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9 Water Quality Coalitions throughout the
10 San Joaquin Valley

11 **BEFORE THE CALIFORNIA**

12 **STATE WATER RESOURCES CONTROL BOARD**

13 In Re: CENTRAL VALLEY
14 REGIONAL WATER QUALITY
15 CONTROL BOARD RESOLUTION
16 NOS. R5-2006-0053 AND R5-2006-
17 0054 RENEWING THE WAIVER OF
18 WASTE DISCHARGE
19 REQUIREMENTS FOR DISCHARGES
20 FROM IRRIGATED LANDS

**PETITION FOR REVIEW; REQUEST FOR
STAY; DECLARATION OF DAVID L.
ORTH IN SUPPORT OF REQUEST FOR
STAY**

[Cal. Wat. Code §1320; 23 CCR §2050, et seq.]

21 **I. INTRODUCTION**

22 The water quality coalitions throughout the San Joaquin Valley¹ (hereinafter
23 “Petitioners”) respectfully file this petition as a result of actions taken at the Central Valley
24 Regional Water Quality Control Board’s (hereinafter the “Regional Board”) June 22, 2006, board
25 meeting. Specifically, the Regional Board adopted Resolutions Nos. R5-2006-0053 and R5-
26 2006-0054 renewing the Conditional Waiver of Waste Discharge Requirements for Discharges
27 from Irrigated Lands (hereinafter the “Waiver”). Petitioners file this Petition for Review pursuant
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¹ The San Joaquin Valley Water Quality Coalition members filing this appeal include: The *Southern San Joaquin Valley Water Quality Coalition*, which is comprised of water agencies that are within the following Associations, Authorities and Districts: Kaweah and St. Johns Rivers Association, Kaweah Delta Water Conservation District, Kern County Water Agency, Kern Delta Water District, Kings River Conservation District, Kings River Water Association, North Kern Water Storage District, Tule River Association, the *Westside San Joaquin River Watershed Coalition*, involving the San Joaquin River and Westside Creeks, the *San Joaquin County and Delta Water Quality Coalition*, involving all Delta and tributary waters, the *East San Joaquin Water Quality Coalition*, involving all the feeder watersheds from east of the Delta, and the *Westlands Water District Coalition*.

1 to California Water Code § 13320 and Title 23, California Code of Regulations, section 2050, et
2 seq.

3 By this Petition, Petitioners further request the State Board to: 1) conduct a hearing to
4 permit presentation of additional evidence, testimony, and argument pertaining to this Petition;
5 and 2) stay the effect of the elimination of the option to submit a participant list in the form of a
6 map, 3) stay the effect of imposing a September 30, 2006 deadline for coalitions to submit their
7 participant lists to the Regional Board; and 4) stay the imposition of a December 30, 2006 cutoff
8 for landowners to join a coalition.

9 **II. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF THE**
10 **PETITIONERS**

11 San Joaquin Valley Water Quality Coalitions
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19 **III. SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD**
20 **IS REQUESTED TO REVIEW**

21 The Regional Board adopted Resolutions No. R5-2006-0053² and R5-2003-0054, to
22 renew the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated
23 Lands. (A copy of the adopted resolutions are attached hereto at Exhibits “A” and “B”.)

24 **IV. DATE ON WHICH THE REGIONAL BOARD ACTED**

25 The Regional Board adopted Resolutions No. R5-2006-0053 and R5-2003-0054, which
26 were issued by Executive Officer Pamela C. Creedon on June 22, 2006.

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28 ² Petitioners attach two versions of the Final Order No. R5-2006-0053 due to a discrepancy identified on the
Regional Board’s website. After the Regional Board’s action of June 22 to adopt the Waiver, the Regional Board
emailed a “final order” to the coalition groups which contains language in the finding 14 of the Order that is not
included in the unsigned “final order” that is currently posted online at [http://www.waterboards.ca.gov/centralvalley/
programs/irrigated_lands/index.html](http://www.waterboards.ca.gov/centralvalley/programs/irrigated_lands/index.html). Without knowing which Order to submit as the Final Order No. R5-2006-
0053, Petitioners attach both Resolutions within Exhibit A.

1 **V. FULL AND COMPLETE STATEMENT OF REASONS THE ACTION WAS**
2 **INAPPROPRIATE OR THE MANNER IN WHICH THE PETITIONERS WERE**
3 **AGGRIEVED**

4 A. General Action, Participant/Non-Participant Maps

5 Petitioners the San Joaquin Valley water quality coalitions are committed to
6 implementing watershed management programs to improve water quality in the Central Valley.
7 Since the inception of the Regional Board's Conditional Waiver program, the Waiver has been
8 implemented throughout the San Joaquin Valley by the members of the water quality coalitions,
9 which are comprised of agriculture, ag water, and agribusiness interests. The San Joaquin Valley
10 water quality coalition members had, for the first two years, implemented the first phase of
11 monitoring, which called for extensive water quality monitoring, comprised of: 1) three water
12 column species for toxicity, 2) water constituents, and 3) sediment toxicity monitoring, and is
13 currently emerging the Phase II monitoring, which also required monitoring for metals, pathogens
14 and specific chemicals, including all pesticides. The San Joaquin Valley water quality coalitions
15 also continue their commitment to water quality through landowner education, reporting,
16 identification and implementation of management practices and paying required Waiver fees.

17 Petitioners appeal the action of the Regional Board on June 22, 2006, with respect to the
18 above Resolutions because the specific amendments to the adopted Waiver made during the
19 Regional Board meeting were not specifically noticed; therefore, not open to discussion or
20 comment by the interested and affected parties, inconsistent with the Policy Working Group
21 recommendations, inconsistent with both the language and the intent of the tentative Waiver, not
22 consistent with by the Board's overall Waiver responsibility, and rebuffs all that the coalitions, in
23 good faith, have been working for months to authorize, develop and implement the participant
24 maps consistent with: a) the Staff directives, b) the Policy Working Group proposal, and c) the
25 draft tentative Waiver and provide an unreasonably short time limit to address changed
26 requirements.

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1 B. Specific Reasons Petitioner Has Been Aggrieved

2 (1) Identification of Watershed Coalition Participants

3 At the November 2005 Regional Board meeting, the Regional Board resisted adopting the
4 proposed Resolution to amend the Waiver to require the identification of coalition members
5 (participants) solely by means of a participant list. Instead, the Regional Board opted to extend
6 the existing Waiver for six months until June 2006, and specifically directed the parties to take
7 that time and work out that issue, as well as the clarification as to what is a “discharge.” The
8 Board clearly expressed that the participant list issue was fundamental to the Waiver’s success
9 and must be resolved in a workable manner.

10 The coalitions, environmental representatives, urban water users and Regional Board Staff
11 were called together by the Executive Officer in a Policy Working Group. The Policy Working
12 Group attempted to develop an agreement on how Staff could get the participant and
13 nonparticipant information they believed they needed to: 1) effectively implement the Waiver in
14 an accountable fashion, 2) provide the Board with information on nonparticipant landowners, and
15 3) also provide information so the Board could appropriately direct pressure or enforcement
16 actions to fully carry out their responsibilities under the California Water Code.

17 The Policy Working Group held several meetings to discuss, negotiate and draft
18 alternatives. During the meetings, the Regional Board Staff set forth the participant information
19 they needed and the process they would have to implement so as to retrieve such information.
20 The watershed coalitions outlined their structural, policy and logistic difficulties associated with
21 various means of supplying such information (lists) and identified means by which such
22 information could be provided (principally via maps). Based thereon, the participants of the
23 Policy Working Group agreed that either lists or maps would be satisfactory, and such lists or
24 maps could be either of participants or non-participants. Hence, the Policy Working Group
25 recommended, and subsequently, the tentative Waiver language which the Staff noticed to the
26 public and sent to the Board hearing read exactly as follows:

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1 Each Coalition Group existing as of the effective date of this
2 Conditional Waiver shall submit a list(s) or map(s) sufficient for the
3 Central Valley Water Board to identify which landowners and/or
4 operators of irrigated lands that discharge waste to waters of the
5 State are knowingly participating in the Coalition Group or those
6 that are not participating in the Coalition Group.

(Regional Board Tentative Order, Attachment B at ¶ 5, 5(a) and 5(b).)

7 There was no controversy during the Policy Work Group meetings relative to either the
8 list or map options being acceptable to identify the participants or nonparticipants of watershed
9 coalitions. There was no controversy regarding the map option leading up to the Board hearing.
10 At the Regional Board hearing of June 22, 2006, the Executive Officer testified that the map
11 options were acceptable. However, during her Powerpoint presentation, she again noted that she
12 did not have an issue with the map options, but offered that she had re-thought only the
13 nonparticipant list issue, and recommended removing that option. (See Hearing Transcript at p.
14 249:14-20.)

15 At the hearing, there was considerable testimony to support the map options, as noticed to
16 the public and presented in the draft tentative Waiver, and there was also specific testimony
17 against taking any action to change the map options. No Board members questioned staff or
18 Coalition witnesses promoting the map option nor signaled any attention to eliminate that option.

19 Only after the Regional Board closed the public hearing the Board departed from the
20 noticed tentative Waiver language, and the Policy Working Group position, which had allowed
21 maps for either participants or non-participants to satisfy the membership issue, and entirely
22 removed the use of maps altogether.

23 As a result, as stated in the Resolutions, the Regional Board now requires only a list of the
24 participating members from all of the coalition groups, but also authorizes the Executive Officer
25 to additionally require maps, without indication as to why or when the maps should be required, if
26 lists are to be required in each instance.

27 (2) September Participant List Deadline

28 The action by the Regional Board to eliminate all map options, without any
notice or discussion with the interested or affected parties, renders moot all of the good faith

1 effort by the coalitions over the last several months on authorizing and developing the
2 information required for the map option. Further, the lists will be due in only two months, in
3 September. The record shows one coalition, the Westside San Joaquin River Watershed
4 Coalition, had fully worked out the map option with Staff, had already submitted their maps, and
5 had been advised by Staff that their mapping was sufficient (See Table 2 of Staff Report, Orders
6 Adopting Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated
7 Lands, June 22, 2006 – Central Valley Water Board, citing the statutes of the Westside Coalition
8 Membership Document submittal as “complete”). (See Hearing Transcript at p. 173:12-25,
9 174:1.) At the June Regional Board hearing, several commented that this particular map
10 submittal was regarded as the “gold standard” and that the map program had been designed
11 around that example.

12 (a) Reversal of the “Participant Identification” Position Has Created
13 Operational Problems

14 Almost all of the coalitions had committed to take all necessary
15 steps to submit these maps by September. They had already commenced through the necessary
16 steps to: 1) notify the landowners of these options; 2) obtain participant sign-ups, and 3) receive
17 authorization from participants to supply their information, via maps, to the Regional Board.
18 Because the existing Waiver had specifically indicated that Coalitions were not required to submit
19 the lists unless requested by the Regional Board and the State Board Order WQO 2004-0003
20 (attached hereto as Exhibit C) had indicated that requests would be made only where there was
21 evidence of violation of Waiver conditions, some Coalitions maintain such lists subject to the
22 understanding of the electing participants that the information would not automatically be turned
23 over to the Regional Board, in the absence of water quality problems, especially not where the
24 Coalition was in fact complying with all the conditions of the Irrigated Lands Program. Thus, all
25 coalitions that had been moving toward the map option must regroup, and even though they were
26 previously required to maintain a membership document, the basic terms have been changed and,
27 therefore, many of the Coalitions must obtain specific authorization from their landowners to
28 release this information in the form of a list.

1 The three-step approach described above must now be implemented
2 to address the list-only requirement. The process takes considerable time and effort. Now those
3 efforts have been rendered moot and most coalitions will have to: 1) meet and decide how to
4 proceed, and 2) commence the changed Waiver terms to landowners and operators and seek to
5 obtain affirmative elections and/or to obtain authorization to release that information, even
6 whether or not they have fulfilled all obligations under the previous Waiver conditions. This will
7 take considerable time. This will be the third time some coalitions will have had to reach out to
8 re-advise their members that the Board has again changed their direction.

9 Critically, it is now July, in the middle of growing season when
10 farm owners and operators must direct their focus to the daily decisions required to successfully
11 complete the crop and prepare for harvest. Coalitions generally meet monthly to make such
12 determinations. Even if a coalition does have a July meeting, they will be left with only August
13 and September to make such decision, implement the education, outreach to re-obtain sign-ups,
14 and get authorization from their landowners to turn their names over to the Regional Board in
15 lists, at the busiest time of the year for those parties. This is too short a time period to reverse this
16 important and fundamental component of the Waiver.

17 (b) New Policy Determination

18 There is also a new policy determination which bears on this issue.
19 At least one coalition relies on districts to act as coalition members under the umbrella of a joint
20 powers agency, which is comprised of public agencies. Those district members have obtained
21 knowing elections from most of their landowners and operators participating in the coalition
22 program. The district members have also billed all landowners and/or operators for expenses of
23 the Monitoring and Reporting Program and Plan, and for coalition administrative costs. This
24 approach has been clearly explained to the Regional Board and its Staff, and has been accepted by
25 Staff, and is consistent with the language of the Waiver, which references “participants,” rather
26 than members.

27 In other coalitions, there are irrigation districts that are fully
28 authorized to make decisions regarding these water quality matters on behalf of their landowners.

1 Some such districts and joint power authorities have done extensive landowner education, and
2 their landowners have knowingly authorized their boards to act on their behalf, including through
3 the submittal of maps that would meet the information requirements of the Waiver. The districts
4 have been operating on behalf of their landowners, who have thus participated in the monitoring,
5 reporting, management practices and paid all costs and fees associated with the Waiver. Notice
6 of Acceptability has been issued. Regional Board Staff has known this implementation approach
7 was in effect and has not suggested that it did not meet program requirements. Such districts
8 have been working on map submittals to fully provide the required information on parties within
9 their boundaries. The Executive Officer, however, just advised a coalition functioning under this
10 arrangement that such district action on behalf of their landowners and operators would no longer
11 qualify those landowners and operators as knowing participants in the Waiver program. The
12 sudden elimination of the map option and short time remaining before September 30 for
13 production of lists is unreasonable, where such dramatic policy changes are now taking effect.

14 Therefore, Petitioners believe that due to the Regional Board action,
15 as discussed above, to totally eliminate the map option which is in direct opposition to the
16 compromises made during the Policy Working Group, and against the extensive hearing record to
17 support the map options, Petitioners have been aggrieved. This action by the Board totally
18 reversed back to the version which had been resisted in November 2005.

19 (3) December Deadline for Adding Participants to Coalition Groups

20 The other action taken by the Board was to impose a deadline of December
21 31, 2006, beyond which no landowner will be allowed to join a coalition. This action was
22 entirely unnoticed, unwarranted, is completely inconsistent with the coalition Waiver approach
23 and is totally unsupported by the record. It discourages the collective coalition approach and
24 compels grower dischargers to obtain WDRs from the Regional Board. This will be costly, and
25 virtually unmanageable. Moreover, it will require extensive enforcement by the Regional Board.

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1 **VI. SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
2 **PETITIONER REQUESTS**

3 Petitioner requests that the State Water Resources Control Board exercise its authority
4 pursuant to California Water Code §13320 to resolve Petitioner's concerns or the State Board
5 take the appropriate action itself, as it is vested with all the powers of the Regional Boards under
6 California Water Code § 13320 by remanding this matter to the Regional Board with instructions
7 to address such serious issues set forth above.

8 The concerns to be addressed as stated above include:

9 A) The Regional Board requirement that a list containing participating members shall
10 be the sole means the coalition groups can report participants be reevaluated, and that the
11 alternative, as agreed upon by the Policy Working Group, and was noticed to the public and
12 presented to the Regional Board be adopted so that maps of either participants or nonparticipants
13 are allowed, alternatively,

14 (1) The Regional Board requirement that all coalition groups submit their list
15 of participating members of the coalition by the September 2006 deadline be extended, and

16 B) The December participant deadline be eliminated, and

17 C) Other relief deemed appropriate by the State Board as a result of petitions filed by
18 Northern California Water Associations and the California Farm Bureau Federation.

19 Petitioners do not waive their right to assert, in any forum, further objections to the
20 Resolutions, challenged by petitions to the State Board submitted by other parties. Additionally,
21 Petitioners request the right to amend this petition.

22 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
23 **ISSUES**

24 A) Motions Made After the Closure of the Public Hearing

25 (1) The Elimination of the Map Option and December Cutoff

26 During the Regional Board hearing, there was no controversy or testimony against
27 the map option. The Executive Officer's testimony sought only an adjustment in the
28 nonparticipant list option. The Powerpoint presentation the Executive Officer used at the hearing

1 did not suggest changes in the map options. In fact, Executive Officer Creedon supported the use
2 of maps and stated, “[Regional Board] staff intends to develop maps anyway, and if we have a
3 really good, well-planned or developed map submitted, it will save staff resources in the long
4 run.” (Regional Board Hearing Transcript of June 22, 2006 Public Meeting, Agenda Item 9
5 (hereinafter “Hearing Transcript”), p. 249:15-20.) Executive Officer Creedon’s testimony
6 emphasizes the support in favor of the map option. As the Hearing Transcript further reflects,
7 there was considerable testimony that supported the map option, and did not support the
8 alternative to eliminate or modify the map option. (See Hearing Transcript testimony of William
9 J. Thomas, Southern San Joaquin Valley Water Quality Coalition at p. 94:3-6, 94:11-16; David
10 Guy, Sacramento Valley Water Quality Coalition at p. 77:14-18; Parry Klassen, East San Joaquin
11 Valley Water Quality Coalition at p. 100:12-15; David Orth, Southern San Joaquin Valley Water
12 Quality Coalition at p. 108:17-25, 109:1-6; Rick Landon, Sacramento Valley Water Quality
13 Coalition and Yolo County at p. 115:1-4, 116:21-23; Stan Lester farmer, in Yolo and Solano
14 Counties, p. 174:24-25; Denise Sagara, Yolo County Farm Bureau Education Corporation at
15 p.180:13-18; Grant Lea, Yolo County farmer, at p. 221:22-25, 222:1-2).

16 Further credible supportive testimony of the map alternative was that of David
17 Cory, San Joaquin River Exchange Contractors, who offered that the Westside San Joaquin River
18 Watershed Coalition had submitted their membership list component in the form of a GIS map,
19 which was currently in the Regional Board’s database. Mr. Cory explained that the GIS map
20 database is, “an interactive program in which you can click on sections of the map and pull up
21 who’s in and who’s out of the coalition. An incredibly powerful too, significantly more powerful
22 than any list could ever be in terms of addressing water quality issues.” (Hearing Transcript at p.
23 173:12-25, 174:1.)

24 In light of the such supportive testimony, it was with substantial surprise that
25 without any notice, any discussion, and after the close of the public hearing, the motion was made
26 to reverse course on the participant identification issue by eliminating the map option.

27 It was a further surprise that without any notice, any discussion, and after the close
28 of the public hearing, the motion was made to cut off the coalition sign-up as of December 31,

1 2006. The Board, by these actions, after the close of the public hearing, did not provide an
2 opportunity for public comment to the change in the noticed agenda item pursuant to the statutes
3 governing its hearings. Title 23, California Code of Regulations, Section 647.3(b) provides that
4 “all persons present shall be given an opportunity to make relevant oral comments on any agenda
5 item.” The comments afforded to the affected parties present at the hearing were limited to the
6 draft Waiver language, which allowed maps and made no reference to a any sign-up deadline, not
7 the amendment subsequently adopted in the Board’s Resolution to eliminate maps and compel
8 sign-up by December 2006.

9 The Regional Board is further obligated, under the Administrative Procedures Act
10 (hereinafter the “APA”) (Cal. Gov’t Code § 11340, et seq.), to follow certain basic procedural
11 requirements in adopting, amending and repealing its administrative regulations. The Board did
12 not follow these procedures in adopting this provision of the revised Resolution in its failure to
13 provide notice of the amended language creating the December 31, 2006, sign-up deadline, and
14 provide an opportunity for public review. The APA provides that the public must receive notice
15 of any change made by an agency to that which was originally made available, unless the change
16 is either grammatical in nature or sufficiently related to the original text that the public was
17 adequately given notice that the change could result from the originally proposed regulatory
18 action. (Cal. Gov’t Code § 11346.8(c).) The actions taken by the Regional Board after the close
19 of the hearing do not fall within those exceptions. The notice to the public included the draft
20 Tentative Waiver language and alternatives to the language as proposed by the Policy Working
21 Group. This public received notice of the Board’s intent to review language relating to the
22 options of either lists or maps to identify either participants or nonparticipants of coalitions, but
23 there was no testimony regarding terminating the right to join a coalition by December 31, 2006,
24 or any date. Therefore, there was absolutely no indication whatsoever that the Regional Board
25 Resolution would result in prohibiting landowners to sign-up after any certain deadline.

26 B) Participant Maps are Far Superior to Lists

27 The map options are, in fact, superior to lists, are more readily available to be
28 provided by coalitions, and they encourage landowner participation rather than discourage sign-

1 ups. Many coalitions have invested significant resources to compile extremely detailed mapping
2 information that Staff has acknowledged is superior to lists alone. (See Executive Officer
3 Creedon Testimony, Hearing Transcript at p. 249:15-20.)

4 1) Lists Are Deficient

5 (a) A list of participants does not identify those lands which are not
6 participating and obtaining that information will be significantly
7 difficult for Staff. The nonparticipants are the group the Water Code
8 compels the Regional Board to deal with.

9 (b) A list provides no information as to field size, field shape, or any
10 inter-relationship of the lands with watercourses, towns or
11 neighboring lands;

12 (c) A list does not lead to any other available or relevant database or
13 maps.

14 2) Maps Are Superior

15 As outlined by the Policy Working Group (and included in the Tentative
16 Waiver) a map would: a) be electronic; b) outline individual land parcels, c) identify, by color,
17 all lands which are participants, and those not participating in the Coalition, and d) be compatible
18 with county assessor's data, which would provide landowner names, parcels and contact
19 information. Consequently, this data would be easily and readily accessible to Staff. (See
20 Testimony of Assistant Executive Officer Ken Landau, Hearing Transcript at p. 48:6-14.)

21 The map option, which was without controversy, is far superior to any list,
22 much less only a participant list.

23 3) The Order, As Amended, Is Arbitrary

24 Condition 7 of Attachment B to Order No. R5-2006-0053 authorizes the
25 Executive Officer to also require maps, in addition to the participant lists, without direction as to
26 why or when to require such maps. The requirement is duplicative of the list requirement and
27 unreasonable if the actual need is for lists. Including that requirement constitutes an
28 acknowledgment that lists are insufficient and that the provision of maps is a better policy choice.

1 The confusion and lack of clarity about the policy needs is further reflected in the late posting of
2 an unsigned Order that is different from the Order executed by the Executive Officer circulated
3 on July 13, 2006, as the “Corrected Final Adopted Order,” and demonstrates the arbitrary nature
4 of the last-minute changes. The ongoing uncertainty for coalition groups that have invested
5 significant resources to provide maps, but now must frantically regroup to obtain participants’
6 authority to turn over lists, even when previously in full compliance with the requirements for
7 coalition groups, but may, at any moment be required to provide maps for indeterminate reasons
8 is arbitrary as well.

9 4) Alternative Approaches Are Appropriate For Watershed-Based Programs

10 Allowing the alternatives of providing participant lists or maps is
11 appropriate for a watershed-based regulatory program. The State Board in WQO 2004-0003, at
12 page 13, upheld the program adopted by the Regional Board as in the public interest “through a
13 Waiver that employs best management practices, encourages a watershed approach, and includes
14 sufficient monitoring requirements.” There was testimony before the Board, both on June 22, and
15 at numerous prior meetings, indicating that different geographic areas had different organizational
16 approaches and could best address water quality if permitted to proceed under alternatives that fit
17 their local needs. (See NorCal Petition for Review), R5-2006-0053 eliminates that flexibility
18 without evidence in the record to support its action and is also arbitrary and capricious on that
19 ground.

20 C) September Participant List Submittal

21 In an instant, the Board motion reversed all that had transpired over the last seven
22 months and took away an uncontroversial, far superior preferred option, and in its stead,
23 needlessly re-instituted the controversy that has impacted the Waiver for some time and which the
24 Board resisted in November 2005.

25 This reversal of position also has problems in light of the fact that the newly
26 adopted Conditional Waiver requires the submittal of such lists by September 2006. Most all of
27 the coalitions had committed to take all necessary steps to submit these maps by September.
28 They had gone through the necessary steps to: 1) notify their landowners of these options, 2)

1 obtain participant sign-ups, and 3) get authorization to supply, via maps, the requisite information
2 to the Board.

3 This three-step process takes considerable time and effort. Now those efforts have
4 been rendered moot and most coalitions will have to: 1) meet and decide how to proceed, and 2)
5 commence to re-take these three steps. This will be the third time these coalitions will have had
6 to reach out to re-advise their members that the Board has again changed their direction.

7 Coalitions generally meet monthly to make such determinations. Even if a
8 coalition does have a July meeting, they will be left with only August and September to make
9 such decision, implement the education, outreach to re-obtain sign-ups, and get authorization
10 from their landowners to turn over their names over to the Regional Board in the form of lists.
11 This is too short a time period to reverse this important and fundamental component of the
12 Waiver.

13 D) New Interpretation Regarding Knowing Participants

14 There is also a new policy determination which bears on this issue. Some
15 irrigation districts are fully authorized to make decisions regarding these water quality matters on
16 behalf of their landowners. Some such districts and joint power authorities have done extensive
17 landowner education, and their landowners have knowingly authorized their boards to act on their
18 behalf. The districts have been operating on behalf of their landowners, who have thus
19 participated in the monitoring, reporting, management practices and paid all costs and fees
20 associated with the Waiver. The Staff has known this implementation approach was in effect and
21 has offered no resistance. The Executive Officer, however, just recently advised that such district
22 action on behalf of their members would no longer qualify those landowners as knowing
23 participants. Therefore, these districts would have to commence anew by again noticing and
24 signing up participants, all prior to a September filing period. This cannot happen during this
25 short time frame.

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1 E) The December Deadline For Participant Sign-up in Coalitions

2 The Regional Board's action to include a deadline to sign-up as a knowing
3 participant in a coalition was entirely unnoticed and there was no discussion of this new provision
4 in any way during the hearing. Consequently, this amendment is entirely unsupported by the
5 record.

6 The participation deadline is not the solution to either compelling grower sign-up or
7 administering the Waiver. Rather than inspire participation, the deadline firmly bars participation
8 for those not signed up by the end of the year. Such a deadline would fix the extent of those lands
9 participating in the Waiver as of the December cutoff date. Irrigation practices throughout the
10 approximately 8 million acres of irrigated lands in the Central Valley often change. The Waiver
11 states, "[w]hether an individual discharge of waste from irrigated lands may affect the quality of
12 the waters of the State depends on the quantity of the discharge, quantity of the waste, the quality
13 of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to
14 groundwater, crop type, management practices and other site specific factors." (R5-2006-0053, p.
15 2, ¶ 7.) The Regional Board simply cannot freeze the present world of potential discharges and
16 dischargers to a given date for their own convenience.

17 The Waiver was devised to establish area-wide, watershed groups that would work
18 together to address water quality in a given area. Establishing an arbitrary deadline to join a
19 Coalition contradicts this approach. The imposition of a deadline for newly irrigated or new
20 growers or reluctant growers within the watershed to elect to participate in a Coalition will
21 establish a bifurcated regulatory system. That bifurcated system, will result in thousands forced
22 to file WDRs, will increase the costs of compliance for Coalition members by reducing funding
23 and will complicate area-wide, or watershed coordination. Further, such a bifurcated system will
24 also dramatically divert Staff resources and significantly increase Staff's workload.

25 There are innumerable situations that will arise where an individual either did not
26 need to participate or could not possibly participate in a Coalition Group prior to December 31,
27 2006. The problems associated with this action are manifold, but would include:
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(1) Farming/Livestock Changes:

- Change in cropping patterns on irrigated property.
- Change in pesticide application practices.
- Technological or scientific advancement changes in farming practices.
- Regulatory measures resulting in changes to pesticides applied and/or pesticide application practices.
- Change in or addition of commercial livestock on irrigated lands.

(2) Irrigation Changes:

- Change in irrigation practices.
- New irrigation on property not previously irrigated.
- Changes in irrigation infrastructure resulting in new drainage to surface waters.
- Change in source of irrigation water.
- Change in water quality of incoming water.

(3) Physical Changes:

- Natural or manmade changes to terrain and drainage (e.g., erosion) resulting in new discharge.
- Natural or manmade changes to terrain and drainage (e.g., erosion) resulting in new drainage to surface waters of State.
- Hydrologic changes resulting in new discharge.
- Upland changes result in new drainage across down slope irrigated lands.

(4) Ownership/Leasehold/Management Changes:

- New irrigator purchases irrigated property.
- New lessee of irrigated property.
- New custom farmer on irrigated property.
- Irrigation responsibility on property shifts to new individual or entity.
- Death results in change in ownership, leasehold, or management of irrigated property.
- Succession planning results in change in ownership, leasehold, or management of irrigated property.
- Change in trustee designation alters management of irrigated property owned or leased by a trust.
- Divorce alters ownership, leasehold, and/or management of property.
- Corporate or partnership dissolution results in change in ownership, leasehold, and/or management of irrigated property.
- Formation of new partnership, corporation, or joint venture alters ownership, managements, or leasehold interests of irrigated property.

(5) Irrigated Lands Program Changes:

- Regional Board and/or Staff provide a new interpretation of the applicability of the Irrigated Lands program to certain discharge.
- Regional Board and/or Staff provide a new interpretation of the requisite participation of an individual, organization, or entity in the Irrigated Lands program.
- Regional Board and/or Staff initiates an investigation or enforcement action against a particular discharge and the discharger thereafter seeks to participate in an established Coalition.

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- An individual, organization, or entity requests Regional Board Staff to opine as to whether the individual, organization, or entity discharges waste into the surface waters of the State and, upon receiving such an opinion after December 31, 2006, believes that participation in a Coalition is necessary.
- Regional Board and/or Staff establish new requirements or clarifications for which individuals, organizations, or entities are eligible to participate in a Coalition Group.
- Regional Board modifies scope (e.g., geographic, hydrologic, etc) of Irrigated Lands Program.
- Regional Board modifies Irrigated Lands Program in such a way as to preclude an existing Coalition from continuing.
- Regional Board and/or Staff require Coalition Group to dissolve and members therein seek to join a new or existing Coalition Group.

It is apparent by the expansive nature of the necessary exceptions and corrections in this amendment that the State Board is compelled to reconsider this item.

VIII. PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD

A copy of this Petition has been sent to the California Regional Water Quality Control Board, Central Valley Region as reflected in the attached Proof of Service.

IX. REQUEST FOR PREPARATION OF ADMINISTRATIVE RECORD

A request to the Regional Board for the preparation of the administrative record has been made. Such request is attached hereto at Exhibit D.

All data, comments, documents, testimony, and information pertaining to the Waiver program submitted to the Regional Board or Regional Board Staff by the Sacramento Valley Water Quality Coalition, the Agricultural Water Quality Coalition, California Farm Bureau Federation, Northern California Water Association, and/or the agricultural coalition groups and their representatives are hereby incorporated by reference.

Petitioners have included a preliminary statement of points and authorities within this Petition as required by Title 23, California Code of Regulations, section 2050, subsection (a). However, until the Regional Board compiles and makes available a complete administrative record, Petitioners cannot submit a complete and thorough statement of points and authorities. Thereby, Petitioners request the right to file supplemental points and authorities after the administrative record and other materials become available.

1 **X. STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED**
2 **IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN**
3 **EXPLANATION OF WHY THE PETITIONER WAS NOT REQUIRED OR WAS**
4 **UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR OBJECTIONS**
5 **BEFORE THE REGIONAL BOARD**

6 This Regional Board's action to require only lists, instead of offering the alternative maps
7 containing participating or nonparticipating members, from all of the coalition groups after the
8 closure of the public hearing was arbitrary and capricious. The action was not subject to oral
9 comments by the affected or interested parties at the hearing, and is not supported by the hearing
10 record, and the hearing record actually contravenes such action.

11 This Regional Board's action to prevent landowners/participants to join a coalition after
12 December 31, 2006, was first advanced after the closure of the public hearing and was arbitrary
13 and capricious. The action was not subject to oral comments by the affected or interested parties
14 at the hearing, and is, therefore, not supported by the hearing record.

15 **XI. REQUEST FOR HEARING**

16 Pursuant to California Water Code section 11320(b) and Title 23 of the California Code of
17 Regulations section 2050.6(b), Petitioners request a hearing before the State Board to permit
18 presentation of additional evidence, testimony, and argument pertaining to this petition.

19 The requested hearing would address, and introduce evidence relating to, the following:

20 1) the elimination of the option to allow coalitions to submit a participant list in the form of a
21 map, 2) the September 30, 2006 deadline for coalitions to implement the submittal of participant
22 list; 3) the new policy determination which will eliminate coalitions' reliance upon districts to act
23 as participants under the umbrella of a joint powers agency, comprised of public agencies; and 3)
24 the imposition of a December 30, 2006 cutoff for landowners to join a coalition.

25 **XII. REQUEST FOR STAY**

26 Pursuant to Water Code section 13221 and Title 23 of California Code of Regulations
27 section 2053, Petitioners request the State Board to: 1) stay the effect of the elimination of the
28 option to submit a participant list in the form of a map, 2) stay the effect of imposing a September
30, 2006 deadline for coalitions to submit their participant lists to the Regional Board; and 3) stay
the imposition of a December 30, 2006 cutoff for landowners to join a coalition.

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A Declaration Of David L. Orth Supporting The Request For Stay is attached hereto as

Exhibit E.

Dated: July 21, 2006

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: _____
WILLIAM J. THOMAS, JR.
Attorneys for Petitioners
Water Quality Coalitions Throughout The
San Joaquin Valley

LAW OFFICES OF
BEST BEST & KRIEGER LLP
400 CAPITOL MALL, SUITE 1650
SACRAMENTO, CALIFORNIA 95814

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is Best Best & Krieger LLP, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On July 21, 2006, I served the following document(s):

**PETITION FOR REVIEW; REQUEST FOR STAY;
DECLARATION OF DAVID L. ORTH IN SUPPORT OF
REQUEST FOR STAY**

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

By messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

California Water Quality
Control Board, Central Valley Region
Executive Officer
Pamela C. Creedon
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

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

Executed on July 21, 2006, at Sacramento, California.

Annamaria Dugan