR.

9 89. At the April 2011 meeting, the Board also directed Staff to develop Orders to address  
10 discharges from irrigated lands to groundwater and surface water. Staff determined that completing  
11 this process will take up to two years. In the interim, because the existing Waiver would expire on  
12 June 30, 2011, the Board determined that the Waiver must be renewed.

13 90. On June 9 and 10, 2011, the Regional Board held a hearing on the Renewed Waiver,  
14 and proposed its adoption, relying on the recently certified PEIR to evaluate Project impacts.  
15 Petitioners submitted written comments explaining that the Regional Board could not rely upon the  
16 PEIR to comply with CEQA for the proposed Waiver renewal because the PEIR is legally and  
17 factually deficient. The comments identified, inter alia, the following PEIR deficiencies:

- 18 a. the PEIR fails to include a stable project description - indeed, no proposed project is  
19 included;
- 20 b. the defined objectives are inadequate;
- 21 c. the PEIR fails to identify the superior alternative;
- 22 d. the PEIR does not provide meaningful comparative analysis of the selected  
23 alternatives because the assumption that all five alternatives would be equally  
24 effective at implementing BPTC and achieving standards is unsupported by any  
25 evidence;
- 26 e. the PEIR's range of alternatives is inadequate because the Regional Board may not  
27 approve four out of five of the proffered alternatives because they would conflict with  
28 other laws, i.e. Porter-Cologne;



- 1 f. the PEIR fails to consider a reasonable range of alternatives because most of the  
2 alternatives are weighted down with components that render them ineffective;
- 3 g. the PEIR overlooks a number of important significant impacts, including impacts to  
4 recreation and aesthetics; cultural impacts re: traditional uses of salmon or other fish;  
5 the public health impacts of authorizing continued discharges of pesticides and other  
6 pollutants from irrigated lands' effluent to groundwater, and; the environmental  
7 impacts of authorizing continued discharges of metals to surface and groundwater.
- 8 h. the PEIR's analysis of many key potential impacts and the alternatives' proposed  
9 mitigations are not supported by substantial evidence including the analysis of impacts  
10 to water quality and fisheries are flawed because there is no evidentiary support for the  
11 assumption that mitigation measures proposed by each alternative would be equally  
12 effective at addressing those impacts;
- 13 i. the PEIR fails to discuss numerous cumulative impacts to water quality and fisheries  
14 habitat currently plaguing the Delta and other areas of the Central Valley;
- 15 j. the PEIR's discussion of possible agricultural impacts is inadequate because it relies  
16 on a flawed economic analysis. The economic analysis relied upon by the PEIR and  
17 staff report is substantially deficient and biased toward the least effective and  
18 coalition-preferred alternatives.

19 91. In addition to identifying Petitioners' concerns with the validity of the PEIR,  
20 Petitioners also provided extensive comments that the Renewed Waiver is not supported by evidence  
21 and inconsistent with State and Federal antidegradation policies, the NPS Policy, and Water Code  
22 Section 13269.

23 92. At the conclusion of the June 10, 2011 meeting, the Regional Board voted to adopt  
24 Resolution No. R5-2011-0032 approving the Renewed Waiver, in reliance on the Final PEIR.

25 93. Pursuant to Public Resources Code § 21152, on June 15, 2011, the Regional Board  
26 filed a notice of determination with the Office of Planning and Research.

27 94. On July 8, 2011, Petitioners filed a petition with the State Board seeking review of  
28 Resolution No. R5-2011-0017 and Resolution No. R5-2011-0032. On August 1, 2011, the State

1 Board provided notice that the petition for review was complete. The State Board's August 1, 2011  
2 notice also required the Regional Board to provide the administrative record of its decision to the  
3 State Board within 30-days. At the request of the Regional Board, the State Board extended the  
4 deadline for the Regional Board to submit the administrative record until September 14, 2011. The  
5 Regional Board submitted a complete administrative record to the State Board on or about September  
6 14, 2011. The administrative record was submitted electronically on two compact disks.

7 95. On April 26, 2012, the State Board dismissed the petition for review.

8 96. On May 18, 2012, Petitioners, Real Parties and the Regional Board entered into a  
9 tolling agreement. The tolling agreement effectively extends the deadline for Petitioners to file a  
10 petition for writ of mandate challenging Resolution No. R5-2011-0017 and Resolution No. R5-2011-  
11 0032 until approximately November of 2012.

12 97. Petitioners, other agencies, interested groups, and individuals participated in the  
13 administrative proceedings leading up to Respondent's approval of the Project and certification of the  
14 PEIR, either by participating in hearings thereon or by submitting letters commenting on  
15 Respondent's Notice of Preparation, Draft PEIR, Final PEIR, or proposed Renewed Waiver Project.  
16 Petitioners attempted to persuade Respondent that its environmental review and approvals did not  
17 comply with the requirements of CEQA and Porter-Cologne, to no avail. Respondent's approval of  
18 the Project and certification of the PEIR is not subject to further administrative review by Respondent  
19 and the State Board. Petitioner has availed itself of all available administrative remedies for  
20 Respondent's violations of Porter-Cologne and CEQA.

21 98. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law  
22 within the meaning of Code of Civil Procedure § 1086, in that Respondents' approval of the Project  
23 and associated PEIR is not otherwise reviewable in a manner that provides an adequate remedy.  
24 Accordingly, Petitioners seek this Court's review of Respondent's approval of the Renewed Waiver  
25 and certification of the PEIR, to rectify the violations of CEQA and Porter-Cologne.

26 99. Unless enjoined, Respondents will implement the Renewed Waiver despite their lack  
27 of compliance with CEQA and Porter-Cologne. Petitioners will suffer irreparable harm by  
28 Respondent's failure to take the required steps to protect the environment. Declaratory relief is

1 appropriate under Code of Civil Procedure § 1060, injunctive relief is appropriate under Water Code  
2 § 13361(c) or Code of Civil Procedure § 525 *et seq.* and a writ of mandate is appropriate under Code  
3 of Civil Procedure § 1085 *et seq.* and 1094.5 *et seq.* and under Public Resources Code § 21168.9, to  
4 prevent irreparable harm to the environment. Under Water Code § 13361(c), injunctive relief may be  
5 ordered by the Court without alleging or proving any irreparable harm or that the remedy at law is  
6 inadequate.

7 100. Under Porter-Cologne, pursuant to § 13330(d), in its review of findings in a Regional  
8 or State Board order, “the Court shall exercise its independent judgment on the evidence.”  
9 Section 1094.5(c) of the CCP provides that in cases such as under Porter-Cologne “in which the  
10 Court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion  
11 is established if the Court determines that the findings are not supported by the weight of the  
12 evidence.”

13 101. For cases under CEQA, abuse of discretion is established if the agency has not  
14 proceeded in a manner required by law or if the determination or decision is not supported by  
15 substantial evidence. Public Resources Code § § 21168.5. Substantial evidence is defined as  
16 “enough relevant information and reasonable inferences from this information that a fair argument  
17 can be made to support a conclusion, even though other conclusions might also be reached.” 14 CCR  
18 § 15384(a). Substantial evidence includes facts, reasonable assumptions predicated on facts, and  
19 expert opinion supported by facts; however, it does not include argument, speculation, or  
20 unsubstantiated opinion or narrative. §§ 21080(e), 21082.2(c).

21 102. Respondents are threatening to proceed with implementation of the Renewed Waiver  
22 in the near future, including permitting existing dischargers to continue agricultural operations  
23 subject to the deficient requirements of the existing Waiver. Implementation of the Project will  
24 irreparably harm the environment in that dischargers will commence and/or continue to release  
25 pollution and pesticides into waters of the State without sufficient management practices in place,  
26 resulting in aesthetic, biological resource, water quality, cultural, and other environmental impacts to  
27 Petitioners and their members. A temporary restraining order and preliminary and permanent  
28

1 injunctions should issue restraining Respondents from proceeding with the Project relying upon the  
2 PEIR.

3 **FIRST CAUSE OF ACTION**  
4 **(Violations of CEQA; PEIR Does Not Comply With CEQA)**

5 103. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
6 forth herein.

7 104. CEQA requires the lead agency for a project to prepare an EIR that complies with the  
8 requirements of the statute. The lead agency also must provide for public review and comment on  
9 the project and associated environmental documentation. An EIR must provide an adequate project  
10 description and sufficient environmental analysis such that decision-makers can intelligently consider  
11 environmental consequences when acting on proposed projects.

12 105. Respondent violated CEQA by certifying a PEIR that is inadequate and fails to  
13 comply with CEQA, and by approving the Renewed Waiver in reliance on a deficient EIR. Among  
14 other things, Respondent:

- 15 a. Failed to provide an adequate, stable and consistent description of the Project –  
16 indeed, no proposed project is included in the PEIR;
- 17 b. Failed to adequately define the Project’s objectives;
- 18 c. Failed to identify the environmentally superior alternative;
- 19 d. Failed to provide meaningful comparative analysis of the selected Project alternatives  
20 because the PEIR’s assumption that all five alternatives would be equally effective at  
21 implementing best practicable treatment or control (“BPTC”) and achieving water  
22 quality standards was unsupported by substantial evidence;
- 23 e. Failed to provide an adequate range of alternatives because four out of five of the  
24 preferred alternatives in the PEIR conflict with other laws, including the Porter-  
25 Cologne Water Quality Control Act, Water Code § 13000 et seq.;
- 26 f. Failed to consider a reasonable range of alternatives because most of the alternatives  
27 are weighted down with components that render them ineffective;
- 28 g. Overlooked a number of important significant environmental impacts, including  
impacts to recreation and aesthetics; cultural impacts regarding traditional uses of

1 salmon or other fish, the public health impacts of authorizing continued discharges of  
2 pesticides and other pollutants from irrigated lands' effluent to groundwater, and; the  
3 environmental impacts of authorizing continued discharges of metals to surface and  
4 groundwater.

- 5 h. Failed to support the analysis of many key potential impacts and the alternatives'  
6 proposed mitigations with substantial evidence. For example, the PEIR's analysis of  
7 impacts to water quality and fisheries are flawed because there is no evidentiary  
8 support for the assumption that mitigation measures proposed by each alternative  
9 would be equally effective at addressing those impacts;
- 10 i. Failed to discuss numerous cumulative impacts to water quality and fisheries habitat  
11 currently plaguing the Delta and other areas of the Central Valley; and
- 12 j. Failed to provide an adequate discussion of possible agricultural impacts because the  
13 PEIR relies on a flawed economic analysis. The economic analysis relied upon by the  
14 PEIR and staff report is substantially deficient and biased toward the least effective  
15 and coalition preferred alternatives.

16 106. As a result of the foregoing defects, Respondent prejudicially abused its discretion by  
17 certifying an EIR that does not comply with CEQA and by approving the Renewal Project in reliance  
18 thereon. Accordingly, Respondent's certification of the EIR and approval of the Project must be set  
19 aside.

20 **SECOND CAUSE OF ACTION**  
21 **(Violations of CEQA; Inadequate Findings)**

22 107. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
23 forth herein.

24 108. CEQA requires that a lead agency's findings for the approval of a project be supported  
25 by substantial evidence in the administrative record. CEQA further requires that a lead agency  
26 provide an explanation of how evidence in the record supports the conclusions it has reached.

27 109. Respondent violated CEQA by adopting findings that are inadequate as a matter of  
28 law in that they are not supported by substantial evidence in the record, including, but not limited to,  
the following:



1 not know and will not know whether any measures installed by any discharger are BPTC. Numerous  
2 expert commenters submitted testimony to the administrative record confirming that it is not feasible  
3 for the Regional Board or any other person to determine based on ambient downstream monitoring  
4 whether upstream dischargers have installed BPTC levels of treatment. *See* April 7, 2011  
5 presentations of former Regional Board staff Jo Anne Kipps, Richard McHenry and Steven Bond;  
6 Comments of Matt Hagemann, P.G. (Sept. 27, 2010), attached hereto under Exhibit 1; Comments of  
7 G. Fred Lee, Ph.D., *et al.* (Sept. 25, 2010); Comments of Steven Bond, P.G., C.E.G., C.H.G. (Sept.  
8 27, 2010). The Regional Board does not explain how regional monitoring would suffice to determine  
9 whether upstream measures are BPTC or the presence and extent of upstream degradation. *See* Staff  
10 Report, p. 116.

11 115. By renewing the Waiver, the Regional Board continues its failure to apply Resolution  
12 No. 68-16 to tens of thousands of dischargers of toxic and other pollutants that are impairing vast  
13 swaths of the State's inland waters. Rather than comply with Resolution No. 68-16, the Renewed  
14 Waiver amounts to a Valley-wide license to degrade water. The Regional Board's determination that  
15 the Renewed Waiver is consistent with Resolution No. 68-16 is not supported by the weight of the  
16 evidence. The Regional Board's failure to implement Resolution No. 68-16 in issuing the Renewed  
17 Waiver is contrary to law by violating its duties under both Water Code § 13146 and § 13247.

18 **FOURTH CAUSE OF ACTION**  
19 **(Porter Cologne – Inconsistent with Nonpoint Source Policy)**

20 116. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
21 forth herein.

22 117. The Regional Board shall comply with state policy for water quality. Water Code §§  
23 13146, 13247.

24 118. The Regional Board's finding that the Renewed Waiver complies with the NPS Policy  
25 is not supported by the weight of the evidence. The Regional Board's administrative record does not  
26 contain any evidence that the Renewed Waiver is consistent with all five key elements of the NPS  
27 Policy.

28 119. The Regional Board failed to demonstrate with the weight of the evidence that the  
Renewed Waiver is consistent with Key element 1 of the NPS Policy. The weight of the evidence

1 does not demonstrate that the Renewed Waiver addresses irrigated lands discharges in a manner that  
2 achieves and maintains water quality objectives and beneficial uses and complies with the  
3 Antidegradation Policy.

4 120. The Regional Board failed to demonstrate with the weight of the evidence that the  
5 Renewed Waiver is consistent with Key element 2 of the NPS Policy. The Renewed Waiver does not  
6 include a description of the management practices and other program elements that are expected to be  
7 implemented to ensure attainment of the implementation program's stated purpose, the process to be  
8 used to select or develop management practices, and the process to be used to ensure and verify  
9 proper management practice implementation. The weight of the evidence is insufficient for the  
10 Regional Board to make a determination that there is a high likelihood the identified management  
11 practices will be successful. There is no evidence for the Regional Board to show that management  
12 practices are tailored to specific irrigated farms. Nor is there any evidence that management practices  
13 being implemented, or to be implemented have been successfully implemented in comparable  
14 circumstances. No dischargers have provided any evidence to the Regional Board documenting the  
15 efficacy of any management practices implemented by specific dischargers.

16 121. Although acknowledging by its terms that irrigated lands dischargers would not  
17 achieve water quality objectives in the foreseeable future, the Regional Board failed to include  
18 specific time schedules for compliance with the objectives in the Renewed Waiver as required by  
19 Key element 3 of the NPS Policy. The Renewed Waiver makes no effort to establish a specific time  
20 schedule for irrigated lands dischargers to come into compliance with applicable water quality  
21 objectives. The Renewed Waiver also does not include any quantifiable milestones to implement  
22 any reasonable schedule of compliance.

23 122. The Regional Board failed to demonstrate with the weight of the evidence that the  
24 Renewed Waiver is consistent with Key element 4 of the NPS Policy requiring sufficient feedback  
25 mechanisms so that the Regional Board, dischargers, and the public can determine whether the  
26 program is achieving its stated purpose, or whether additional or different management practices or  
27 other actions are required. Because the Renewed Waiver does not generally require identifying and  
28 monitoring specific management practices on specific irrigated lands, the Renewed Waiver does not



1 describe the management practices that are being used. Likewise, neither the Renewed Waiver nor  
2 the weight of the evidence describes a “strong correlation” between the management practices and  
3 achieving water quality standards. There is no evidence that the Regional Board, a discharger or the  
4 public can determine that a management practice is effective without reports from the discharger that  
5 the management practice has been properly implemented and monitoring to confirm the management  
6 practice has reduced pollution.

7 123. Because the Renewed Waiver continues to rely on non-discharger coalitions, and does  
8 not require individual dischargers to report on or monitor their individual management practices, the  
9 Regional Board failed to demonstrate with the weight of the evidence that the Renewed Waiver is  
10 consistent with Key element 5 of the NPS Policy. Rather than make clear in advance the potential  
11 consequences of an entire geographic area’s failure to achieve water quality objectives, the Renewed  
12 Waiver obfuscates the consequences to individual dischargers who join a coalition but refuse to  
13 implement effective management practices. There are no clear consequences of any failures by  
14 coalitions. No coalition or discharger takes seriously the notion that a coalition will be dissolved for  
15 failing to comply with the program’s requirements. In essence, the coalition-based alternatives  
16 require the Regional Board to dissolve an entire watershed program – with nothing in place to back it  
17 up once it is gone. Likewise, the consequences of failure to any actual discharger are not clear  
18 because the Renewed Waiver does not include monitoring of the individual dischargers. Without  
19 management practice effluent data and only sporadic site inspections by staff, there are no clear  
20 consequences for noncompliance by individual dischargers.

21 **FIFTH CAUSE OF ACTION**  
22 **(Porter Cologne –Findings Under Water Code § 13269)**

23 124. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
24 forth herein.

25 125. The Regional Board may only waive reports of waste discharge (“RWDs”) and/or  
26 WDRs if the agency determines, after a hearing, that “the waiver is consistent with any applicable  
27 state or regional water quality control plan and is in the public interest.” Water Code § 13269(a).  
28 The Regional Board failed to demonstrate with the weight of the evidence that the Renewed Waiver  
is consistent with Basin Plan, including the Antidegradation Policy and NPS Policy.

1           126. The Regional Board failed to demonstrate with the weight of the evidence that the  
2 Renewed Waiver is consistent with the public interest.

3           127. The Regional Board relied upon five key elements to success in support of the  
4 agency's findings required by Section 13269. None of the five elements are supported by the weight  
5 of the evidence in the record.

6           128. The first element relied upon by the Regional Board is that “[t]hird-party lead or  
7 coalitions groups, as opposed to Central Valley Board lead, ... take advantage of local knowledge  
8 and administrative/cost efficiencies in dealing with a few groups versus thousands of individual  
9 operations.” There is no evidence coalition groups have successfully used their purported “local  
10 knowledge” to secure and verify implementation of management measures at the farm level and  
11 quantitatively reduce the mass loading of agricultural contaminates. Nor is there any evidence of cost  
12 efficiencies that would materialize if coalitions actually instituted a comprehensive program that  
13 successfully complied with regulatory requirements and held farmers accountable for implementing  
14 management measures and reducing pollutant loading.

15           129. The second element relied upon by the Regional Board is that a irrigated lands  
16 discharge program can effectively rely upon “[r]egional surface and groundwater quality  
17 management plans, as opposed to individual water quality management plans, to minimize  
18 paperwork/administrative burdens while clearly defining the expectations and approach for  
19 addressing water quality problems.” Staff Report, p. 2. There is no evidence to support this  
20 conclusory statement. Avoiding paperwork is simply a euphemism for not collecting information.  
21 There is no evidence that the Board can regulate 30,000 farms without at some point gathering  
22 information from them about their pollution discharges. The notion that the requisite information  
23 becomes less bureaucratic and involves less paperwork by inserting fictitious entities – with their  
24 own layers of management and paperwork – between the Regional Board and the dischargers is  
25 nonsensical. And there is no explanation as to how plans devised on a regional basis can clearly  
26 define expectations of all relevant dischargers in that area. The PEIR acknowledges that “[t]he  
27 appropriate management practice is typically selected on a site-specific or property-specific basis.”  
28 PEIR, p. 3-9. The Regional Board's Staff Report admits that “[w]ith regard to selection of measures

1 and practices, the Central Valley Water Board and USEPA recognize that there is often site-specific,  
2 crop-specific, and regional variability that affects the selection of appropriate management measures,  
3 as well as design constraints and pollution-control effectiveness of various practices.” Staff Report,  
4 p. 66-67. Only by addressing site-specific measures that are at least BPTC and assure compliance  
5 with standards can expectations and water quality measures be clearly defined. To rely exclusively  
6 on regional management plans rather than farm-specific management plans, the Board will only  
7 continue to obscure individual discharger’s actions or, more likely, inactions.

8 130. The third element relied upon by the Regional Board is that a program is beneficial if  
9 it relies upon “[r]egional surface and groundwater quality monitoring, as opposed to individual or no  
10 water quality monitoring, to take advantage of cost efficiencies in coordinating with other monitoring  
11 efforts while providing sufficient information to characterize water quality.” The weight of the  
12 evidence does not demonstrate that regional monitoring miles downstream from a farm’s discharge  
13 location would characterize that discharger’s water quality. The weight of the evidence does not  
14 demonstrate that any regional monitoring effort to date has reduced any irrigated lands pollution in  
15 the Central Valley. The weight of the evidence demonstrates that monitoring of actual discharge  
16 points is necessary to achieve water quality objectives and protect the public interest because  
17 upstream waterways are disproportionately important as their increased energy inputs, higher  
18 invertebrate production, spawning, nursery and rearing habitat and lower discharge make these  
19 smaller aquatic systems vital to the overall health of the aquatic system. Larval fish and their food  
20 supplies found in these areas also are particularly vulnerable to adverse impacts of pesticides and  
21 other pollutants. Monitoring of irrigated lands at the edge-of-field is crucial for evaluating the  
22 presence of BPTC and determining if recommended management practices are being implemented  
23 properly or if benefits from adopted practices are actually being realized.

24 131. The Regional Board’s findings under Section 13269 are not supported by the weight  
25 of the evidence because the Regional Board completely ignores irrigated land discharges adverse  
26 impact on groundwater.

1 132. In making the findings required by Section 13269, the Regional Board relied upon  
2 rationales that are contravened by the weight of the evidence. As a result, the findings must be  
3 vacated and remanded to the Regional Board.

4 WHEREFORE, Petitioner prays for judgment as hereinafter set forth.

5 **PRAYER**

6 WHEREFORE, petitioner prays for the following relief:

7 1. For a stay of Respondents' decisions certifying the PEIR and approving the Renewed  
8 Waiver pending trial.

9 2. For a temporary restraining order and preliminary injunction restraining Respondent  
10 from taking any action to carry out any site-specific projects relying in whole or in part upon the  
11 Renewed Waiver or the PEIR pending trial.

12 3. For a peremptory writ of mandate, permanent injunction and declaratory relief  
13 directing:

14 a. Respondents to vacate and set aside its Resolutions certifying the PEIR for the  
15 Renewed Waiver and approving the Renewed Waiver.

16 b. Respondent to suspend all activity under the certification of the PEIR and  
17 approval of the Renewed Waiver that could result in any change or alteration  
18 to the physical environment until Respondents have taken actions that may be  
19 necessary to bring the certification and project approval into compliance with  
20 CEQA and Porter-Cologne.

21 c. Respondent to prepare, circulate, and consider a new and legally adequate  
22 PEIR and otherwise to comply with CEQA in any subsequent action taken to  
23 approve the Renewed Waiver.

24 4. For the costs of suit.

25 5. For an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any  
26 other applicable provisions of law or equity.

27 ///

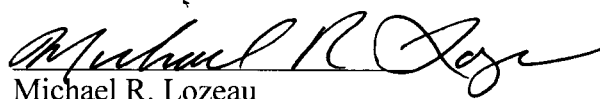
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6. For any other equitable or legal relief that the Court considers just and proper.

Dated: May 25, 2012

LOZEAU DRURY LLP



Michael R. Lozeau  
Attorney for Petitioners and Plaintiffs

# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
michael@lozeaudrury.com

May 24, 2012

BY U.S. MAIL

Mr. Karl E. Longley, Chair  
Central Valley Regional Water Quality Control  
Board, Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

**RE: Notice of Intent to File Suit Under the California Environmental Quality Act and Porter-Cologne Water Quality Act Regarding Final PEIR for the Long-Term Irrigated Lands Regulatory Program and Short-term Renewal of the Coalition Group Conditional Waiver of Discharge Requirements for Discharges from Irrigated Lands**

Dear Chair Longley:

I am writing on behalf of California Sportfishing Protection Alliance and California Water Impact Network ("CSPA") concerning (1) the Central Valley Regional Water Quality Control Board, Central Valley Region's ("Regional Board") adoption of the Final Program Environmental Impact Report ("PEIR") for the Long-Term Irrigated Lands Regulatory Program ("ILRP"), (2) and adoption of Resolution No. R5-2011-0032, approving the Short-term Renewal of the Coalition Group Conditional Waiver of Discharge Requirements for Discharges from Irrigated Lands, Regional Board Order No. R5-2006-0053, for an additional 24 months ("Renewed Waiver") (collectively, "Project").

Please take notice, pursuant to Public Resources Code ("PRC") § 21167.5 as well as Paragraph 3 of the Tolling Agreement entered into by the regional Board and various interested parties, that CSPA intends to file a Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition"), under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq. and the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000 et seq., against Respondent and Defendant Regional Board in the Superior Court for the County of Alameda, challenging the unlawful actions taken by the Regional Board on April 7, 2011 in (1) adopting Resolution No. R5-2011-0017 certifying and relying on the Final PEIR for the ILRP in violation of the requirements of CEQA and the CEQA Guidelines, title 14, California Code of Regulations, § 15000 et seq., and on June 10, 2011 in (2) improperly adopting Resolution No. R5-2011-0032, approving the Renewed Waiver without complying with CEQA and inconsistent with state policy for water quality control, including the State of California's antidegradation policy or "Statement of Policy With Respect to Maintaining High Quality of Waters in California," Resolution 68-16 (Oct. 28, 1968) ("Antidegradation Policy"), the State Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (May 20, 2004) ("NPS Policy"), Water Code § 13269, and the public interest.

The petition being filed will seek the following relief:

1. For a stay of the Regional Board's decisions certifying the PEIR and approving the Renewal Project pending trial.
2. For a temporary restraining order and preliminary injunction restraining the Regional Board from taking any action to carry out any site-specific projects relying in whole or in part upon the Renewal Project or the PEIR pending trial.
3. For a peremptory writ of mandate, permanent injunction and declaratory relief directing the Regional Board to:
  - a. vacate and set aside its Resolutions certifying the PEIR for the Renewal Project and approving the Project.
  - b. suspend all activity under the certification of the PEIR and approval of the Renewal Project that could result in any change or alteration to the physical environment until Respondents have taken actions that may be necessary to bring the certification and project approval into compliance with CEQA and Porter-Cologne.
  - c. prepare, circulate, and consider a new and legally adequate PEIR and otherwise to comply with CEQA in any subsequent action taken to approve the Renewed Waiver.
4. For the costs of suit.
5. For an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any other applicable provisions of law or equity.
6. For any other equitable or legal relief that the Court considers just and proper.

CSPA urges the Regional Board to rescind its approval of the PEIR and Resolutions Nos. R5-2011-0017 and R5-2011-0032, and all other related Renewed Waiver approvals, and prepare the adequate and appropriate CEQA documents for this Project as required by law and require reports of waste discharge and issue waste discharge requirements or waivers consistent with Porter-Cologne.

Sincerely,



Michael R. Lozeau  
Attorneys for CSPA and C-WIN



**PROOF OF SERVICE**

I, Tony Stearns, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 410 12<sup>th</sup> Street, Suite 250, Oakland, California, 94607.

On May 24, 2012, I served a copy of the foregoing document(s) entitled:

**Notice of Intent to File Suit Under the California Environmental Quality Act and Porter-Cologne Water Quality Act Regarding Final PEIR for the Long-Term Irrigated Lands Regulatory Program and Short-term Renewal of the Coalition Group Conditional Waiver of Discharge Requirements for Discharges from Irrigated Lands**

on the following parties:

Mr. Karl E. Longley, Chair  
Central Valley Regional Water Quality Control Board, Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

California Rice Commission; Northern California Water Association on Behalf of Sacramento Valley Water Quality Coalition; and San Joaquin Valley Drainage Authority on Behalf of Westside San Joaquin River Watershed Coalition  
c/o Theresa A. Dunham, Esq.  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 500  
Sacramento, CA 95814

San Joaquin County Resource Conservation District on Behalf of the San Joaquin County and Delta Water Quality Coalition  
c/o Jennifer L. Spaletta, Esq.  
Herum / Crabtree  
5757 Pacific Avenue, Suite 222  
Stockton, CA 95207

Southern San Joaquin Valley Water Quality Coalition; Arvin-Edison Water Storage District; Wheeler Ridge-Maricopa Water Storage District; and Semitropic Water Storage District  
c/o William Thomas, Esq.  
Best Best & Krieger  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814

California Farm Bureau Federation  
c/o Kari Fisher, Esq.  
2300 River Plaza Drive  
Sacramento, CA 95833

Central Valley Regional Water Quality Control Board  
c/o Alex P. Mayer, Esq.  
State Water Resources Control Board, Office of Chief Counsel  
1001 I Street, 22nd Floor  
Sacramento, CA 95814

<input checked="" type="checkbox"/>	<b>BY MAIL. By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid for First Class mail, in the United States mail at Oakland, California addressed as set forth above.</b>
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I declare under penalty of perjury under the laws of the State of California that the foregoing

May 24, 2012  
Notice of Intent to File Suit re ILRP PEIR  
Page 4 of 4

is true and correct, and that this declaration was executed May 24, 2012 at Oakland, California.

  
\_\_\_\_\_  
Tony Stearns

# EXHIBIT B

1 Michael R. Lozeau (Bar No. 142893)  
2 Richard T. Drury (Bar No. 163559)  
3 Christina M. Caro (Bar No. 250797)  
4 LOZEAU DRURY LLP  
5 410 12th Street, Suite 250  
6 Oakland, California 94607  
7 Tel: (510) 836-4200  
8 Fax: (510) 836-4205  
9 E-mail: michael@lozeaudrury.com  
10 Attorneys for Petitioners and Plaintiffs

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA

13 CALIFORNIA SPORTFISHING PROTECTION  
14 ALLIANCE, a non-profit corporation;  
15 CALIFORNIA WATER IMPACT NETWORK, a  
16 non-profit corporation,  
17  
18 Petitioners and Plaintiffs,

19 vs.

20 CALIFORNIA REGIONAL WATER QUALITY  
21 CONTROL BOARD, CENTRAL VALLEY  
22 REGION, a State agency; and DOES I – X,  
23 inclusive,  
24  
25 Respondents and Defendants.

Case No.

PETITIONERS' NOTICE OF INTENT  
TO PREPARE RECORD

(Public Resources Code section  
21167.6(b)(2))

Dept.: CEQA CASE

26 CALIFORNIA RICE COMMISSION, a State  
27 statutory organization; EAST SAN JOAQUIN  
28 WATER QUALITY COALITION, an  
unincorporated association; GOOSE LAKE  
WATER QUALITY COALITION, an  
unincorporated association; SACRAMENTO  
VALLEY WATER QUALITY COALITION, an  
unincorporated association; SAN JOAQUIN  
COUNTY & DELTA WATER QUALITY  
COALITION, an unincorporated association;  
SOUTHERN SAN JOAQUIN VALLEY WATER  
QUALITY COALITION, an unincorporated  
association; WESTLANDS WATER DISTRICT, a  
water district; WESTSIDE SAN JOAQUIN  
RIVER WATERSHED COALITION, an  
unincorporated association; and ROES I-X,  
inclusive,

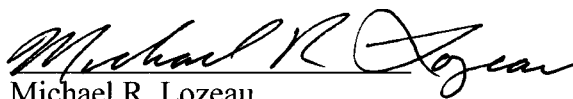
Real Parties in Interests.

1 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners and Plaintiffs  
2 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation; and  
3 CALIFORNIA WATER IMPACT NETWORK, a non-profit corporation, (collectively  
4 “Petitioners” or “CSPA”) hereby notify all parties that Petitioners will prepare the record or  
5 proceedings (“administrative record”) relating to the above-captioned action regarding  
6 Respondent and Defendant’s CALIFORNIA REGIONAL WATER QUALITY CONTROL  
7 BOARD – CENTRAL VALLEY REGION, a State agency (“Respondent” or “Regional Board”)   
8 unlawful adoption of Resolution No. R5-2011-0017 certifying and relying on the Final Program  
9 Environmental Impact Report (“PEIR”) for the Long-Term Irrigated Lands Regulatory Program  
10 (“ILRP”) in violation of the requirements of the California Environmental Quality Act  
11 (“CEQA”), Public Resources Code § 21000 *et seq.*, and the CEQA Guidelines, title 14,  
12 California Code of Regulations, § 15000 *et seq.*, and, 2) improperly adopting Resolution No. R5-  
13 2011-0032, approving the Short-term Renewal of the Coalition Group Conditional Waiver of  
14 Discharge Requirements for Discharges from Irrigated Lands, Regional Board Order No. R5-  
15 2006-0053, for an additional 24 months (“Renewed Waiver”) without complying with CEQA  
16 and inconsistent with state policy for water quality control, including the State of California’s  
17 antidegradation policy or “Statement of Policy With Respect to Maintaining High Quality of  
18 Waters in California,” Resolution 68-16 (Oct. 28, 1968) (“Antidegradation Policy”), the State  
19 Board’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control  
20 Program (May 20, 2004) (“NPS Policy”), Water Code § 13269, and the public interest.

21 Respondents, Real Parties in Interest and Defendants are directed not to prepare the  
22 administrative record for this CEQA action and not to expend any resources to prepare said  
23 administrative record.

24 Dated: May 25, 2012

LOZEAU DRURY LLP

25  
26   
27 Michael R. Lozeau  
Attorney for Petitioners and Plaintiffs

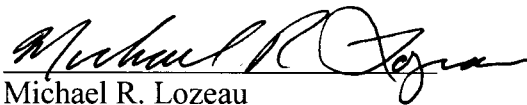
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**VERIFICATION**

I am Michael R. Lozeau, attorney for petitioners in this action. I am verifying this Petition pursuant to Code of Civil Procedure section 446. Petitioners are absent from the County of Alameda, in which I have my office. I have read the foregoing petition and complaint. I am informed and believe that the matters in it are true and on that ground allege that the matters stated in the petition and complaint are true.

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

Date: May 25, 2012

  
Michael R. Lozeau  
Attorney for Petitioners and Plaintiffs