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Via e-mail

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Re: California Sportfishing Protection Alliance Comments on the Recommended Irrigated Lands Regulatory Program Framework

On behalf of the California Sportfishing Protection Alliance and California Water Impact Network (collectively "CSPA"), thank you for this opportunity to comment on staff's "Recommended Irrigated Lands Regulatory Program Framework." The proposed ILRP Framework is a wholesale retreat from any meaningful changes to the existing failed irrigated lands program. In the Framework, staff proposes to authorize the continued degradation of Central Valley waters by the agricultural industry without any meaningful fear of Regional Board interference. Rather than acknowledge the obvious shortcomings of the existing irrigated lands program and propose changes to the program modeled on existing successful regulatory programs implemented in California, including the industrial and construction storm water program and others, staff has chosen to mirror the dischargers' concerns that it may cost time and money for them to reduce their gross discharges of pollutants. The Regional Board cannot solve the Central Valley's irrigated lands pollution problems by continuing to avoid regulating the dischargers responsible for the pollution. That avoidance approach has not worked for the last seven years since the current program was instituted. It certainly did not work for the twenty years prior to that when the Regional Board let the agricultural industry manage its water quality impacts itself and, as a result, caused the massive impairments that continue to be generated by agricultural discharges every year.

CSPA's previous comments on the initial staff report and draft PEIR outlined the minimum changes to the existing irrigated lands program that are necessary for the Regional Board to comply with the State's Antidegradation Policy (SWRCB Resolution No. 68-16), the State's Nonpoint Source Policy and the Regional Board's mandate to implement regulatory programs that comply with the applicable water quality objectives. None of CSPA's reasonable proposals are included in the vague Framework produced by staff. Staff's new Framework actually weakens staff's previous proposal and, if adopted, will only create a program that plainly violates each of the applicable

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requirements and policies. The Regional Board should reject staff's recommended Framework and instead adopt a program that incorporates the following components.

1. Third Party Coalitions Must Be Eliminated.

Third party coalitions add bureaucracy, obfuscate information the Regional Board needs to collect and evaluate, create permanent lobbies to weaken or undermine any true regulation of farm dischargers (the proposed Framework being a case in point), and cannot be effectively enforced. The Regional Board has the duty to implement Porter-Cologne and to assure that farm dischargers do not unreasonably degrade and pollute the Central Valley's waters. See Water Code §§ 13146, 13247. The perpetuation of fictional coalition groups is a primary reason the Regional Board has failed to carry out its duties over the last seven years to protect water quality from irrigated agriculture waste discharges. Staff acknowledges that the existing coalitions have not succeeded in demonstrating any implementation of farm management practices designed to protect water quality and the regional data collected to date shows wide spread and prolonged violations of water quality objectives and no discernable progress in bringing the Central Valley waters into compliance. See Staff Report, p. 10 ("a number of factors that are not well known, including (1) the extent to which growers have already implemented management practices to protect water quality; [and] (2) whether the third-party framework will be successful or greater direct Board oversight will be required. . .").

Staff's Framework relies on a number of fallacies regarding the existing coalitions and entirely unrealistic premises about the Regional Board's ability to adjust to coalition shortcomings. For example, a typical head-in-the-sand proposal included in the Framework includes that "[a]ny requirements or conditions not fulfilled by the third party are the responsibility of the individual discharger participant to fulfill." Framework, p. A-10. This is almost meaningless in the context of a framework that does not require anything of individual dischargers, instead gearing its requirements and conditions to the coalitions. Even assuming some requirements apply to individual growers, staff cannot identify and has not exhibited any practicable ability to follow through on this notion and hold any individual grower accountable under a coalition-based program. The only actual response that staff could take is to eliminate a coalition when it fails and that is not a realistic outcome given that the entire program is proposed to continue to be based on abstract coalitions.

The absurdity of the Framework's reliance on coalitions is highlighted by staff's strained effort to make believe notices of violation passed on to some individual, unknown, coalition members by the coalition itself somehow stands in for a rational enforcement mechanism. *Id.*, p. A-10. This abdication of regulatory responsibility is not a reasonable or effective method to enforce the pervasive water quality violations already afflicting the Central Valley. Staff even envisions adding another layer of non-discharger entities to the mix, suggesting in the Framework to "[e]nsure that any activities conducted on behalf of the third party by a subsidiary group (e.g., subwatershed group) meet Board requirements" and that "[t]he third party must assume responsibility for any activities conducted on the third party's behalf." *Id.*, A-12. In other

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words, another layer of unidentified, non-dischargers for the Board to peel away in order to address actual dischargers. One has to ask; can this scheme be any less enforceable?

2. **All Agricultural Dischargers Must Prepare an Individual Farm Water Quality Management Plan (FWQMPs) Available to the Regional Board and the Public.**

Instead of proposing a scheme that would eliminate the veil of secrecy erected by the Coalitions over what, if anything, their members have been up to over the last seven years, staff pays lip service to individual farm management plans, proposing that a watered down plan be prepared only if the discharger happens to be in a Tier 3 watershed and only “if the Central Valley Water Board determines that adequate progress in the implementation of the regional GQMP or SQMP has not been made.” *Framework*, p. A-16. This is another way of saying there will be no farm specific management plans. The Executive Officer and Board already have this authority and it has never been used. The Regional Board already is lacking, even after seven years, any evidence that any progress has been made by any coalition group members to implement in any significant way any pollution control measures.

The Regional Board should cut to the chase and not warrant another decade of delay waiting (or more accurately wishing) the dischargers will save the Board from its own duty to act. There is no reason that the Regional Board should not require all farm dischargers to prepare a farm-specific FWQMP. Nor should the Regional Board allow a farm discharger to prepare a plan and then delay for five years before determining whether the plan should be changed or improved. See *Framework*, p. A-16. And, although CSPA initially agreed it may make sense to allow FWQMPs to remain on the farm, and available to the Regional Board and the public, upon request, CSPA now believes that a copy of all the FWQMPs should be submitted to the Regional Board electronically (e.g., through an online database system similar to SMART, which serves the industrial and construction stormwater regulatory program). Given staff’s proposal, it is clear to CSPA that any expectation that the Regional Board itself might follow-up on ascertaining the contents of a significant number of FWQMPs is unlikely and only by making this essential information about what is actually happening in the field readily available to the public, especially researchers and advocacy groups, will assure that the dischargers prepare effective FWQMPs consistent with appropriate criteria.

The State Board’s Policy For Implementation And Enforcement of The Nonpoint Source Pollution Control Program (May 20, 2004) (“NPS Policy”) reliance on individual discharger’s assessment of their pollution contribution is worth repeating: “[a] first step in the education process offered by these programs often consists of discharger assessment of their lands or operations to determine NPS problems, followed by development of a plan to correct those problems.” NPS Policy, p. 11 (emphasis added). The Policy continues, emphasizing that “[management practices] must be tailored to a specific site and circumstances, and justification for the use of a particular category or type of MP must show that the MP has been successfully used in comparable

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circumstances. If an MP has not previously been used, documentation to substantiate its efficacy must be provided by the discharger." NPS Policy, p. 12 (emphasis added). The Regional Board has to stop putting off this first step and require FWQMPs be prepared by every discharger within 6 months of the termination date of the current waiver.

Staff's proposed farm evaluations are not sufficient to identify the implementation of best practicable treatment or control (BPTC) or assure adequate protection of water quality. It would appear from the sparse description of the evaluations' proposed contents and the proposed use of templates that the evaluations will be cursory and not provide details about specific measures and the rationale, if any, behind them. Framework, p. A-16. The evaluations should be elevated to full FWQMPs with sufficient detail for Board staff or any third party reviewer to determine whether the described measures are adequate for the type and size of farm being addressed. Although further details should be provided, the outline of the FWQMP contents proposed by staff appear to be a good start and should be required of all dischargers without contingencies. See Framework, p. A-32.

3. The Three Tiers Should Be Identified Now.

CSPA does not have any objection to the Regional Board using a tiered system. We agree that the tiers are a rational mechanism to: adjust monitoring requirements; assist farm dischargers in determining the level of management measures necessary to protect water quality and, where waters are of high quality, meet BPRC; and assist the Regional Board in prioritizing inspections and enforcement actions. However, the information to specifically designate appropriate tiers is available now. Namely, any waterbody already subject to a Regional Water Quality Management Plan is already impaired and should be designated Tier 3. The Board also has sufficient information to specify the other two tiers of watersheds as well. See PEIR, pp. 3-17 – 3-18.

4. Non-Water Quality Monitoring.

Our review of the recommended Framework turns up no mention of any scheme to track in any detail whether any management practices are being implemented and maintained, especially on a farm-specific basis. Nor does the Framework provide basic information about nutrients and pesticides being applied by specific farms for the Board to evaluate whether any installed measures are appropriate. The Framework makes no improvement on the current program, which has left the Regional Board and the public entirely naïve about what, if any, measures have been implemented by irrigated agriculture throughout the Central Valley. The proposed Framework resorts to vagaries that make it impossible for anyone to comment intelligently on its merits. Rather than think through and propose specific requirements for tracking the implementation of management practices, staff throws up its hands and simply proposes to let the coalitions tell us in a few years time. Framework, p. A-28.

CSPA believes that the PEIR Alternative 4 gets this piece correct by calling for the tracking of nutrients, pesticides, and implemented management practices by each

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farmer. Again, the NPS Policy underscores the need for each discharger to track implementation of his/her management practices, “[i]t is important to recognize that development of a plan is only the first step in developing an implementation program that addresses a discharger’s NPS pollution discharges. Implementation of the plan, including any necessary iterative steps to adjust and improve the plan and/or implementation must follow the planning stage.” NPS Policy, p. 11. Leaving it entirely to the coalitions to devise this piece of the Framework will assure that the Regional Board remains in the dark about what management practices have actually been implemented in the Central Valley.

5. **Regional Monitoring of Surface Water Quality, By Itself, Will Not Assure The Implementation of BPTC or Tell The Board or Public Whether Any Management Practice is Proving Effective.**

If irrigated agriculture discharges waste that affects or has the potential to affect the quality of waters of the state, they like every other discharger in the state, should be required to characterize and monitor what they are discharging and be able to show that their discharge is not creating or contributing to a condition of pollution and degrading beneficial uses, whether the waters are flowing immediately adjacent to their fields or miles downstream. Staff’s Framework proposes a license to pollute that, like the current program, does not mandate that any farmer reduce or eliminate a single molecule of pollution in their discharges. Instead, it resorts to wishful thinking and window dressing – producing very limited surface water quality monitoring collected by discharger representatives, miles away from the pollution sources and without a prayer of informing anyone about the merits or demerits of any management practices implemented by any specific dischargers upstream. This non-monitoring scheme is not designed to drastically curb the gross pollution that continues to impair the beneficial uses of Central Valley waters. It is designed to prolong the status quo as long as possible.

The Framework calls for a vague proposal that coalitions in their regional management plans describe the coalition’s “approach for determining the effectiveness of the management practices implemented...” Framework, p. A-28. Likewise, the Framework says coalitions will “[d]evelop and implement plans to track and evaluate the effectiveness of management practices and provide timely and complete submittal of any plans or reports required by the Board.” *Id.*, p. A-11. The Framework also hints at coalitions “conduct[ing] required water quality monitoring and assessments and reporting the results to the Board. *Id.* See also p. A-20. The lack of any detail makes these generic proposals impossible to evaluate.

The Framework mentions possible field studies of some representative sites or somehow linking implementation of practices to changes in water quality. *Id.* Although some studies to evaluate management practice effectiveness would be welcome by CSPA, such isolated studies do not serve as a reasonable stand-in for measuring what is actually being implemented and achieved in the field. Even if a well thought through pilot study showed a management practice could be effective, that study says nothing about whether that practice is being implemented and maintained in any given field. As

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for attempting to determine the effectiveness of a management practice by monitoring downstream receiving waters, given the regional nature of the monitoring proposed by staff, CSPA does not see how anyone could ever draw such a connection to a specific management measure. Even in those rare instances under the proposed Framework where a FWQMP may be required, staff still doesn't require any monitoring by individual dischargers. Framework, p. A-32. The only way to truly evaluate the effectiveness of a particular management practice in the real world is to monitor discharges from a sufficient number of representative farms that have implemented the practice, including pre-implementation and post-implementation samples, along with appropriate monitoring of receiving waters upstream and downstream of the area of farm discharge.

As CSPA proposed in its previous comments, within areas where Coalitions are currently required to prepare and implement a management plan, all farms within that management area that are discharging any pollutant which triggered the management plan, must prepare and implement a discharge monitoring plan for the pollutants governed by the management plan as well as basic parameters that serve as indicators of pollution discharges. The basic parameters would include, for example, flow, toxicity, total nitrogen, nitrate, total ammonia, total phosphorous, soluble ortho-phosphate, temperature, turbidity, pH, electrical conductivity, fecal coliform (if livestock is present or the land receives applications of animal manure), and any applied pesticides and metals. If no toxicity is identified in the initial year, toxicity testing could be dropped for several years. The monitoring plan would include monitoring of end-of-farm discharges at a point downgradient from areas where best management practices (BMPs) are implemented. Where possible, monitoring of surface water run-on to areas where BMPs are implemented also must be included. CSPA agrees with the proposed number of samples per season outlined in the PEIR. PEIR, p. 3-24. However, like Tier 3, sampling by Tier 2 growers should be every year. Only by direct monitoring of site-specific BMPs can the Regional Board comply with the NPS Policy, where it states that "if the program relies upon dischargers' use of MPs, there should be a strong correlation between the specific MPs implemented and the relevant water quality requirements." NPS Policy, p. 11. Likewise, discharge data of BMP effectiveness within areas known already to be degraded is necessary to implement the State Antidegradation Policy, in particular its BPTC requirement as well as its nondegradation provision. The Framework does not come close to implementing these key requirements and policies.

Even the regional monitoring proposed in the Framework falls well short of achieving staff's stated goals. Monitoring only every three years will hardly be capable of discerning trends in any reasonable period of time. Given the shifts in agricultural production and pesticide use, such an infrequent monitoring interval will not provide adequate data to detect any trends and any resulting conclusions will always be subject to debate.

As CSPA recommended in its comments on the draft Framework, there is no good reason that the irrigated lands program should be responsible for regional monitoring. No other dischargers in the region are individually responsible for conducting regional monitoring. All of the Region's dischargers should be contributing a

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portion of their permitting fees toward an objective and agency-controlled (not discharger-controlled) regional monitoring program, conducted by the Regional Board and its consultants. CSPA agrees that regional monitoring is important to determining the overall health of waterways in the Central Valley. However, its inclusion in permits for irrigated lands dischargers takes away resources that need to be focused on implementing BMPs and evaluating their effectiveness at the points of discharge. It also would be fairer that all entities that discharge pollutants to Central Valley waters contribute a proportionate share of the funds necessary to conduct regional monitoring. Lastly, by consolidating that program within the Regional Board and other non-discharger agencies – rather than under the current program with inexperienced coalitions made up of discharger representatives – the objectivity of the program will be maintained. Placing regional monitoring in another program outside of the ILRP will of course free up a vast quantity of time currently spent by staff attempting to track the coalitions' various regional monitoring efforts which have failed to demonstrate the implementation of a single BPTC-level of management practices on any farm and have not established any meaningful trend that the irrigated lands program is improving water quality anywhere in the Region.

6. Groundwater Monitoring.

Again, the Framework resorts to vague suggestions rather than any specific proposals that the public can reasonably comment upon. For example, the Framework states that “[m]onitoring and other collected information would be used to assess the effectiveness of management practices and whether the BPTC or best efforts standard has been achieved. Additional practices/monitoring may be necessary, in an iterative process, to address water quality concerns.” Framework, p. A-18. The Framework should specify that growers who qualify as Tier 2 or Tier 3 for groundwater pollution should be required to conduct individual monitoring annually as described for the Tier 3 groundwater growers in the PEIR. PEIR, p. 3-25. All growers should be required to sample all existing functional wells on their property and provide that information to the Regional Board within six months of Framework adoption to determine their tier level. The Regional Board should incorporate this data with information from the counties or Department of Public Health to identify tier areas. As for surface water monitoring, the Regional Board should take charge of regional groundwater trend monitoring, not the dischargers' coalitions.

7. Compliance Schedules Are Inappropriate.

Staff proposes another three years to allow third-party coalitions yet another opportunity to show that whatever they are doing is resulting in implementation of effective management practices and improved water quality. Framework, p. A-3. The dischargers already have had seven years to show whether this awkward third-party scheme would work. They have failed to demonstrate any meaningful progress. Prior to the current program, growers had at least 20 years where they claimed they were not degrading water quality. Of course, the data collected over the years proved the very opposite. Enough is enough. The Board should abandon the coalitions and establish

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clear requirements for individual growers, including implementation of BPTC where appropriate to protect high-quality waters and BMPs elsewhere to protect water quality, as well as farm-specific monitoring now without any schedules of compliance. Either the coalitions have done what they said they were going to do seven years ago, and they can readily show that their members have all implemented BPTC or BMPs, or they failed, and no such measures have generally been implemented. The fact that staff is now proposing another three years is just another way of acknowledging the program has failed. Staff should hold the dischargers responsible and not give them yet another three years to begin even the basic improvements necessary to effectively address the impairment of Central Valley waters caused by irrigated agriculture.

Staff's leisurely pace for existing coalition members to indicate that they will remain enrolled under the new requirements underscores the inefficiency created by vague, third-party coalitions. Why should it take three months for coalitions to tell their existing members of the new requirements? And why would it possibly be necessary to wait an entire year for existing members to reconfirm their membership? Two and a half years to attract a few new members also is extremely long. Given the failure of the coalition approach, the Regional Board should eliminate legally fictitious middlemen and issue individual or general WDRs that require all irrigated lands dischargers to immediately implement best management practices that are protective of Central Valley waters.

On top of an unreasonable program level compliance delay, staff then further proposes to delay compliance by each of the discharger categories by another five to ten years. Framework, pp. A-24-25. Of course, staff's anticipation that every discharger will need up to another decade to comply with any reasonable requirements is another plain admission that the coalition-based program to date is an utter failure. The dischargers should be held to the guarantees made by their representatives seven years ago – that they would be effective at reducing the impacts to Central Valley waters from irrigated agriculture discharges. No additional schedule of compliance is necessary or warranted.

Staff also introduces yet another vague concept linking those very long compliance schedule recommendations to "primary focus" waters. *Id.* This appears to suggest that non-primary focus waters would be subject to even longer or open-ended compliance schedules. The program should apply to all Central Valley waters.

8. Staff's Proposed Framework Fails To Comply With The NPS Policy.

Like its earlier strawman proposal, staff's new proposed Framework still fails to comply with the NPS Policy. Most importantly, staff has not placed the Regional Board in a realistic position to make the most fundamental determination required by the NPS Policy: "Before approving or endorsing a specific NPS pollution control implementation program, a RWQCB must determine that there is a high likelihood the implementation program will attain the RWQCB's stated water quality objectives." NPS Policy, p. 10. There is absolutely no evidence that an irrigated lands program relying upon third party

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coalition groups has any likelihood, never mind a **high** likelihood of ever achieving any water quality objectives. Staff proposes a few small tweaks to the existing program, many of which, including the monitoring proposals, weaken the existing waivers. The existing program, after seven years of oversight by the Regional Board, has failed miserably. The Board staff cannot point to a single farm that has implemented BPTC. Staff certainly cannot describe or quantify the farm management practices, if any, that have been implemented throughout the Central Valley. The data collected during that seven-year period shows water quality continuing to be degraded throughout large areas of the Central Valley. Further weakening an already ineffective program does not provide the Regional Board any basis to determine that there is a high likelihood staff's Framework will achieve the program's objectives, especially meeting water quality objectives.

As the NPS Policy states, "[f]or implementation programs developed by non-regulatory parties, factors such as availability of funding, **a demonstrated track record or commitment to NPS control implementation**, and a level of organization and group cohesion that **facilitates NPS control implementation** are among the critical factors that must be taken into account." NPS Policy, p. 11 (emphasis added). As for the Central Valley's coalitions, there simply is no track record of implementation of control measures. No evidence of any implementation has been provided by the coalitions or presented by staff. Similarly, although the coalitions have shown cohesion in slowing down implementation of the program and added some additional ambient monitoring to the mix, the coalitions have shown no organizational effort or cohesion **facilitating implementation of controls** as is required by the NPS Policy. These abject failures of the existing program and coalitions to achieve these **critical factors** demonstrate that the Regional Board should develop and implement the irrigated lands regulatory program into one much like the industrial and construction storm water programs.

Key Element 1.

Staff's Framework does not comply with Key Element 1 of the NPS Policy. In addition to meeting the goals of the program itself, the NPS Policy requires that the irrigated lands program's "implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements." NPS Policy, p. 12 (emphasis added). No such manner of addressing farm pollution is found in staff's Framework. It is clear that staff has no idea if the program will ever be effective in achieving water quality objectives and protecting beneficial uses. Indeed, they propose to extend compliance, albeit with what requirements is anyone's guess, out by another eight to 13 years. No reasonable person can project or assure compliance that far in the future. Indeed, the need to articulate such a lengthy compliance period is evidence that staff has no idea whether continuing the coalition model will ever work. Certainly, the Board cannot determine that staff's proposal for the Regional Board to continue the existing unsuccessful model for three years will assure the achievement and maintenance of water quality objectives. Seven years of failure proves otherwise.

Key Element 2.

Staff claims their proposed Framework complies with Key Element 2 of the NPS Policy. Staff claims that “[i]mplementation of the ILRP Framework requires identification of specific practices that will be used to address constituents of concern and requires tracking of management practice implementation. Proper implementation of practices will be tracked through required monitoring and evaluation.” Framework, p. 27. The problem with each of these examples is that any identification and evaluation is only shared between the discharger and their relevant coalition group. The only information about measures that the Framework requires to be submitted to the Board is a presumably area-wide discussion of management measures that may be generally appropriate and a summary of the evaluations. There is no clear requirement in the proposed Framework that would assure that the Regional Board will know where and what management measures exist, nevermind their effectiveness. As for monitoring of measures, there is none. The regional monitoring will not measure the presence or effectiveness of any specific discharger implemented management measures. Without farm-specific monitoring, staff cannot reasonably be claiming to track implementation and effectiveness of practices.

The NPS Policy provides that:

MPs [management practices] must be tailored to a **specific site and circumstances**, and justification for the use of a particular category or type of MP must show that the MP has been successfully used in comparable circumstances. If an MP has not previously been used, documentation to substantiate its efficacy must be provided by the discharger. A RWQCB must be convinced there is a high likelihood the MP will be successful. A schedule assuring MP implementation and assessment, as well as adaptive management provisions must be provided.”

NPS Policy, p. 12 (emphasis added). Nothing in the Framework tailors any management practices to specific sites or shows what, if any, management practices have been successfully used on farms in the Central Valley. To date, **no documentation** has been provided by any **discharger**. Given staff’s complete ignorance about what, if any, management practices have been implemented in the Central Valley, they are in no position to convince the Regional Board there is a high likelihood those unidentified practices will be successful.

Key Element 3.

Staff also is incorrect that extending compliance timelines out for another decade or more despite having already provided the coalitions seven years to demonstrate their ability to meet standards is consistent with the NPS Policy. “The time schedule may not be longer than that which is reasonably necessary to achieve an NPS implementation program’s water quality objectives.” NPS Policy, p. 14. The Regional Board cannot determine, based on any evidence, that additional time is reasonably necessary for

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apparently recalcitrant dischargers who choose not to implement meaningful management practices to some day implement BPTC and meet the applicable water quality objectives.

Key Element 4.

Staff's description of Key Element 4 attempts to refocus this important Element on an overall program and deletes the NPS Policy's reference to specific management practices. Staff paraphrases Key Element 4 as requiring an NPS program to "include feedback mechanisms so that the Board, regulated operations, and the public can determine whether the program is effective." Framework, p. 27. The NPS Policy actually focuses much more on whether management practices are effective: "An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is **achieving its stated purpose(s)**, or whether **additional or different MPs or other actions are required.**" NPS Policy, p. 13 (emphasis added). Staff claims that management practices will be tracked and their effectiveness evaluated. Framework, p. 27. But almost all of the information, except for what small amount may be requested by the Executive Officer, will not be available to the public. Given the vagueness of staff's Framework, it is impossible to tell whether the referenced evaluations will provide any useful information (quantitative or otherwise). The only monitoring that will occur under the Framework is regional monitoring every three years. Framework, p. A-22. Downstream monitoring on such a long interval will not assure the effectiveness of any management measures. Had such ambient monitoring provided an effective feedback tool for the public and Regional Board to evaluate management measures, the public and the Board already would be able to know what measures were in place now and what if any reductions in pollutants they may have achieved. The Board and the public (and we would surmise the coalitions themselves) obviously do not know anything about the overall presence of management practices in the Central Valley never mind their effectiveness.

Key Element 5.

CSPA is unaware of any consequences that would possibly result to a farmer who did absolutely nothing for the last seven years as long as they could say they were enrolled in a coalition. As for the coalitions, the only consequences that have resulted from their missing deadlines or not achieving any measurable water quality benefits are receiving additional extensions of time or weakening of requirements. Staff's Framework continues this tradition. Staff's list of possible consequences bears no resemblance to the actual implementation to date of the irrigated lands program. Staff claims that "the individual irrigated land operations are responsible for compliance should the third party fail to fulfill its obligations." Framework, p. 28. This is what the Regional Board indicated in the previous waivers for the last seven years. The coalitions have not complied with the requirement to meet water quality objectives. Nevertheless, not one coalition member has been called to task by the Regional Board. Although it should be, this is not a realistic consequence of staff's Framework. Staff,

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like in previous waivers, again states that “failure of regional planning efforts will result in the requirement to develop and implement individual farm plans.” *Id.* The coalition planning efforts already have failed and this consequence should have been triggered already. And, if the possible farm plans are parked on a shelf in the field, there will be no effective way of knowing again whether it was implemented or, if it was, whether it was adequate. Third, staff states that, “growers who do not comply under a third-party Order will be regulated individually.” If the seven-year dance with the coalitions and staff’s proposed Framework have made anything clear, it is that staff has no intention of regulating individual growers. In any event, this consequence also is not likely given that the Board will not have the information readily available to take action against coalition members. The only way farm dischargers will recognize any consequences of not complying with conditions of an irrigated lands program is for the Regional Board to remove the coalitions from the equation and regulate the dischargers directly.

9. The Proposed Framework Guarantees Degradation Will Continue To Occur As It Has For The Last Seven Years.

As CSPA emphasized in its original comments, it is not realistic for staff to assume that regional monitoring, by itself, will implement the high quality waters policy’s BPTC requirement or be able to address degradation in the hundreds of miles of waterways left unmonitored by such regional schemes. Staff sticks to its desire for regional monitoring based on its assertion that such monitoring will allow them and others to determine compliance with the BPTC requirement. Framework, p. 28. The simple fact is that the regional monitoring performed to date is incapable of accomplishing the results claimed by staff. Regional monitoring does not achieve BPTC. Indeed, contrary to staff’s claim, the monitoring to date has not identified one farm’s management practices and whether those practices amount to BPTC. See Framework, p. 28. Likewise, the simple farm evaluations proposed by staff and which will be largely unavailable to staff, as well as some unidentified monitoring of measures (presumably special studies referred to elsewhere in the Framework), are so vague that they will not provide any useful information about a particular farm’s effort to achieve BPTC.

Nor does staff’s reliance on regional monitoring take into account the ever-changing cropping patterns and chemical applications made by farmers based on market conditions and evolving technology. These changes in crops and chemical applications often lead to adverse impacts and increased water quality degradation. One clear example is grower’s observed switch to cheaper and more toxic pyrethroids, which bind to sediments. The coalition approach and regional monitoring lack mechanisms to identify and address these evolving problems. Staff’s focus on regional monitoring at three year intervals assumes that agriculture is static and that ambient water quality is always linked to improvements in BMPs when in fact it could be simply measuring pollutants that have been abandoned in favor of new, equally toxic, chemicals. Regional monitoring also focuses on certain commodities, waterways and watersheds and essentially ignores others. Additionally, agricultural pollutants are often discharged during episodic events as pulse flows. The low frequency of regional

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monitoring frequently fails to capture these pulses of pollutants in ambient waters. The Board cannot address the Region’s widespread degradation if staff does not know what is being applied and discharged by specific farms.

The program already is replete with ineffective regional management plans that fail to provide any information about BPTC. Staff should acknowledge that failure and jump to the next step they state is appropriate to respond to that failure – individual water quality management plans with farm specific monitoring. *Id.*, p. 29. Only then will staff be able to review a specific farm and determine whether BPTC is in place and whether its discharges are degrading adjacent waters.

10. The Board Has No Authority To “Extend” The Existing Irrigated Lands Waivers.

The Framework proposes that the Regional Board “extend the existing irrigated lands coalition group waiver until the new Orders are issued.” Framework, p. A-3. However, by its terms and as a matter of law, the existing waiver terminates as of June 30, 2011. See Water Code § 13269(f) (“[p]rior to renewing any waiver . . . , the regional board shall review the terms of the waiver policy at a public hearing”); 13269(a)(2) (“A waiver may not exceed five years in duration, but may be renewed by the . . . regional board”); Coalition Waiver, p. 17 (“[t]his Order . . . expires on 30 June 2011 unless rescinded or renewed by the Central Valley Water Board”). The Regional Board can only renew the waiver if the waiver still meets the criteria set forth in Section 13269 and is consistent with the Basin Plan, including the NPS Policy and antidegradation provisions. See also Water Code §§ 13146, 13247. As discussed above and in CSPA’s previous comments, the existing waiver falls far short of the waiver criteria, is allowing discharges that are violating applicable water quality objectives, is inconsistent with the NPS Policy, and cannot meet the High Quality Waters Policy’s requirement to implement BPTC. For all of these reasons, renewing the existing waiver is not in the public interest. In addition, reliance by the existing waiver on third party groups not subject to the state and local public records laws and requiring the Regional Board to request information in order for the public to access information required by the waiver is contrary to the public’s right to know about discharges of pollution to the state’s waters and the implementation of the waiver.

Thank you again for this opportunity to comment on staff’s proposed framework. CSPA urges the Regional Board to direct staff to implement an irrigated lands program

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Adam Laputz
March 21, 2011
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adhering to CSPA's recommendations and begin at last to directly address the largest source of pollutants and toxicity to the Central Valley's waters.

Sincerely,



Michael R. Lozeau
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CSPA