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19 BEFORE THE CALIFORNIA
20 STATE WATER RESOURCES CONTROL BOARD

21 In Re:

**SWRCB/OCC FILES:
A-1759, A-1759(A), A-1759(C)**

22 CENTRAL VALLEY REGIONAL
23 WATER QUALITY CONTROL BOARD
24 RESOLUTION NOS. R5-2006-0053 AND
25 R5-2006-0054 RENEWING THE
26 WAIVER OF WASTE DISCHARGE
27 REQUIREMENTS FOR DISCHARGES
28 FROM IRRIGATED LANDS,

**RESPONSE TO PETITIONERS
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,
DELTAKEEPER CHAPTER OF
BAYKEEPER AND SAN JOAQUIN
AUDUBON'S PETITION FOR REVIEW**

I. INTRODUCTION

Petitioners California Sportfishing Protection Alliance, Deltakeeper Chapter of Baykeeper, and San Joaquin Audubon (hereinafter "CSPA") renew their previously unsuccessful challenges to the Central Valley Regional Water Quality Control Board's ("Regional Board's") Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Resolution Nos. R5-2006-0053 and R5-2006-0077 (hereinafter "Agricultural Waiver" or "Waiver"). CSPA argues that the Regional Board's landmark commitment to implement, and now further strengthen and extend this nonpoint source regulatory program is unlawful and as a policy matter seeks to impose a point source individual discharger program for each of the 20,000 to 30,000 farmers in the Central Valley.

1 Most of CSPA’s arguments presented here on appeal offer nothing new and have been
2 previously dismissed by both this Board and the Sacramento County Superior Court. Sacramento
3 Superior Court Case No. 04CS00264, *Deltakeeper, et al. v. California Regional Water Quality*
4 *Control Board*. In fact the only thing that is new are the additional, more restrictive terms and
5 conditions in the Waiver. As such, the Court’s key and still relevant conclusions are worthy of
6 review and serve as a good foundation for the dismissal of the CSPA petition. the Court
7 addressed many of the same issues Petitioners re-raise challenging this new and more strict
8 Waiver.

9 In this lengthy opinion, the Court ultimately concludes:
10 (1) Respondents have the discretion to waive substantial discharges
of waste conditioned upon compliance with applicable Water
Quality Objectives;
11 (2) Respondents’ findings that the Waiver is “not against the public
interest” and that the Waiver is consistent with other State policies
12 and supported by the weight of the evidence.
13 (3) Respondents did not violate CEQA by adopting a negative
declaration instead of preparing an environmental impact report;
14 (4) The Waiver’s reporting requirements do not violate the
California Water Code.

15 Sacramento Superior Court Case No. 04CS00264, *Deltakeeper, et al. v. California*
16 *Regional Water Quality Control Board*. Page 4. These holdings of the Court are a good
17 foundation to review Petitioner CSPA’s present challenges.

18 **II. THE CONDITIONAL WAIVER IS IN THE PUBLIC INTEREST AND**
19 **OTHERWISE MEETS THE REQUIREMENTS OF CALIFORNIA WATER**
20 **CODE §13269**

21 The Regional Board’s Waiver program was promulgated pursuant to California Water
22 Code § 13269, and Petitioners CSPA once again challenge that such Waiver is inconsistent
23 therewith.

24 Cal. Water Code § 13269 empowers either the State or Regional Boards to waive
25 particular provisions of Cal. Water Code §§ 13260 and 13264, if the Board determines, after any
26 necessary meeting, that the Waiver is consistent with any applicable Basin Plan and is in the
27 public’s interest. The Water Code also provides that the waivers must be conditional and have
28 watershed-based monitoring, the results of which must be made public. The only other possible
requirement is that the Regional Board may require the payment of an annual fee.

1 Resolution No. R5-2006-0053 was adopted at a public meeting of the Regional Board on
2 June 22, 2006. It was subsequently amended by Resolution No. R5-2006-0077 on August 3,
3 2006, with regard to conditions under which additional participants may join Coalition Groups
4 after December 31, 2006, and to require submittal of management plans when there has been
5 more than one exceedance of a water quality standard in three years, unless the Executive Officer
6 determines that the exceedance is not likely to be remedied or addressed by a management plan.

7 The Waiver before the Board meets and exceeds these minimum conditions, has an
8 extensive monitoring program, requires actions designed to improve water quality consistent with
9 Basin Plan objectives and was promulgated through various public hearings and meetings.

10 When Petitioners CSPA had challenged the original Waiver in Sacramento Superior Court
11 Case No. 04CS00264, Judge Hersher in her May 10, 2005 decision, stated at p. 68, “The Court
12 also rejects Deltakeeper’s challenges to the Board’s finding that the Waiver is not against the
13 public interest.”

14 A. The Waiver Is Consistent With The Basin Plan

15 The Regional Board’s Waiver identifies the Basin Plan and its purposes in
16 Paragraph 19, indicating that compliance with water quality objectives will protect the beneficial
17 uses in the Basin Plan. Paragraph 20 explains that the Conditional Waiver is consistent with the
18 Basin Plan, and Paragraph 21 sets out the beneficial uses to be protected. Attachment A to the
19 Order begins, “Order No. R5-2006-0053 requires the Coalition Groups and individual Discharges
20 to comply with applicable state plans and policies and applicable state and federal water quality
21 standards and to take actions to prevent nuisance.” It continues, listing the following relevant
22 provisions: Paragraph 8, Attachment B of the Order setting forth Terms and Conditions for the
23 Coalition Group Conditional Waiver that specifically requires those covered by the Waiver to
24 comply with TMDL’s and implementation plans in the Basin Plans; Paragraph 10, Attachment B
25 requires implementation of management practices “that will achieve compliance with applicable
26 water quality standards, protect the beneficial uses of waters of the state, and prevent nuisance.”
27 Furthermore, the Basin Plan does not require any one program to be comprehensive, and the
28 Regional Board expressly acknowledges that the irrigated lands program does not cover all

1 discharges or dischargers (Paragraphs 44-48) and that activities not subject to the Conditional
2 Waiver still remain subject to other regulatory authorities. Although the CSPA Petitioners would
3 like a different regulatory program, fear that this program will not accomplish all that they wish,
4 and seem to demand instantaneous compliance with all water quality objectives, they have not
5 presented substantial evidence that the regulation established by the Waiver is not consistent with
6 the Basin Plan. Instead, the Waiver and the irrigated lands regulatory program it renews clearly
7 set forth terms that are consistent with the Basin Plan and is designed to bring discharges into
8 compliance with Basin Plan objectives.

9 B. The Waiver Is In The Public Interest

10 The Waiver, at Paragraph 35, describes in detail the Board's basis for finding that
11 in this instance, the waiver of waste discharge requirements is in the public interest. This board e
12 State Water Resources Control Board already determined in Order WQO 2004-0003 that it is in
13 the public interest to regulate the discharges from irrigated agriculture throughout the Central
14 Valley through a waiver that employs best management practices, encourages a watershed
15 approach, and includes sufficient monitoring requirements. Judge Herscher's opinion in the
16 appeal of the 2004 Order also upheld the Regional Board's determination concerning the public
17 interest (Case No. 04CS00264, p. 68-70). While the CSFA Petitioners' would like to see waste
18 discharge requirements ("WDRs") required for individual discharges from irrigated land, neither
19 they nor any other party submitted evidence to indicate that the Regional Board could effectively
20 identify and issue WDRs to the large number of individual dischargers addressed in this program,
21 or use WDRs to effectively address the complex nature of discharges from irrigated lands into
22 waters of the State based upon existing available information, without additional monitoring or
23 information on the effectiveness of management practices. The record does contain, however,
24 extensive evidence that the public interest is well served by a watershed-based program that
25 utilizes the expertise of existing local organizations to educate irrigators, collect the necessary
26 monitoring data and promote adoption of management practices in order to implement program
27 goals.
28

1 The Court had recognized the public benefit of the Waiver program, as well as the
2 Regional Board's broad discretion in making these determinations:

- 3 1. RWQCB must be accorded discretion in determining what is or is not in
4 the public interest.

5 The RWQCB must be accorded discretion and given deference in
6 determining what is or is not in the public interest because their findings come with "a strong
7 presumption of their correctness." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812.). It is
8 presumed that the agency regularly performed its official duty. (*Elizabeth D. v. Zolin* (1993) 21
9 Cal.App.4th 347, 354.) This is particularly true in cases involving technical and scientific
10 evidence in which the agency has particular expertise. (*Fukuda*, at 812).

11 In the issuance of the Waiver Renewal the Water Code §13269 requires,
12 among other things, the issuance of the waiver to be in the public interest. However, it offers no
13 other insight into what such an evaluation should entail or demand. However, Water Code
14 sections 13000 and 13001 provide consider guidance:

15 [A]ctivities and factors which may affect the quality of the
16 waters of the state shall be regulated to attain the highest
17 water quality which is reasonable considering all demands
18 being made and to be made on those waters and the total
19 values involved, beneficial and detrimental, economic and
social, tangible and intangible...in exercising any power
granted in this division [the RWQCB] shall conform to and
implement the policies of this Chapter.

20 It is thus an overriding obligation of the RWQCB and SWRCB to ensure
21 that all of their actions, including the issuance of waivers pursuant to Water Code §13269 are
22 reasonable, meaningfully taking into consideration the actual demands on the water and
23 economics. In the absence of a legislative checklist of what is or is not in the public interest we
24 must rely on the nine members of the RWQCB who "represent and act on behalf of all the
25 people." Water Code §13201(a).

26 The RWQCB's adoption of the Waiver Renewal carefully considered the
27 requirements of Water Code §13269, the public's comments, and other applicable laws and
28 regulations such as Water Code §13000. As such, the determination of what is or is not

1 reasonable in terms of the public interest is in and of its self an act of discretion and the
2 RWQCB's decision should given deference¹.

3 2. Waiver requires compliance with WQOs

4 Judge Hersher rejected Petitioner's previous arguments that (a) the Waivers
5 do not require immediate compliance with Water Quality Objectives, (b) the Regional Board does
6 not have authority under Water Code section 13269 to waive or delay compliance with Water
7 Quality Objectives, and (c) the Regional Board is without authority to waive or delay compliance
8 with existing Water Quality Objectives, by stating, "section 13269 appears to authorize the
9 Regional Board to waive the requirement for the Board to prescribe requirements for the
10 discharge based on, among other things, the applicable Basin Plan and the Water Quality
11 Objectives based therein." (See Decision p. 38.)

12 Judge Hersher also noted that notwithstanding the statutory flexibility
13 provided to waivers, "the record shows that the Regional Board required compliance with Water
14 Quality Objectives as a condition of the Waiver...The record shows that the Board could have
15 waived compliance with the WQOs, but instead required compliance as a condition of the
16 Waiver." (See Decision, p. 39.)

17 The Legislature did not specify how such waivers must be
18 conditioned, which suggests that the Legislature intended
19 the Board have broad discretion in fashioning appropriate
"conditions."

20 The Court finds that the Board did not exceed this discretion
21 by including a time schedule –even an open-ended schedule
22 –for compliance with WQOs. Indeed, to expect
instantaneous compliance with WQOs would have been
unreasonable. The Board is trying for the first time to

23 ¹ It is not for this Court to speculate whether a different regulatory framework, such as WDRs,
24 would be more efficient or more effective, assuming that the Board even would be able to
regulate all 25,000 farms using general or area-wide WDRs.

25 Neither will the Court overturn the Regional Board's findings that (i) the Waiver includes
26 conditions to reduce and prevent pollution and nuisance and protect the beneficial uses of waters
27 of the state; (ii) the Waiver contains more stringent conditions for protection of water quality
28 than did any of the Board's previous waivers; and (iii) given the magnitude of and number of
persons who discharge waste from irrigated lands, the Waiver provides for an efficient and
effective use of limited Regional Board resources.
(Sacramento Superior Court Case No. 04CS00264, May 10, 2005 Decision at p. 69.)

1 regulate more than 7 million acres of agricultural land and
2 more than 25,000 agricultural dischargers, and the Board
3 admits it lacks meaningful data regarding the sources and
4 types of discharges and the identification and
5 implementation of best control and management measures.
6 Under the circumstances, the Board reasonably could not
7 have required instantaneous compliance with WQOs even if
8 it had been required to do so.

9 (See Decision, pp. 39-40.)

10 Nothing in the Waiver has been eliminated or softened since the Court's ruling.
11 Dischargers are required to implement management practices to achieve compliance with water
12 quality objectives, protect the beneficial uses of the water, and prevent nuisance. The
13 amendments to the Waiver only strengthened the terms and program. As before, CSPA's claim is
14 without merit and should be rejected.

15 C. Claims against the adequacy of the MRP are unfounded and are not ripe.

16 1. CSPA's comment and criticisms about the Waiver Renewal's associated
17 Monitoring and Reporting Program are not justifiable because no actual controversy exists and
18 the issue is otherwise unripe or moot. Water Code § 13320 and Section 2050 of Title 23 of the
19 California Code of Regulations provide that persons aggrieved by the Regional Board actions or
20 failures to act may petition the State Board for review of the action or failure to act. However, in
21 this instance the Regional Board neither acted, nor failed to act with respect to the monitoring and
22 reporting program subject to CSPA's criticism² because the MRP was not before the Regional
23 Board for consideration.

24 The public hearing notice for the disputed resolutions, R5-2006-0053 and
25 R5-2006-0054, states that "The Central Valley Water Board will consider adopting two new
26 Conditional Waiver Orders to take effect on 1 July 2006."³ Absent from the public hearing
27 notice, the agenda, and the hearing itself, is discussion and consideration of the MRP. In fact,

28 ² *Monitoring & Reporting Program No. R5-2003-0826 For Coalition Groups Enrolled Under
The Conditional Waiver; And Attachment A, Quality Assurance Program Plan For Coalition
Groups, Rescinded And Replaced By Monitoring & Reporting Program No. R5-2005-0833 On 15
August 2005* (hereinafter "MRP").

³ 19 April 2006 Public Hearing Concerning Orders Adopting Conditional Waivers Of Waste
Discharge Requirements For Discharges From Irrigated Lands.
<http://www.waterboards.ca.gov/centralvalley/tentative/0606/irr-lands/irr-lands-noph.pdf>

1 even CSPA fails to plead their discontent for the “specific action or inaction of the [RWQCB]
2 which the State Board is requested to review.” CCR 2050.

3 Petitioners seek review of Order No. R5-2006-0053,
4 Coalition Group Conditional Waiver of Waste Discharge
5 requirements for Discharges from Irrigated Lands, and
6 Order No. R5-2006-0054, Individual Discharger
7 Conditional Waiver of Waste Discharge Requirements From
8 Irrigated Lands.

7 Page 2 CSPA Petition for Review

8 Because the RWQCB never acted, or failed to act with respect to the MRP
9 there is no actual controversy that exists and subject to review by the SWRCB. As such those
10 portions of CSPA’s petition that refer to the MRP should be struck and their arguments
11 dismissed.

12 2. The existing MRP, which was not yet amended is very extensive and
13 demanding.

14 The existing MRP (Order No. R5-2005-0833, signed by Executive Officer
15 Pinkos August 15, 2005) expressly clarifies the importance of the monitoring program.

16 The development of a science-based water quality
17 monitoring program is critical for determining actual and
18 potential impacts of discharges of waste from irrigated lands
19 on beneficial uses of water in the Central Valley Region.
20 Determining the existing ecological conditions of
21 agriculturally dominated waterbodies is a critical goal of a
22 water quality monitoring program and should be achieved
23 by multiple assessment tools such as toxicity, chemical
24 monitoring, and bioassessments.”

21 MRP, p. 1, para. 4.

22 The MRP specifically outlines the objectives of the monitoring as,

23 The MRP shall be designed to achieve the following
24 objectives as a condition of the Conditional Waiver:

- 25 a. Assess the impacts of waste discharges from irrigated
26 lands to surface water;
27 b. Determine the degree of implementation of management
28 practices to reduce discharge of specific wastes that impact
water quality in watersheds, subwatersheds, or drainage
areas were (sic) water quality problems have been identified
through monitoring;

- 1 c. Determine the effectiveness of management practices and
- 2 strategies to reduce discharges of wastes that impact water
- 3 quality;
- 4 d. Determine concentration and load of waste in these
- 5 discharges to surface waters; and
- 6 e. Evaluate compliance with existing narrative and numeric
- 7 water quality objectives to determine if implementation of
- 8 additional management practices is necessary to improve
- 9 and/or protect water quality.
- 10 In order to focus the monitoring effort in a cost effective
- 11 manner, a phased process is needed for the use of various
- 12 assessment tools (i.e. chemical monitoring, toxicity testing,
- 13 and bioassessments).

14 MRP, p. 2, para. 1.

15 Section 4 of the MRP (pp. 7 and 8) sets forth Table 1, which lists

16 the 69 different and separate water and sediment tests required of the coalitions by the MRP

17 program.

18 Section III of the MRP (pp. 11 through 14) outlines the seven

19 different types of reports which are required to be filed by coalitions. These include the

20 Exceedence, Communication, and Evaluation Reports, all of which are required to be filed after

21 monitoring indicates a water quality exceedence. The new MRP, soon to be adopted, will also

22 reflect the addition of Management Plans which the Board has newly required in the amended

23 Waiver.

24 **III. THE WAIVER DOES NOT NEED TO ADDRESS GROUNDWATER**

25 As previously discussed, the minimum requirements for the issuance of a waiver are

26 enumerated in Cal. Water Code §13269 and nowhere in this section is the requirement for the

27 RWQCB to include groundwater as a part of its waiver program. In fact, to do so would make no

28 sense because it would unnecessarily restrict the ability of the RWQCB to prioritize its regulatory

efforts. The Regional Board has other programs available to deal with specific groundwater

issues, such as well water issues and dairy CAFO permits. These other water board programs

deal with specific groundwater-related issues and other sister agencies also deal with groundwater

(drinking water – Department of Health Services and pesticide issues –Department of Pesticide

Regulation’s groundwater protection programs).

1 This Regional Board was the first regulatory body in the nation to extensively
2 regulate nonpoint source agricultural drainage across its 8+ million irrigated acres. This is a
3 mammoth undertaking, the likes of which has not been undertaken previously. Surface water has
4 the characteristic of being largely traceable and definable, and is often aligned with water district
5 and irrigation district jurisdictions. The entire application of the Waiver is tied to coalitions that
6 are designed on a watershed scale. For the Regional Board to contemporaneously engage a
7 groundwater program which has none of those characteristics would illustrate poor regulatory
8 prioritization because a groundwater program would have to be managed entirely differently, and
9 where there are different legal considerations and difficulties well beyond those involving the
10 present surface water Waiver would be monumental. Also, the two Basin Plans in the Central
11 Valley Region have limited and differing positions related to groundwater. It is certainly
12 reasonable that the Board undertake one major new program at a time will maintaining its ability
13 to embark on investigations, site specific enforcement, and issuance of permits as necessary to
14 protect groundwater. It is entirely reasonable that the Board has not tried to take two mammoth
15 steps at the same time, and the Water Code does not require it.

16 **IV. THE WAIVER IS CONSISTENT WITH THE SWRCBS / RWQCB'S PLANS AND**
17 **POLICIES**

18 A. As discussed with regard to Cal. Water Code § 13269 above, the Waiver is
19 consistent with the Basin Plan

20 (See section A, p. 3, above.)

21 B. Anti-degradation SWRCB Resolution No. 68-16

22 The high quality water policy (also known as the “Anti-degradation Policy”) deals
23 with the pristine waters of the state, not the agricultural drain waters of the state. The State’s
24 policy with respect to maintaining the high quality of waters in California is represented by
25 Resolution 68-16. The Resolution deals with very high quality waters, which are of a higher
26 quality than the quality established in existing policies and Basin Plans. Even when dealing with
27 such extraordinarily high quality waters, regulatory efforts have to be balanced with the
28 maximum benefit to the people of the state. Agricultural drain water in this region is certainly not

1 extraordinarily better quality water than required by the Basin Plans. In fact, the entire Waiver is
2 dedicated to bring this region’s agricultural waters up to Basin Plan standards. Therefore, this
3 policy does not apply to these waters. Moreover, even if it was relevant, the agricultural
4 beneficial use of waters in the Central Valley has an extraordinarily high public value, which
5 would have to be balanced with this policy.

6 1. Court’s Decision:

7 The Regional Board found that the Waiver is consistent with
8 Resolution 68-16 because the Waiver requires persons who
9 obtain coverage to comply with applicable water quality
10 objectives, protect beneficial uses and prevent nuisance by
11 implementing monitoring and reporting programs,
12 evaluating the effectiveness of management practices, and,
13 where water quality exceeds WQOs, by identifying and
14 implementing additional management practices to comply
15 with WQOs.

16 (See Court’s Decision at p. 65.)

17 A fundamental flaw in Deltakeeper’s argument is its
18 assumption that the State Board Policy means there can be
19 no degradation from “natural” background conditions.

20 (See Court’s Decision at p. 65.)

21 The Court reminds us that “section 13000 of the Water Code which provides that
22 “the waters of the state shall be regulated to attain the highest water quality which is reasonable,
23 considering all demands being made and to be made on those water sand the total values
24 involved, beneficial and detrimental, economic and social, tangible and intangible.” (Water Code
25 § 13000 [emphasis added].) Instead, the Court interprets the Policy consistent with its plain
26 language, namely, that the purpose of the Anti-degradation Policy is to ensure that newly-
27 permitted discharges do not degrade waters where the existing water quality is higher than
28 necessary for the protection of the applicable beneficial uses. (October 28, 1968 State Water
Resources Control Board’s Resolution No. 68-16 *Statement of Policy with Respect to Maintaining*
High Quality of Waters in California, p. 66; 10:21.

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The Court also noted:

Because the Anti-degradation Policy was not triggered, the Policy did not require that the Board employ WDRs.

(See Court’s Decision at p. 67.)

There was no requirement that the Board comply with the Policy of making findings that the Waiver is consistent with the Anti-degradation Policy.

(See Decision at p. 67)

C. Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program

Contrary to Petitioner CSPA’s allegation, Order No. R5-2006-0053 (the “Order”) is entirely consistent with the Regional Board’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (May 20, 2004) (the “NPS Policy”), the elements of which are outlined in section II.C.2. of that document. First, as discussed above, the Order is consistent with the Basin Plan and in the public interest. More specifically, as also determined by the Court in the 2005 opinion at pages 70-72, the Order meets the NPS Policy by requiring a monitoring program, currently specified as pursuant to Coalition Group MRP Order No. R5-2005-0833 (Order Attachment B, B.4); by stating at Order Paragraph 9 that the waiver is conditional and subject to termination at any time, and in Order paragraph 10, by establishing a 5-year term. The Waiver contains a fee schedule (Order paragraph 18) and a program for enforcement. Finally, the NPS Policy states: “The RWQCBs are encouraged to have an enrollment process for coverage under the waiver of WDRs so that the RWQCBs can identify the dischargers who are required to comply with the general waiver of WDR’s” The Order goes beyond that “encouragement,” which the we assert was fully satisfied by the provision of maps identifying all participants, and now requires that Coalition Groups submit an electronic list of landowners and/or operators who knowingly participate in the Coalition Group (Order Attachment A.6). In summary, every point outlined for Waivers of Waste Discharge Requirements under the NPS Policy is satisfied by the Order.

1 **V. RESPONSE TO CSPA SPECIFIC POLICY ARGUMENTS**

2 The following section is organized by CSPA's specific policy arguments as stated in their
3 Petition for Review. The specific reasons why their arguments fail are listed as "Response,"
4 following each respective sub-section.

5 I. *The Board's Findings That The Waiver Is In The Public Interest Is Not Supported*
6 *By The Weight Of The Evidence: The Boards Have No Evidence As To What, If*
7 *Any, Additional Pollution Control Measures The Discharger Coalitions Will*
8 *Apply, When And Where They Would Apply, Or Whether They Would Be Effective*

9 A. *The Evidence Overwhelmingly Demonstrates That Discharges From*
10 *Agriculture Have Violated Water Quality Objectives And Will Do So Again*
11 *In The Future Pursuant To The Conditions of The Waiver*

12 **RESPONSE:**

13 When the Waiver was initially passed, these same Petitioners alleged that water column
14 toxicity was ever-present throughout the Region. After three years of monitoring, this has been
15 demonstrated to be false. Rather, such monitoring has indicated certain finite areas of concern.

16 The Coalition monitoring results from the 2004 and 2005 Annual Reports were reviewed
17 by Dr. Jay Gann, Professor and Water Quality Specialist of University of California, Riverside.
18 Professor Gann presented his analysis to the Regional Board prior to the adoption of the Waiver
19 Renewal.

20 At the time of the hearing (2006 data will be finalized and turned in early 2007), there had
21 been monitoring in 2004 and 2005 from 108 total sites, involving 17,720 total water quality
22 analyses. Those samples demonstrated that there were several different physical properties that
23 showed exceedences, but each involved from only 5% of the samples (pH) to 30% of the samples
24 (TDS). Of the chemical exceedences, only two were above 5% frequency, and none more
25 frequent than 17% of the samples. Toxicity of the water column to ceriodaphnia arose in less
26 than 9% of the total samples. This evaluation shows that there is far less cause for concern than
27 those expectations asserted by CSPA both now, and when the original Wavier was promulgated.

28 Dr. Gann's conclusions were that the program produced a large volume of high quality
data.

Going back to 2003, CSPA had originally testified that they understood that water quality
objectives could not be immediately achieved and, in fact, they suggested a ten-year target which

1 the Board generally embraced. In spite of CSPA's own recommendation in only the first three
2 years, the monitoring results indicate considerable progress is being achieved.

3 *B. The Evidence Graphically Establishes That Coalitions Have Failed To*
4 *Comply With Waiver Conditions*

4 **RESPONSE:**

5 Here again CSPA manufactures their own facts to bolster old arguments. Pursuant to the
6 Waiver, coalitions have been formed covering the vast majority of the Central Valley Region.
7 The only statutory operational requirement, monitoring, has been aggressively required and
8 engaged. As stated in the previous section, in the first two years, there were 108 total monitoring
9 sites, involving 17,720 total separate analyses. The Irrigated Lands Program Conditional Waiver
10 represents the most robust surface monitoring program which has been conducted in this state or
11 elsewhere. Pursuant to the Monitoring and Reporting Program, water quality objective
12 exceedences are timely reported and responsive action is required and does take place. As such,
13 this is also without merit.

14 *C. The Evidence Establishes The Regional Board Cannot or Will not Enforce*
15 *Fundamental Waiver Conditions*

15 **RESPONSE:**

16 Petitioners allege that the Regional Board cannot and will not enforce the fundamental
17 Waiver conditions. Nothing can be further from the truth. The Waiver expressly provides that it
18 does not set aside or vitiate the applicability of any water quality objective, therefore, the Board
19 can take any and all traditional actions within their authority regarding Water Code or Basin Plan
20 violations. The statute provides (Cal. Water Code § 13269) and the Waiver itself expressly
21 provides that the State and Regional Board can take action at any time to terminate or amend the
22 Waiver terms or conditions. Moreover, the Regional Board, under the terms of the Waiver, has
23 the ability to cancel any coalition certification. Therefore, the Regional and State Boards each
24 have unfettered authority to take action to enforce the terms of the Waiver.

25 Additionally, the Regional Board has both formally (through the required filing of
26 reports), and informally (through their follow up with the Coalitions concerning such annual
27 monitoring and exceedence reports) held coalitions to full compliance with the Waiver terms.
28 Further, the Regional Board has sent out hundreds of Cal. Water Code section 13267 letters

1 demanding reports from individual farmers, and the Board has issued notice that they are going to
2 take action against those who have indicated that they have not yet joined coalitions, and they are
3 taking action against those who have not responded to their 13267 letters, as well as following up
4 for with those who have not adequately supplied all the requested information.

5 Therefore, it is clear that the Board has full authority, has complete intention to, and has
6 actually fully implemented the Waiver.

7 *D. The Evidence Shows The Waiver's Monitoring Program Is Deficient*

8 **RESPONSE:**

9 Watershed coalitions have been formed to cover the irrigated land areas of the Region.
10 Such watershed coalitions have designed and have implemented monitoring programs which
11 collectively represents the most robust and expansive surface water monitoring that has ever been
12 engaged in the State. It is legion that the Regional Board's SWAMP monitoring programs and
13 the Regional Board monitoring conducted through the University of California, have been limited
14 in resources, thus limited in the number of sampling locations. All parties acknowledge that the
15 Central Valley Board's Irrigated Lands Program, Ag Waiver, is the most extensive monitoring
16 program and robust data reservoir that has yet been engaged in dealing with nonpoint source
17 surface water drainage.

18 Monitoring sites have been devised to cover most of the agricultural drains and major
19 waterways of the Region. Monitoring sites may be adjusted to more precisely cover drainages of
20 concern, and Regional Board Staff routinely meets with watershed coalitions regarding suggested
21 additions or changes in monitoring sites. The Waiver also indicates that when water quality
22 exceedences are experienced, additional monitoring sites are required to be placed upstream of
23 the point of exceedence. The purpose of additional and upstream monitoring is to determine both
24 the cause, and ultimately the source of such exceedence so that appropriate action can be taken to
25 remedy the problem.

26 The extent of the monitoring program has also been the most elaborate of any previously
27 designed. The original monitoring program was divided into phases. The first phase required
28 three species biomonitoring in the water column to determine toxicity, and also biomonitoring in

1 the sediment to determine sediment toxicity. In addition thereto, all traditional water constituents
2 were required to be monitored. (See Section C, p.6)

3 The Phase 2 monitoring program, which commenced a year ago required that, in addition
4 to toxicity monitoring: a) specific chemical monitoring for all agricultural chemistries, and b)
5 monitoring for all metals and c) monitoring for pathogens was also required.

6 The Waiver has various attachments, as well as related orders. Order No. R5-2005-0833
7 deals with monitoring, known as the Monitoring & Reporting Program (“MRP”). As the Board
8 was deliberating on what amendments to include to tighten up the terms of the recent Waiver
9 extension, they also decided to strengthen many provisions in the MRP. This parallel and
10 extensive MRP review process involved all stakeholders, including the environmental petitioners
11 who participated in the Technical Issues Committee which was an officially facilitated process.
12 Under the Technical Issues Committee, there were a number of Focus Groups that were brought
13 together to deal with particular issues (i.e., laboratory focus group, toxicity triggers focus group,
14 nutrient focus group). The Board had originally intended to promulgate the new MRP when they
15 amended the Waiver, but the rigorous Technical Committee process was not able to be concluded
16 on that schedule. The Technical Issues Committee has now completed its review and the MRP,
17 will be released and acted upon in November/December. Because this process was open to the
18 public, the components of the MRP amendments are known to the parties (including Petitioners).
19 Some of the upgrades in the Waiver’s MRP includes more rigorous and global monitoring plans
20 by coalitions, more precision relative to follow up monitoring, more precision as to upstream
21 monitoring following exceedences, and many other upgrades. It is not proper that these
22 Petitioners challenge the Waiver for not yet having made the specific improvements they know
23 are in the course of being made, and in which they participated.

24 *E. Waiving Substantial Waste Discharges That Violate Water Quality*
25 *Objectives Is Not In The Public Interest And Inconsistent With The Intent*
Of The Legislature

26 *F. Waiving WDRs For Discharges of Agricultural Wastes That Have Been*
27 *Identified As Causing Or Contributing To the Further Decline Of The*
28 *Sacramento-San Joaquin Delta And California’s Beleaguered Fisheries*
Cannot Be In The Public Interest

1 G. *The Waiver’s Conditions Violate the Water Code By Exempting*
2 *Agriculture From Having To Comply With Water Quality Objectives For*
3 *The Foreseeable Future*

4 **RESPONSE:**

5 The Waiver does not waive the violation of water quality objectives, but is a regulatory
6 program designed to move nonpoint source discharges into compliance with relevant water
7 quality objectives. It is very much in the public’s interest for a regulatory program to be
8 implemented to commence to deal with nonpoint source drainage in this Region, and the Waiver
9 that has been promulgated is the most aggressive regulatory program of its nature. Moreover, the
10 Waiver expressly does not eliminate the applicability of water quality objectives, nor does the
11 Waiver remove any authority of the Boards to deal with such requirements.

12 1. *The Waiver Cannot Ensure Attainment Of Water Quality Standards*

13 **RESPONSE:**

14 The Waiver is a regulatory program to move the largest land use in the Region and the
15 most unregulated system of discharges into a regulatory program designed to achieve water
16 quality objectives. Still in its infancy, this program has brought together and focused more
17 dischargers than any program of its kind. It has also generated the most extensive body of water
18 quality data in the Region, and has set up a mechanism to commence dealing with any reported
19 exceedences. Once identified, the program is also designed to determine the source and cause of
20 such exceedences and for management practices to be implemented to deal with those
21 exceedences.

22 It is disingenuous for the Petitioners to say that this regulatory program does not “assure”
23 that each water quality objective is instantaneously achieved on each square foot of the
24 approximately 8 million irrigated acres of this region. This is an unreasonable test, and would be
25 similar to criticizing CalTrans for not assuring that any car at any point in this State will ever
26 exceed 55 miles per hour, or other posted limits.

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1 2. The Waiver’s De Facto Time Schedule Is Illegal And Cannot Be In
2 The Public Interest

3 **RESPONSE:**

4 It is uncertain what Petitioners even mean regarding this “*de facto* time
5 schedule.”

6 *H. The Waiver Conditions Do Not Assure Pollution Reductions By Individual
7 Farms*

8 *1. Farm-Specific Pollution Prevention Plans Are Needed To Assure
9 Reductions In Pollution Loadings*

10 **RESPONSE:**

11 The Regional Board considered having individual waste discharge
12 requirements and individual monitoring plans at the farm level and determined that they were
13 both infeasible and impossible for the Board to administer, and that such a program would be less
14 effective than pulling all the dischargers together in organized coalitions that could implement a
15 coordinated and representative monitoring program and take actions to address exceedences.

16 *2. All Coalition Members Must Affirmatively Opt-In To A Coalition
17 And Provide Relevant Information*

18 **RESPONSE:**

19 This contention simply reflects what is presently required. All individual
20 farmer dischargers are required to either file independently or to join a certified coalition, and to
21 supply the relevant information requested of the Board. (Also see response to “I” below.)

22 *3. Adequate Fees Are Essential To The Success Of Any Sustainable
23 Program Addressing Agricultural Pollution Discharges*

24 **RESPONSE:**

25 Fees are authorized by statute and are fixed annually by the State Board.
26 The Regional Board has required such fees.

27 *1. The Board Cannot Assume That A Program That Fails To Reach Out To
28 Individual Dischargers Will Be Effective Because The Boards Have Not
Gathered Any Evidence About Who, What, Where Or When Farming
Discharges Occur*

RESPONSE:

The Regional Board has been actively coordinating with coalitions regarding the
submittal of information regarding individual dischargers (participants) who are members of

1 coalitions. The Regional Board has changed their position on how they wanted such information
2 submitted (i.e., maps or various lists), and the nature of what information is to be provided (i.e.,
3 APN numbers, acres or geographic map outlines). The Regional Board changed their position on
4 what and how they wanted this information provided several times over the last year and a half,
5 but they have been consistent that they intended to obtain such information.

6 The Regional Board called together a stakeholder policy working group,
7 principally for the purpose of identifying how such information should be presented. Petitioners
8 were invitees to such workgroup. The recommendations of such workgroup were presented to the
9 Regional Board at the public hearing. All of the coalitions had committed to provide this
10 information regarding their coalition participants throughout this entire period. The only question
11 was what form of such information would ultimately be required. At the Board meeting, the
12 Board reinforced their interest in getting individual participant and coalition information. To the
13 frustration of the coalitions, the Board decided they wanted such information in the form of
14 participant lists versus the nonparticipant lists or maps of each category, as had been previously
15 suggested by the Board and had been recommended by the policy workgroup. Notwithstanding
16 this change in the required form of such submittal, the Board's position has been consistent that
17 they wanted information on individuals who were participating in coalitions. Coalitions have
18 now complied with the September 30 filing date, and have submitted such participant
19 information. Because the Board also promulgated a December 30 cutoff date for sign-up, there
20 are additional participants being signed up by coalitions at this time, and several coalitions intend
21 to submit a supplemental list in January.

22 Consequently, the issue of identification of those who are participating in
23 coalitions has been settled, and the Petitioners have known that it has been settled.

24 Because the Board decided they wanted only submittal of participant information,
25 and not information on nonparticipants, the Board is now engaged in efforts to identify those who
26 may be dischargers who are not participating in coalitions. The Board has sent out several
27 hundred Cal. Water Code § 13267 letters in an attempt to identify individuals who are
28

1 nonparticipants in coalitions. Therefore, the Board has been extremely diligent in identifying
2 individual participants in coalitions and individual dischargers not in coalitions.

3 *J. In Order For Coalitions To Be Successful, They Must Be Subject To Clear*
4 *Conditions, Goals And Rational Checks & Balances*

5 **RESPONSE:**

6 The Waiver expressly indicates the obligations of the coalitions and the goals of
7 the program. It also requires the submission of several types of reports and requires certain
8 follow up information on particular time schedules. Moreover, the monitoring and reporting
9 appendix to the Waiver, which is presently being finalized with the participation of the
10 environmental Petitioners also includes increased and more stringent conditions and goals.

11 1. *The Agricultural Discharge Program Must Limit The Size Of*
12 *Coalitions*

13 **RESPONSE:**

14 The size of the coalitions has absolutely no importance or relevance to the
15 performance of the monitoring and reporting functions. Each of the coalitions have submitted
16 their Notice of Intents, and have been certified by the Regional Board. Some of the larger
17 coalitions have operationally broken down areas of responsibility to sub-coalitions, which are
18 implementing the Waiver for their particular watersheds. It makes absolute sense that coalitions
19 and sub-coalitions are organized on a watershed basis and thereby aligned with the irrigation and
20 water districts that operate therein. The monitoring programs have to be reflective of the
21 watershed network. The coalitions have submitted detailed maps of the water flow network
22 within each of their particular watersheds. To break these organizations down so they are not
23 organized by watershed, and thus not harmonized with the water districts and the water network,
24 is simply an attempt to make this a disjointed and failing program.

25 2. *The Agricultural Discharge Program Must Establish A Clear*
26 *Deadline For All Dischargers To Comply With Water Quality*
27 *Objectives*

28 **RESPONSE:**

The Waiver is clear that it does not eliminate the applicability of any Water
Code or Basin Plan objective, as they remain applicable throughout the period of the Waiver, and
the Board is fully empowered to take all traditional actions to deal with such objectives. The

1 Waiver recognizes that it is impractical to instantly expect compliance with all objectives across
2 all of the millions of acres of the Region. The Waiver is a regulatory program designed to move
3 towards the achieving objectives as soon as possible. It has been said that a reasonable target
4 would be within ten years. Much progress has been made to date.

5 3. *Coalitions Must Be Obligated Each Year To Determine Their*
6 *Existing Loadings And Estimate The Next Year's Reductions*

7 **RESPONSE:**

8 Petitioners seem to be confused between the Waiver program and the
9 TMDL program that deals with specific loading and load allocations. The new monitoring and
10 reporting program is going to expressly require additional information on loading, but the Waiver
11 is not a universal TMDL load allocation program.

12 4. *Regional Board Review And Approval Of Key Milestones Must Be*
13 *Included In The Program*

14 See Comments in Paragraph No. 2 above.

15 5. *The Current Conditions, Numerous Assertions In The Proposed*
16 *Waiver Rely on Assumptions And Conjecture Rather Than The*
17 *Weight Of The Evidence*

18 **RESPONSE:**

19 The Regional Board has had many hearings and workshops, technical
20 meetings, focus group meetings, policy group meetings, stakeholder briefings, and through all
21 this has collected significant input and evidence regarding water quality and how it can be
22 effectively managed. The Board has weighed all such evidence in making their informed
23 judgment on the Waiver. Every decision could be the subject of criticism by various parties (the
24 agricultural community and coalitions have their frustrations as to certain components), but
25 clearly the actions of the Board have not been on mere conjecture or arbitrary considerations.

26 II. *THE PROPOSED WAIVER MUST ADDRESS INCREASING POLLUTION OF*
27 *GROUNDWATER FROM AGRICULTURAL ACTIVITIES*

28 **RESPONSE:**

The Regional Board was the first regulatory body in the nation to regulate nonpoint source
agricultural drainage across its 8+ million irrigated acres. This is a mammoth undertaking, the
likes of which has not been undertaken previously. As stated above, surface water has the

1 characteristic of being largely traceable and definable, and is often aligned with water district and
2 irrigation district jurisdictions. The entire application of the Waiver is tied to coalitions that are
3 designed by watershed. For the Board to contemporaneously engage a groundwater program
4 which has none of those characteristics, which would have to be managed entirely differently, and
5 where there are different legal considerations and difficulties well beyond those involving the
6 present surface water Waiver would be monumental. It is certainly reasonable that the Board
7 undertake one major new program at a time. It is reasonable that the Board has not tried to take
8 two inconsistent mammoth steps at the same time. More significant, the Water Code does not
9 require it.

10 *III. THE PROPOSED WAIVER IS INCONSISTENT WITH THE REGIONAL*
11 *BOARD'S BASIN PLAN AND THE STATE AND FEDERAL*
12 *ANTIDEGRADATION POLICIES*

13 *1. The Regional Board's Finding That The Waiver Is Consistent With State*
14 *Board Resolution No. 68-16 Is Contrary To Law, Not Supported By The*
15 *Weight Of The Evidence And Inconsistent With Other Findings*

16 **RESPONSE:**

17 The Waiver program is designed to determine what discharges are related to
18 exceedence of water quality objectives. The Waiver also calls for follow up monitoring to
19 determine the particular source and identifies additional responsibilities regarding management
20 plans to be implemented to deal with such exceedences. The purpose of the Waiver, therefore, is
21 to identify and fix any exceedences. The Waiver does not try to justify any exceedence of the
22 objectives.

23 *a. Neither the Dischargers Nor the Regional Board Have*
24 *Demonstrated That Agricultural Discharges That Add*
25 *Concentrations of Pollutants Well Above Natural Background*
26 *Levels are to the Maximum Benefit of the Public or Will Comply*
27 *With Objectives*

28 **RESPONSE:**

Monitoring, to date, has shown that exceedences are far less prevalent than
had originally been alleged, and are more varied (not so much water column toxicity, but there
are unexpected issues dealing with algae and traditional water constituents).

1 IV. A NEGATIVE DECLARATION IS APPROPRIATE AND IS BASED ON
2 SUBSTANTIAL EVIDENCE

3 **RESPONSE:**

4 Once again, Petitioners CSPA misstate the law, discusses irrelevant facts, and express their
5 displeasure with the way the Regional Board’s executive officer, staff, and coalition groups have
6 implemented the Waiver as the basis for their challenge of the Regional Board’s environmental
7 review under CEQA. However, as with previous attacks this too is unsupported by fact or law
8 and therefore the Regional Board’s use of the negative declaration is appropriate.

9 First, Petitioners CSPA attack the negative declaration by misstating the project baseline
10 as “the apparently clean baseline observed in the 1970s and early 1980s.” CSPA May 19th 2006
11 letter to the Regional Board at p. 44. It is unclear why, despite an unambiguous regulation and a
12 court opinion upholding the very CEQA document at issue Petitioners CSPA forward this
13 argument. “Rather, the proper baseline is the set of environmental conditions existing at the time
14 the environmental analysis was commenced.” *Deltakeeper, et al. v. California Regional Water*
15 *Quality Control Board For The Central Valley Region, et al.*, Case No. 04CS00235 at 38-39.
16 Citing (14 C.C.R. § 15125(a)). See also, SWRCB WQO 2004-0003, at p. 16 citing SWRCB
17 Order WR 2001-07, at p. 3; and generally *Save our Peninsula Committee v. Monterey County*
18 *Board of Supervisors* (2001) 87 Cal. App.4th 99.

19 The importance of the application of the correct baseline is illustrated in the context of
20 CEQA’s exemption for existing facilities. For example, where a previously-approved project is
21 being reauthorized or re-permitted, CEQA places the baseline at the time of reauthorization or re-
22 permitting. (See, e.g., tit. 14 Cal. Code Reg. §§ 15300, 15301 (“the **operation, . . . permitting, . . .**
23 **or minor alteration of existing . . . facilities . . . involving negligible or no expansion of use**
24 **beyond that existing at the time of the lead agency’s determination**” is deemed to not have a
25 significant effect on the environment) (emphasis added).) This issue is addressed in *Bloom v.*
26 *McGurk* (1994) 26 Cal. App. 4th 1307, where the court held that the re-permitting of an existing
27 facility’s operations need not be subject to an Environmental Impact Report (“EIR”) as long as
28 there was no increase in impacts when compared to operations at the time of review.

1 In addressing whether the operation would have significant impacts and therefore fall
2 outside the exemption, the *Bloom* court explicitly rejected a prior case that interpreted the
3 definition of "significant effects on the environment" to mean an adverse change since CEQA
4 was enacted – i.e., when compared to environmental conditions existing in 1970. (*Id.* at 1313-
5 15; tit. 14 Cal. Code Reg. § 15300.2.) The court explained that “thousands of permits are
6 renewed each year for ongoing operation of regulated facilities, and [discerned] no legislative or
7 regulatory directive to make each such renewal an occasion to examine past CEQA compliance at
8 every facility built in the last 24 years.” (*Id.*) Instead, the Court held that a “‘significant effect on
9 the environment’ would mean a change in the environment existing at the time of the agency’s
10 determination.” (*Id.*)

11 Accordingly, here, the proper baseline is the environmental conditions existing at the time
12 the initial study was conducted by the Regional Board, not the 1970’s or 1980’s. The Regional
13 Board, in fact, re-analyzed the negative declaration and initial study prior to the Waiver
14 Renewal’s adoption in 2006. RWQCB Order No. R5-2006-0053 at pages 14-15.

15 As such, CSPA’s environmental baseline is improper and renders their CEQA claims
16 invalid.

17 Second, even if somehow CSPA had the correct environmental baseline, which they do
18 not, CSPA alleges the Waiver Renewal causes significant impacts because it “permits an
19 enormous new multi-billion gallon set of discharges above those permitted under the 2003
20 waiver.” CSPA May 19, 2006 letter at 39. However, this statement is facially inaccurate and is
21 not supported by substantial evidence. The Waiver Renewal in numerous locations articulates
22 strict adherence to the Basin Plan, its water quality objectives, and other regulatory considerations
23 protective of water quality. “The Conditional Waiver is consistent with applicable Basin Plans
24 because it requires compliance with applicable water quality standards, as defined in Attachment
25 A, and requires the prevention of nuisance. It requires implementation of a monitoring and
26 reporting program to determine effects on water quality and implementation of management
27 practices to comply with applicable water quality standards.” RWQCB Order No. R5-2006-0053
28 at page 4. See also RWQCB Order No. R5-2006-0053 at page 14; RWQCB Order No. R5-2006-

1 0053 Attachment A at page 1, 5 and RWQCB Order No. R5-2006-0053 Attachment B at page 2-
2 3. As such, there is no substantial evidence to support that there are proposed substantial changes
3 that involve new significant environmental impacts with respect to the circumstances of the
4 project.

5 Third, CSPA alleges that the CEQA documentation should fail because of purported
6 failures by coalition groups “to comply with the specific conditions of the Waiver” and the
7 Regional Board’s failure “to enforce those conditions.” CSPA equates this to the uncovering of a
8 level of new information of substantial importance which was not known and will show that the
9 project will have significant effects. This argument is also without legal merit. For purposes of the
10 Regional Board’s CEQA analysis, mere speculation and/or unsubstantiated opinions that the
11 Waiver will not be complied with by the regulated community or effectively enforced by the
12 agency is not substantial evidence that the Waiver itself may result in a potentially significant
13 impacts. *Lucas*, 233 Cal. App. 3d at 157, 162 (a “distrust” or fear of noncompliance is not
14 substantial evidence); *Leonoff*, 222 Cal. App. 3d at 1351-52 (same). As previously stated, the
15 Waiver Renewal’s conditions specifically prohibit increases in run off, require compliance with
16 water quality objectives, demand the prevention of nuisance and compliance with such conditions
17 should be presumed, *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988)
18 47 Cal. 3d 376, 447 (compliance with the law “can be reasonably presumed” for purposes of
19 CEQA review). Therefore, the Regional Board properly determined that the project would not
20 have a significant impact on the environment in its reevaluation of its CEQA document.

21 In its simplest terms, this more rigorous Waiver underwent even more complete review
22 than the original Waiver. The coalitions are now operating and monitoring has produced public
23 data and actions are being taken to address the limited water quality exceedences that have
24 evidenced. Clearly by tightening up the Waiver terms can not result in this Waiver being subject
25 to more extensive CEQA review than the original Waiver.

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**VI. REQUEST FOR OPPORTUNITY TO MAKE ADDITIONAL SUBMITTAL
AFTER ADMINISTRATIVE RECORD IS FILED:**

The water quality coalitions throughout the San Joaquin Valley and the California Farm Bureau Federations timely filed their Petitions for Review and Requests for Stay of the Regional Board’s Waiver Order on July 21, 2006. The State Water Resources Control Board (“State Water Board”) responded on September 8, 2006, denying the Requests for Stay, but has take no other action to date, indicating how or whether it will take up the Petition. While State Board regulations provide 270 days to review petitions (Cal. Code Regs., tit. 23 § 2050.5(b)), the San Joaquin Valley water quality coalitions and the California Farm Bureau Federation’s response is required to be filed by October 27, 2006 (Cal. Code Regs., tit. 23 § 2050.5(a).), as is the formal administrative record. However, to date, the formal record has not been filed. The San Joaquin Valley water quality coalitions and the California Farm Bureau Federation, therefore, hereby request the opportunity to amend or augment this filing as appropriate based on citations to the formal record when it becomes available. (Cal. Code Regs. tit. § 2050.5(a)).

Dated: October 27, 2006

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Dated: October 27, 2006

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