

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

**ORDER R7-2019-0053**

**GENERAL WASTE DISCHARGE REQUIREMENTS  
FOR  
DISCHARGES OF WASTE FROM IRRIGATED AGRICULTURAL LANDS FOR  
DISCHARGERS THAT ARE MEMBERS OF A COALITION GROUP IN  
BARD VALLEY  
IMPERIAL COUNTY**

The California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) finds that:

1. Discharges from irrigated agricultural lands, including leaching or runoff of irrigation water and/or stormwater, may carry wastes, including but not limited to, salts, nutrients, pathogens, sediments, and pesticides that can affect the quality of waters of the state.
2. There are approximately 14,676 acres of irrigated agricultural lands in Bard Valley in Imperial County. Of those, approximately 7,120 acres are located on non-tribal land (in an area known as the “Bard Unit”), and approximately 7,556 acres are located on reservation land of the Fort Yuma Quechan Indian Tribe. The location of the Bard Unit is depicted in **Figure 1**.
3. Waters of the state are or may be affected by waste discharges from irrigated agricultural lands in the Bard Unit, including surface water and groundwater. Affected surface waters include the Bard Valley Drains, all of which are tributary to the Colorado River; affected groundwaters include the Yuma Valley Groundwater Basin in the Yuma Hydrologic Unit.
4. Water Code section 13260, subdivision (a)(1), requires that any person discharging wastes or proposing to discharge wastes (other than into a community sewer system), which could affect the quality of the waters of the state, must file a report of waste discharge (ROWD). The appropriate regional water board then prescribes requirements for the discharge or proposed discharge of wastes pursuant to Water Code section 13263. General waste discharge requirements may be prescribed for discharges produced by the same or similar operations, involving the same or similar types of wastes, and requiring the same or similar treatment standards. (Wat. Code, § 13263, subd. (i).)
5. This Order consists of general waste discharge requirements (General WDRs) regulating discharges of wastes from commercial irrigated agricultural lands in the Bard Unit to prevent and address water quality impacts to waters of the state. These General WDRs regulate owners/operators of irrigated agricultural lands (collectively, Dischargers) with the potential to discharge waste that may impact the quality of the

waters of the state. This Order also establishes substantive and procedural requirements for third-party representatives formed to comply with this Order (Coalition Groups), and only regulates Dischargers who are also members of a Coalition Group.

6. Dischargers were previously regulated under Order R7-2013-0002, a *Conditional Waiver of Waste Discharge Requirements for Agricultural Wastewater Discharges and Discharges of Waste from Drain Operations and Maintenance Activities Originating within the Bard Unit of the Reservation Division* (2013 Conditional Waiver), which expired on January 17, 2018. This Order supersedes the 2013 Conditional Waiver, except for enforcement purposes.

### **Scope and Applicability**

7. This Order regulates discharges, potential discharges, or proposed discharges of waste from “**Irrigated Agricultural Lands**,” which means lands irrigated to produce crops or pasture for commercial purposes, and includes but is not limited to, lands planted for row, vineyard, pasture, field and tree crops, and nurseries. This includes land for which:
  - a. The landowner or operator holds a current Operator Identification Number/Permit Number for pesticide use reporting.
  - b. The landowner or operator files federal taxes using federal Department of Treasury Internal Revenue Service Form 1040, Schedule F “Profit or Loss from Farming.”
  - c. The crop is sold, including but not limited to (1) an industry cooperative, (2) harvest crew/company, or (3) a direct marketing location, such as Certified Farmers Markets.
8. This Order only regulates discharges from Irrigated Agricultural Lands in the Bard Unit area, depicted in **Figure 1** and further described in Findings 28 through 31.
9. Discharges regulated under this Order include surface water discharges (e.g., stormwater runoff, irrigation return water, tailwater) and subsurface discharges (e.g., tile water and groundwater seepage).
10. This Order only regulates landowners or operators<sup>1</sup> who are members of a Coalition Group. In order to be covered by this Order, the landowners or operators must be members of a Coalition Group. Dischargers not represented by a Coalition Group must submit an ROWD to the Colorado River Basin Water Board and obtain individual WDRs from the Colorado River Basin Water Board.

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<sup>1</sup> Because this Order regulates both landowners and operators, but does not require enrollment of both parties, the provisions of this Order require that the Coalition Group member provide notification to the non-member responsible party of enrollment under this Order.

11. This Order does not apply to the following:
  - a. Discharges from Irrigated Agricultural Lands that are adequately regulated under other Colorado River Basin Water Board regulatory programs/permits, including but not limited to, concentrated animal feeding operations (CAFOs), cannabis cultivation, parks, golf courses, and cemeteries.
  - b. Discharges from agricultural activities not engaged in for profit, such as hobby growing or gardening.
  - c. Discharges from Irrigated Agricultural Lands where all growing operations are conducted within buildings or in completely enclosed areas with no potential to discharge waste to waters of the state.
  - d. Discharges regulated under National Pollutant Discharge Elimination System (NPDES) permits pursuant to Clean Water Act section 402.
  - e. Discharges of dredged or fill material regulated under Clean Water Act sections 401 and 404.

### **Definitions**

12. "Irrigated Agricultural Lands" has the meaning set forth in Finding 7.
13. "Waste" means sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with the human habitation, or of human or animal origin, or from producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. (Wat. Code, § 13050, subd. (d).)
14. "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state. (Wat. Code, § 13050, subd. (e).)
15. "Discharger(s)" means the owner(s) or operator(s) of Irrigated Agricultural Lands who discharge, have the potential to discharge, or propose to discharge waste, which could directly or indirectly affect the quality of waters of the state.
16. "Coalition Group" means any third-party entity (e.g., group of Dischargers, nonprofit organization, government agency, etc.) that is formed to comply with this Order. Coalition Groups can be formed based on a defined geographical area, watershed, or other appropriate grouping, such as growing similar types of crops.
17. "Compliance Program" means a nonpoint source pollution control program that specifies the management practices and monitoring and reporting requirements that will be implemented to ensure compliance with this Order.
18. Unless otherwise specified, all terms used in this Order shall have the same definition as those set forth in division 7 of the Water Code.

## Program Background

19. On January 20, 2011, the Colorado River Basin Water Board adopted Resolution R7-2011-0014 to amend the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan). The proposed amendment would have established a conditional discharge prohibition regulating agricultural discharges in the Palo Verde Valley and Palo Verde Mesa. Basin Plan amendments must be approved by the State Water Resources Control Board (State Water Board) before they become effective.
20. On January 10, 2012, the State Water Board disapproved the proposed Basin Plan amendment, in part because there were no fees associated with the discharge prohibition and the amendment would have resulted in a disparate fee structure for discharges from irrigated agricultural lands across the state. This action resulted in the Colorado River Basin Water Board's subsequent adoption of a waiver of waste discharge requirements for agricultural discharges in the Palo Verde Valley and Palo Verde Mesa, and directed the Board's approach to regulating the Irrigated Agricultural Lands program in the Colorado River Basin Region.
21. On January 17, 2013, the Colorado River Basin Water Board adopted the 2013 Conditional Waiver, which regulated discharges from irrigated agricultural lands in the Bard Unit and included a requirement to pay state fees.
22. Bard Water District created and manages a Coalition Group, the Bard Unit Coalition Group (Bard Coalition), to assist Dischargers who were members of the Coalition Group in complying with the 2013 Conditional Waiver. The district also obtained approval from the State Water Board to manage fee collection and payment on behalf of Bard Coalition members. All Dischargers that enrolled under the 2013 Conditional Waiver enrolled as members of the Bard Coalition.
23. To comply with the 2013 Conditional Waiver and ensure attainment of water quality objectives, the Bard Coalition developed a compliance program in which members were required to:
  - a. Complete an individual Water Quality Management Plan (Farm Plan);
  - b. If applicable, complete an individual Drain Water Quality Management Plan (Drain Plan);
  - c. Install, implement, and maintain management practices that protect water quality from agricultural activities on every parcel of Irrigated Agricultural Lands;
  - d. Update parcel information as often as necessary (i.e., when leases or crops change, management practices are changed, etc.). At a minimum, parcel information was required to be reviewed and updated annually;
  - e. Attend outreach and education trainings hosted by the Bard Coalition; and
  - f. Pay coalition dues to the Bard Coalition to cover state fees and coalition costs.

24. The Bard Coalition also developed a Monitoring and Reporting Program and a Quality Assurance Project Plan, both of which were approved by the Colorado River Basin Water Board's Executive Officer, and pursuant to which the Bard Coalition monitored water quality and reported on behalf of the members of the Coalition Group.
25. The 2013 Conditional Waiver expired on January 17, 2018. On January 22, 2018, the Colorado River Basin Water Board's Executive Officer sent a letter to the Bard Coalition indicating that staff was still in the process of drafting this Order, and that the Colorado River Basin Water Board would not take any enforcement action against Dischargers for failure to submit a Report of Waste Discharge (ROWD), provided that the Bard Coalition continued implementing the compliance program developed under the 2013 Conditional Waiver during the transition period.
26. On February 7, 2018, following a lengthy public hearing, the State Water Board adopted revisions to the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) *Waste Discharge Requirements General Order for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group* in Order WQ 2018-0002 (Eastern San Joaquin Order). The State Water Board's order establishes a model for all regional water boards to follow in their subsequent orders to reduce pollutants from irrigated agriculture around the state. The Eastern San Joaquin Order directs all regional water boards to revise the permits in their irrigated lands regulatory programs within the next five years to be consistent with certain precedential requirements in the State Water Board order. This Order complies with the State Water Board's directive.
27. Upon adoption of these General WDRs, Bard Water District has agreed to continue managing the Bard Coalition and to implement a Compliance Program in accordance with this Order.

### **Bard Unit Background**

28. The Bard Unit is part of the United States Department of the Interior, Bureau of Reclamation's (USBRs) Yuma Project, which began in the early 1900s. The Yuma Project provides water to irrigate 68,091 acres of Irrigated Agricultural Lands in the vicinity of the towns of Yuma, Somerton, and Gadsden in Arizona, and Bard and Winterhaven in California.
29. The Yuma Project is divided into two divisions: the Valley Division, consisting of 53,415 acres in Arizona (located in Yuma Valley), and the Reservation Division, consisting of 14,676 acres (roughly 23 square miles) in California (located in Bard Valley). The Reservation Division is further subdivided into the 7,120-acre Bard Unit, and the 7,556-acre Indian Unit.

30. The land in the Indian Unit is part of the Fort Yuma Indian Reservation, which is held in trust by the federal government for the Fort Yuma Quechan Indian Tribe and owned by tribal allottees. The land that is irrigated is leased to various operations and is administered by the United States Department of the Interior, Bureau of Indian Affairs.
31. The Bard Unit of the Reservation Division is on private land, which was first deeded to settlers in 1910. Bard Water District was organized in 1927 to represent private land owners in the Bard Unit. As specified in Finding 8, this Order only regulates Irrigated Agricultural Lands that are located in the Bard Unit of the Reservation Division.

### **Hydrological Setting**

32. The Bard Unit is located in what is commonly known as the “Bard Valley,” which is flat, floodplain land on the California side of the Colorado River that stretches from just a few miles below Imperial Dam to north and west of the City of Yuma, Arizona. The All-American Canal flows along the northwestern edge of the valley and delivers water to the various smaller canals and laterals of the Reservation Division. (USBR, Sept. 2018.<sup>2</sup>)
33. Mean summer temperatures in Bard Valley range from 85° to 110° Fahrenheit. Annual average precipitation typically ranges from about 1 to 3 inches.
34. Soils in the valley consist of alluvium, which includes unconsolidated younger Quaternary alluvial deposits overlying unconsolidated to semi-consolidated older Tertiary to Quaternary alluvial deposits. Maximum depth of the material is at least 200 feet.
35. The groundwater basin that underlies Bard Valley is known as the Yuma Valley Groundwater Basin. The basin is bounded by nonwater-bearing rocks of the Cargo Muchacho Mountains on the west and by the Chocolate and Picacho Mountains on the north and northeast. Low-lying alluvial drainage divides form boundaries on the northwest and southwest, and the Colorado River bounds the basin on the south and east. Elevation in the mountains range from about 1,300 feet in the Cargo Muchacho Mountains and about 2,000 feet in the Picacho Mountains.

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<sup>2</sup> U.S. Department of the Interior, Bureau of Reclamation. September 2018. *2017 Groundwater Status Report: Yuma Area, Arizona and California*. Reclamation: Managing Water in the West. p. 13-14.

36. Water levels have remained largely unchanged in those areas within the Colorado River floodplain south and east of the All-American Canal. Depth to groundwater remains shallow and ranges from about 6 to 18 feet below ground surface, according to the most recent reports from the Bureau of Reclamation. (USBR, Sept. 2018.) There are localized areas where the depth to groundwater is closer to the ground surface. In the eastern portion of the basin along the Colorado River, high groundwater levels and fluctuations in the elevation of the water table are in direct response to various stages of the Colorado River. (Cal Dep't Water Resources, 2004.<sup>3</sup>)
37. In the few wells that exist north or west of the canal, records show water levels have also remained mostly unchanged or have increased slightly over the period of record. Depth to groundwater in these areas varies greatly, but generally range from about 40 to 240 feet below the surface. (Cal Dep't Water Resources, 2004.)
38. Natural recharge to the basin is mainly from subsurface inflow from the Ogilby Valley Basin on the west, and infiltration of surface runoff from the bordering mountains. Additional recharge comes from seepage loss from unlined canals and from the percolation of irrigation return flows. There are no known barriers to the movement of groundwater except localized clay layers, which may obstruct the downward percolation of water. Groundwater generally moves in a southern direction towards the Colorado River. (Cal Dep't Water Resources, 2004; Dickensen et al. 2006.<sup>4</sup>)
39. Surface waters in Bard Valley consist of irrigation canals and surface drains.
40. The District operates a 68-mile network of irrigation canals and laterals that service farmland in the Reservation District. Approximately 37 miles of the distribution system are located in the Bard Unit. Water for irrigation in the Bard Unit is diverted from the Colorado River into the All-American Canal into the Siphon Drop Power Plant, Reservation Main, Titsink, and Yaqui Turnouts. Some Reservation Division lands are served directly from turnouts on the All-American Canal above the Siphon Drop Power Plant.
41. The drainage system consists of about 15 miles of open drains that ultimately discharge back to the Colorado River. Approximately 12.3 miles of open drains are located in the Bard Unit. Of these 12.3 miles, 4.66 miles are shared drains that contain comingled water from tribal lands and Imperial Irrigation District.
42. Recent surface water quality data for the Bard Unit is detailed in the Information Sheet, **Attachment A**.
43. All drinking water in Bard Unit is sourced from groundwater. Based on the locations of public-supply wells reported in the statewide database maintained by the State

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<sup>3</sup> California Department of Water Resources. February 27, 2004. *Hydrologic Region Colorado River: Yuma Valley Groundwater Basin*. Bulletin No. 118.

<sup>4</sup> Dickinson, J.E. et al. 2006. *Hydrogeologic Framework Refinement, Ground-Water Flow and Storage, Water-Chemistry Analyses, and Water-Budget Components of the Yuma area, Southwestern Arizona and Southeastern California*. U.S. Geological Survey, Scientific Investigations Report 2006-5135. 90 p.

Water Board, Division of Drinking Water (DDW), there are approximately 16 domestic wells, 1 public supply well, and 2 production wells which may provide drinking water in the Bard Unit. The depths of these wells vary from 40 to 200 feet below ground surface, sometimes much lower than the first encountered groundwater.

44. A groundwater quality study of wells sampled in the Yuma Valley Groundwater Basin by the U.S. Geological Survey (Dawson and Belitz, 2012<sup>5</sup>) indicates that most constituents detected were below the Primary and Secondary Maximum Contaminant Levels (MCLs) found in California Code of Regulations, title 22, section 64421 et seq. Total dissolved solids, chloride, iron, manganese, and sulfate were measured above the Secondary MCLs. The predominant cation present in groundwater was sodium, and the predominant anions were chloride and sulfate. TDS concentrations ranged between 1,380 and 1,970 milligrams per liter (mg/L). Available groundwater quality data for the area is detailed in the Information Sheet, **Attachment A**.

### **Discharge Characteristics**

45. Agriculture is the predominant land use in the Bard Unit. The main crops grown in the Bard Unit are winter vegetables, citrus, and dates.
46. Farmers in the Bard Unit divert water from a canal through a gate operated by the Bard Water District onto Irrigated Agricultural Lands. The method of irrigation is mostly gravity flood irrigation. When uniform germination is desired, sprinkler irrigation is used. Drip irrigation is used for date trees and other orchard crops, and some field crops in the Bard Unit.
47. Discharges from Irrigated Agricultural Lands in Bard Valley (tailwater, seepage, and surface water draining from fields after irrigation and storms events) either percolate to the underlying aquifer or are collected into open and unlined drains that ultimately discharge to Bard Valley Drains and the Colorado River.
48. Discharges from Irrigated Agricultural Lands in Bard Valley may contain high levels of salts, nutrients, pathogens, sediments, and pesticides that can adversely impact receiving water beneficial uses.

### **Basin Plan and Related Regulatory Requirements**

49. The Basin Plan, which was adopted on November 17, 1993 and amended on January 8, 2019, designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Pursuant to Water Code section 13263, subdivision (a), waste discharge requirements must implement the Basin Plan and take into consideration the beneficial uses to be protected, the water quality

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<sup>5</sup> Dawson, B.J.M., and Belitz, K. 2012. *Status of Groundwater Quality in the California Desert Region, 2006–2008: California GAMA Priority Basin Project*. U.S. Geological Survey, Scientific Investigations Report 2012–5040. 110 p.

objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.

50. The Basin Plan specifies the following beneficial uses for Bard Valley Drains:
  - a. Water Contact Recreation (REC I),<sup>6</sup>
  - b. Water Non-Contact Recreation (REC II),
  - c. Warm Freshwater Habitat (WARM), and
  - d. Preservation of Rare, Threatened, or Endangered Species (RARE).
51. The Basin Plan's water quality objectives for the Bard Valley Drains are summarized in the Information Sheet, **Attachment A**.
52. The Basin Plan specifies the following beneficial uses for the Colorado River:
  - a. Municipal and Domestic Supply (MUN),
  - b. Agriculture Supply (AGR),
  - c. Aquaculture (AQUA),
  - d. Industrial Service Supply (IND),
  - e. Ground Water Recharge (GWR),
  - f. REC I,
  - g. REC II,
  - h. WARM,
  - i. Cold Freshwater Habitat (COLD),
  - j. Wildlife Habitat (WILD),
  - k. Hydropower Generation (POW), and
  - l. RARE.
53. The Basin Plan's water quality objective for salinity (TDS) for the Colorado River in the Bard Unit area is summarized in the Information Sheet, **Attachment A**.

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<sup>6</sup> The only REC I usage known to occur is from fishing activity.

54. The Bard Unit is part of the Yuma Hydrologic Unit, and the Basin Plan designates the following beneficial uses for area groundwater:
  - a. MUN, and
  - b. AGR.
55. The Basin Plan's water quality objectives for groundwater in the Bard area are summarized in the Information Sheet, **Attachment A**.
56. This Order establishes WDRs pursuant to division 7, chapter 4, article 4 of the Water Code for discharges that are not subject to regulation under Clean Water Act section 402 (33 U.S.C. § 1342). These General WDRs implement narrative and numeric water quality objectives for groundwater and surface waters established by the Basin Plan and other applicable state and federal laws and policies.
57. These General WDRs constitute a Nonpoint Source Implementation Program consistent with the requirements of State Water Board's *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (State NPS Policy). The State NPS Policy recognizes that nonpoint source pollution typically occurs from diffuse sources such as runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification, and that prevention and minimization of pollution from these sources is the most successful form of control. The purpose of these General WDRs is to minimize or eliminate waste discharges from Irrigated Agricultural Lands to waters of the state that may be causing or contributing to exceedances of applicable federal or state water quality objectives.
58. Consistent with the State NPS Policy, Dischargers comply with these General WDRs by implementing and improving management practices and complying with the other conditions, including monitoring and reporting requirements. This Order requires Dischargers to address impacts to water quality by evaluating the effectiveness of management practices (e.g., waste discharge treatment and control measures) and take action to improve management practices to reduce discharges. However, implementation of management practices is not a substitute for meeting water quality objectives. If a Discharger fails to address impacts to water quality by taking the actions required by this Order, including evaluating the effectiveness of their management practices and improving as needed, the Discharger may then be subject to progressive enforcement and possible monetary liability.
59. The Colorado River Basin Water Board has considered the factors found in Water Code section 13241 in establishing these General WDRs, including:
  - a. Past, present, and probable future beneficial uses of water;
  - b. Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;
  - c. Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;

- d. Economic considerations;
  - e. The need for developing housing within the region; and
  - f. The need to develop and use recycled water.
60. Average annual compliance cost estimates for the Bard Coalition are \$59,291-120,939 for the first year and \$54,291-110,939 for subsequent years. Expressed on a per-acre basis, the estimated costs amount to \$9.19-18.75 per acre for the first year, and \$8.41-17.20 in subsequent years. Average annual cost estimates of compliance with this Order for individual Dischargers who are members of a Coalition Group range from \$5,800 to \$7,800, plus state fees (currently \$100 per Group, plus \$0.95 per acre of land enrolled). The cost per acre will depend on the amount of acres the member enrolls, and cost savings may be realized in subsequent years as the program matures.
61. Significant uncertainties prevent the precise estimation of program costs, including: the total number of monitoring sites required to evaluate water quality conditions, the nature and extent of management practices required to address exceedances of water quality objectives, labor rates, contracting fees, and efficiencies as the program matures. The Information Sheet, **Attachment A** of this Order, contains further discussion of estimates of the total costs and an identification of potential sources of financing to comply with this Order.
62. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order requires Dischargers to implement management practices to meet water quality objectives intended to protect water for municipal and domestic uses and to monitor and report on the effectiveness of the management practices.
63. Water Code section 13267 authorizes the Colorado River Basin Water Board to require technical and monitoring reports. Regional Water Board staff have developed the Monitoring and Reporting Program (MRP), **Attachment B**, for the Bard Coalition and its members. The technical reports required by the MRP are necessary to evaluate compliance with the terms and conditions of this Order and to ensure protection of waters of the state. The burden, including costs, of this MRP bears a reasonable relationship to the need for that information and the benefits to be obtained from that information.
64. Pursuant to Water Code section 13263, subdivision (g), the discharge of waste is a privilege, not a right, and adoption of this Order does not create a vested right to continue the discharge.

### **303(d) Listed Impairments**

65. Section 303(d) of the federal Clean Water Act requires states to identify waterbodies that do not meet water quality objectives. Each state must submit an updated list of impaired waterbodies every two years to the U.S. Environmental Protection Agency

(USEPA) (303(d) List), as well as establish priority rankings for waters on the list and develop Total Maximum Daily Loads (TMDLs) for these waters. A TMDL is a pollutant and surface waterbody specific control plan that must account for all sources of the pollutant that caused the waterbody to be listed.

66. In some cases, alternative pollution control requirements can be used to address waterbody impairments in lieu of a formal TMDL. Regional water boards have wide latitude in determining how to address impaired waters, within certain legal parameters. Impaired waters may be addressed through existing regulatory tools and mechanisms, known as “TMDL alternatives,” such as individual or general WDRs, enforcement actions, and interagency agreements. Federal regulations specifically recognize that “other required control measures” may obviate the need for a TMDL when such requirements are expected to result in the attainment of the applicable water quality standard in a reasonable period of time. (40 C.F.R. § 130.7, subd. (b)(1)(iii).) USEPA often refers to such a TMDL alternative as a “4b alternative.” (USEPA *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act*, dated July 29, 2005, at pp. 53-56.)
67. On July 30, 2015, USEPA gave final approval to California’s 2012 303(d) List. The Bard Valley Drains and the lower section of the Colorado River are not currently listed as “impaired” for any pollutants on that list.
68. To date, no TMDLs have been developed or are scheduled to be developed.
69. In the future, this Order may serve as the first phase of data collection for a TMDL, or serve as an alternative, non-TMDL solution to address impairments should they occur.

### **Antidegradation Analysis**

70. State Water Board Resolution 68-16, entitled *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Resolution 68-16), generally prohibits the Colorado River Basin Water Board from authorizing discharges that will result in the degradation of high quality waters, unless it is demonstrated that any change in water quality will (a) be consistent with maximum benefit to the people of the state, (b) not unreasonably affect beneficial uses, and (c) not result in water quality less than that prescribed in state and regional policies (e.g., the violation of one or more water quality objectives). The Discharger must also employ best practicable treatment or control (BPTC) to minimize the degradation of high quality waters. High quality waters are surface waters or areas of groundwater that have a baseline water quality better than required by water quality control plans and policies.
71. These General WDRs include conditions and performance standards that will minimize any degradation to waters of the state. Some limited degradation to high quality waters may occur as a result of discharges from Irrigated Agricultural Lands subject to this permit. Such limited degradation is consistent with maximum benefit to the people of the state. Agriculture is a significant generator of economic activity

and employment in the area and provides food for the region and beyond. These General WDRs address the health, environmental, and social costs associated with agricultural discharges by prohibiting discharges that will cause or contribute to exceedances of water quality objectives, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance. The General WDRs also require sampling of on-farm drinking water wells to ensure that users of the wells are not drinking water exceeding nitrate contamination health levels.

72. The BPTC requirements of Resolution 68-16 are met through a combination of upfront planning and implementation at the farm level; regional monitoring and assessments to determine whether trends in degradation are occurring; and regional planning and on-farm implementation when trends in degradation are identified. Initially, Dischargers need to conduct an on-farm evaluation to determine whether their management practices are protective of water quality. Dischargers must also prepare and implement a farm-specific irrigation and nitrogen management plan. Through the process of learning about effective management practices, evaluating their own practices, and implementing improved practices, Dischargers are expected to achieve BPTC, where applicable. The State Water Board determined in the Eastern San Joaquin Order that the types of requirements that have been incorporated into this Order constitute BPTC.
73. This Order also requires Dischargers to implement monitoring and assessment programs for both surface water and groundwater. These monitoring and assessment programs are required to determine compliance with water quality objectives and whether any trends in water quality improvement or degradation are occurring. If trends in such degradation are identified that could result in impacts to beneficial uses, a water quality restoration plan is prepared by the Coalition Group. The plan must identify management practices that will be implemented to address exceedances of water quality objectives or trends in degradation, and include an evaluation of the effectiveness of those practices in addressing the degradation. Failure to implement practices or address the exceedances or degradation in accordance with the schedule proposed in the approved plan may result in further direct regulation by the Colorado River Basin Water Board, including, but not limited to, regulating the individual Discharger directly through WDRs for individual discharges or taking other progressive enforcement actions.

### **California Environmental Quality Act**

74. Adoption of these General WDRs constitutes a “project” pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. The Colorado River Basin Water Board is the lead agency for this project under CEQA.
75. On January 17, 2013, the Colorado River Basin Water Board adopted the 2013 Conditional Waiver, waiving WDRs for discharges of waste from Irrigated Agricultural Lands in the Bard Unit and adopted a programmatic Negative Declaration under CEQA (2013 Negative Declaration) under Resolution R7-2013-0002.

76. The 2013 Negative Declaration describes the potential environmental impacts associated with implementation of water quality management practices, construction of monitoring wells, and impacts to agricultural resources (e.g., loss of production of prime farmland). This Order is substantially similar to the 2013 Conditional Waiver and continues the program, with the only difference being the addition of new or revised monitoring and reporting requirements. These new or revised monitoring and reporting requirements will not result in an adverse physical change to the environment. Nor are there substantial changes in the surrounding circumstances which would require major revisions to the 2013 Negative Declaration or significant new information, as that term is used in CEQA. Therefore, the 2013 Negative Declaration for the 2013 Conditional Waiver constitutes the environmental analysis under CEQA for this Order and no subsequent environmental document is required pursuant to California Code of Regulations, title 14, section 15162.

### **Public Participation**

77. On May 15, 2019, the Colorado River Basin Water Board conducted a public workshop on these General WDRs.
78. The Colorado River Basin Water Board has notified interested agencies and persons of its intent to adopt this Order and provided them with an opportunity for a public hearing and to submit comments.
79. On July 11, 2019, the Colorado River Basin Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13260, 13263, and 13267, and in order to meet the provisions contained in division 7 of the Water Code and regulations and plans and policies adopted thereunder, Dischargers and Coalition Groups shall comply with the following terms and conditions:

#### **A. Coverage Requirements**

- 1. Duty to Apply.** These General WDRs apply to discharges or potential discharges of waste from Irrigated Agricultural Lands in the Bard Unit of the Reservation Division, as described in Findings 7 through 11 and 28 through 31. Dischargers who are members of a Coalition Group are required to apply for enrollment under this Order. Dischargers who are not members of a Coalition Group must submit an ROWD and apply for individual WDRs.
- 2. Type of Enrollment.** A Discharger obtains coverage under this Order as a member of an approved Coalition Group. By joining a Coalition Group, the Discharger agrees to be represented by the Coalition Group. Any Order requirements not fulfilled by the Coalition Group are the responsibility of the member.
- 3. Electronic Notice of Intent / Application.** To obtain coverage under these General WDRs, Dischargers must complete an electronic Notice of Intent (e-NOI)

on GeoTracker, print a copy of it, sign it, and submit a paper or electronic copy to the Colorado River Basin Water Board as follows:

- a. New Dischargers shall submit a completed e-NOI within **at least 90 days before the discharge is to commence**, unless permission for a later date has been granted by the Colorado River Basin Water Board's Executive Officer.
  - b. Existing Dischargers who are members of the Bard Coalition shall submit a completed e-NOI **within 150 days of adoption of this Order**.
  - c. In the case where an operator will be operating for a period of less than 12 months, the landowner must complete an e-NOI.
  - d. **Within 60 days of a change in operations**, Dischargers must update their e-NOI to reflect the changes to their operation and/or ranch/farm information.
- 4. Transferability.** Coverage under this Order is not transferable to any person except after the completion and submittal of a new e-NOI to the Colorado River Basin Water Board, and written approval by the Colorado River Basin Water Board's Executive Officer.
- 5. Notice of Applicability.** If the Colorado River Basin Water Board's Executive Officer determines that coverage under this Order is appropriate, the Executive Officer shall issue a Notice of Applicability (NOA) to the Discharger. The Discharger shall comply with this Order upon receipt of the NOA. If coverage under this Order is not appropriate, the Executive Officer will inform the Discharger in writing and may request that the Discharger submit an ROWD to obtain an individual permit for the discharge of waste.
- 6. Notice to Non-Member Landowner/Operator.** Following issuance of the NOA, the Discharger must provide written notice of the Discharger's enrollment to any landowner whose parcel has been enrolled by an operator under this Order or to an operator who farms a parcel that has been enrolled by a landowner. Confirmation that the Discharger provided this notice must be submitted to the Coalition Group.
- 7. Confirmation of Membership.** For members of a Coalition Group, coverage under this Order is automatically terminated if confirmation of membership in the Coalition Group is not received from the Coalition Group during the annual membership update provided in Section E.3 below.

8. **Termination of Coverage.** Dischargers may terminate coverage under this Order by providing a 30-day written notice to the Colorado River Basin Water Board's Executive Officer and, if applicable, notice to the Coalition Group. At a minimum, the written notice must include the reason for terminating coverage (e.g., transfer of ownership, Discharger applied for and obtained individual WDRs, discharge was discontinued, etc.). The Discharger shall continue to comply with this Order until the Colorado River Basin Water Board notifies the Discharger in writing that coverage has been terminated.

## **B. Prohibitions**

1. The discharge of waste to waters of the state, other than from Irrigated Agricultural Lands as defined in Findings 7 through 11 of this Order, is prohibited.
2. The discharge of hazardous waste, as defined in California Code of Regulations, title 23 section 2521, subdivision (a), is prohibited.
3. The discharge of waste (e.g., fertilizers, fumigants, pesticides) into groundwater via backflow through a water supply well is prohibited.
4. The discharge of waste (e.g., fertilizers, fumigants, pesticides) down a groundwater well casing is prohibited.
5. The discharge of waste shall not cause a condition of pollution or nuisance, as defined in Water Code section 13050, subdivisions (l) and (m).

## **C. Receiving Water Limitations<sup>7</sup>**

### **1. Surface Receiving Water Limitations**

- a. Wastes discharged from Irrigated Agricultural Lands in the Bard Unit shall not cause or contribute to an exceedance of applicable water quality objectives for surface waters, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance.

### **2. Groundwater Receiving Water Limitations**

- a. Wastes discharged from Irrigated Agricultural Lands in the Bard Unit shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance.

## **D. Requirements - Members of a Coalition Group**

This subdivision applies to Dischargers who are members of an approved Coalition Group (Members), who shall comply with all of the following:

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<sup>7</sup> These limitations are effective immediately except where Coalition Group members are implementing an approved Water Quality Restoration Plan (WQRP) for a specified waste parameter in accordance with an approved time schedule authorized pursuant to Section E.6 of this Order.

## 1. Management Practices

- a. Members must (1) implement management practices that prevent or control discharges of waste that are causing or contributing to exceedances of water quality objectives; and (2) when effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality objectives, Members must implement improved management practices.
- b. Pursuant to Water Code section 13360, this Order does not specify the design, location, type of construction, or particular manner of management practices compliance, and Members can use any appropriate management practice to comply with the requirements of this Order. A non-exhaustive list of example management practices is found in Section III of the Information Sheet, **Attachment A**. Members are also encouraged to consult the State Water Board's Nonpoint Source Management Measures Encyclopedia as well as Management Practices Miner Tool.

## 2. Water Quality Management Plan (Farm Plan)

- a. Members shall develop and implement an individual Water Quality Management Plan (Farm Plan) to identify the type and location of management practices currently used on their Irrigated Agricultural Lands and additional management practices based on current conditions needed to minimize or prevent the discharge of waste to waters of the state through irrigation water runoff and infiltration, non-stormwater runoff, and stormwater runoff.
- b. Members with the potential to cause erosion and discharge sediment that may degrade surface waters shall implement sediment and erosion control practices. Members must indicate whether they are implementing sediment and erosion control practices in their Farm Plan.
- c. Members must use the Farm Plan Template approved by the Executive Officer. At a minimum, the Farm Plan must include the following:
  - i. The name, business address, mailing address, email address, phone number of the farmland owner;
  - ii. The name, business address, mailing address, email address, phone number of the farm grower/operator (if different from above);
  - iii. Information regarding the location of farm, including: (1) the address, (2) the Assessor Parcel Numbers (APNs) and the county in which each parcel is located, (3) the San Bernardino Baseline and Meridian System coordinates, and (4) applicable canal and gate number(s);
  - iv. The total acreage under cultivation;
  - v. A list of crop(s) grown and the acres dedicated for each type of crop;
  - vi. A description of the irrigation methods used for each crop;

- vii. A list of agricultural chemicals typically applied to crops at the operation, including but not limited to, fertilizers and organic amendments, pesticides, and fumigants;
  - viii. A list of the management practices used on each crop for the annual cycle and an indication whether sediment and erosion control practices are being implemented;
  - ix. A description of any subsurface drainage collection system;
  - x. The location of discharge point(s) and type of discharge(s) (surface and/or subsurface discharges); and
  - xi. The name of the receiving surface waters (if known) to which irrigation runoff, stormwater runoff, and non-stormwater runoff from the operation is discharged.
- d. Members shall submit the individual Farm Plan to the Coalition Group. An updated Farm Plan must be prepared and submitted to the Coalition Group **by March 1, 2020** and by **March 1 annually** thereafter.
- e. A copy of the Farm Plan shall be maintained at the Member's farming headquarters or primary place of business.
- f. Members shall ensure that all management practices identified in the Farm Plan are properly operated and maintained. Members shall periodically evaluate the effectiveness of the management practices and shall make modifications to the Farm Plan as necessary when visual observation monitoring indicates waste discharges have not been adequately addressed in the Farm Plan.

### **3. Irrigation and Nitrogen Management Plan (INMP) and Summary Report**

- a. Members shall implement management practices that minimize excess nitrogen application relative to crop need. Proper nutrient management will work to reduce excess plant nutrients, such as nitrogen, from reaching state waters. Nitrogen management must take site-specific conditions into consideration in identifying steps that will be taken and practices that will be implemented to minimize nitrate movement through surface runoff and leaching past the root zone. The Information Sheet, **Attachment A** of this Order, lists example management practices to manage irrigation and control the discharge of nutrients, including nitrogen.

- b. Members must prepare and implement an Irrigation and Nitrogen Management Plan (INMP) for each field<sup>8,9</sup> and submit the INMP Summary Report for the previous crop year.<sup>10</sup>
- c. Members must use the INMP Template approved by the Executive Officer. The Executive Officer may approve the use of multi-year INMPs for categories of crops that have consistent irrigation and nitrogen planning from year to year. Multi-year plans cannot exceed three years in length.
- d. The INMP must include the information identified in the MRP, **Attachment B** for use by the Coalition Group in calculating an Applied/Removed (A/R) ratio for nitrogen, and an Applied-Removed (AR) difference for nitrogen, as defined in the equations below. The A/R ratio is the ratio of total Nitrogen Applied (from sources including, but not limited to, organic amendments, synthetic fertilizers, manure, and irrigation water) to the total Nitrogen Removed (including all harvested materials and nitrogen annually sequestered in permanent wood for perennial crops). The A-R difference is the difference of total Nitrogen Applied and the total Nitrogen Removed. Total Nitrogen Removed shall be determined, in part, by multiplying a Member's crop yield by a crop-specific nitrogen coefficient, CN, provided by the Coalition, which

$$\text{A/R Ratio} = \frac{\text{Nitrogen Applied (from any source, including fertilizers, irrigation)}}{\text{Nitrogen Removed (via harvest, etc.)}}$$

$$\text{A-R Difference} = \text{Nitrogen Applied} - \text{Nitrogen Removed}$$

represents the amount of nitrogen in the harvested crop. For some crops, the data needed to develop the CN coefficient may not yet be available. The Coalition is directed in Section VI.D of the MRP, **Attachment B** to determine, through nitrogen removed testing and research, the most appropriate CN

<sup>8</sup> Where this Order requires reporting by field, Members may report data for a portion of a field or for multiple fields provided that the reported area has (1) the same crop type, (2) the same fertilizer inputs, (3) the same irrigation management, and (4) the same management practices. In no case should a reported area exceed a total size of 640 acres, and different crop types must always be reported separately even if they are within the same reporting area.

<sup>9</sup> The Regional Water Board's Executive Officer may also approve alternative reporting areas for Dischargers in areas with highly intensive cropping practices, including multiple rotations of different crops in the same location within a single year, unpredictable crop types and harvesting based on rapidly-shifting market demand, and variable management practices adjusting to weather and field conditions. The alternative reporting area must provide meaningful data and balance the level of detail with the reporting burden similar to the field approach. In no case should a reported area exceed a total size of 640 acres, and different crop types must always be reported separately, even if they are within the same reporting area, to allow for evaluation of the effectiveness of management practices with regard to each individual crop type grown.

<sup>10</sup> Pursuant to the Eastern San Joaquin Order, this requirement does not apply to Members where applied nitrogen is not expected to seep below the root zone in amounts that could impact groundwater and is further not expected to discharge to surface water. Any category of Members (such as growers of a particular crop or growers in a particular area) must receive approval of the Executive Officer for this exception to apply.

$$\text{Nitrogen Removed (lbs / acre)} = \text{Crop Yield (units / acres)} \times \text{CN (lbs / unit)}$$

coefficients for converting crop yield to nitrogen removed.

- e. Notwithstanding the provisions above, with the approval of the Executive Officer, the following Members may initially report the A value only in the INMP:
  - i. Growers that operate in areas with (1) evidence of no or very limited nitrogen impacts to surface or groundwater, (2) have minimal nitrogen inputs, and (3) have difficulty measuring yield. (E.g., irrigated pastures.)
  - ii. Diversified socially disadvantaged growers, as defined by the Farmer Equity Act of 2017<sup>11</sup> with (1) a maximum total acreage of 45 acres, (2) gross annual sales of less than \$350,000, and (3) a crop diversity greater than 0.5 crops per acre (one crop for every two acres).
  - iii. Growers with (1) a maximum total acreage of 20 acres, and (2) a crop diversity greater than 0.5 crops per acre (one crop for every two acres). (E.g., small growers with multiple crops that sell at farmers' markets.)
- f. Based on currently-available data for groundwater conditions, the Colorado River Basin Water Board is not requiring that each Discharger's INMP be certified at this time. However, the Executive Officer has discretion to require certification at a future date. The INMP shall be maintained at the Member's farming operations headquarters or primary place of business.
- g. Members shall prepare an INMP by **March 1, 2022** and by **March 1 annually** thereafter, unless using a multi-year INMP. All Members must submit INMP Summary Reports to the Coalition Group for the prior year by March 1 annually. As provided in the MRP, **Attachment B**, the Coalition Group will provide certain INMP Summary Report data to the Executive Officer.
- h. At a minimum, the INMP Summary Report Template must collect the following information:
  - i. Crop Year;
  - ii. Owner/Manager name;
  - iii. Assessor Parcel Number (APN);
  - iv. Field identifier;
  - v. Acreage for each field identified;
  - vi. Crop type;
  - vii. Crop age (permanent crops);
  - viii. Irrigation method;

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<sup>11</sup> Food & Agr. Code, § 512, subd. (b).

- ix. Irrigation management practices implemented;
- x. Nitrogen management practices implemented;
- xi. Total Acreage;
- xii. Nitrogen Applied (lbs/acre); and
  - 1. Irrigation Water
  - 2. Synthetic Fertilizers
  - 3. Organic Amendments
- xiii. Crop Yield (units specified by Coalition Group).

#### 4. Education

- a. Members shall participate in Coalition Group outreach and education events, **at least annually**. Members shall review outreach materials to become informed of any water quality problems to address and the management practices that are available to address those problems.
- b. Members shall provide **annual** confirmation to the Coalition Group that the Member has attended and participated in an outreach and education event activity during the previous year and reviewed the applicable event materials.

#### 5. On Farm-Drinking Water Testing

- a. Due to the potential severity and urgency of health issues associated with drinking groundwater with high concentrations of nitrates, Members shall conduct testing and monitoring of all drinking water supply wells present on the Members' property<sup>12</sup> in accordance with the schedule in the MRP, **Attachment B**.
- b. The Coalition Group, on behalf of its Members, may conduct testing and monitoring of all drinking water supply wells present on the Members' property. If a well is identified as exceeding the MCL for nitrate, the Member must notify the Colorado River Basin Water Board and users of the well in a timely fashion in accordance with the procedures described in MRP.
  - i. Members must use the Drinking Water Notification Template approved by the Executive Officer. At a minimum, the template must contain the following:
  - ii. A statement notifying users of the exceedance;
  - iii. Material regarding the potential health risks associated with consuming nitrate-contaminated drinking water and steps that should be taken for protection; and

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<sup>12</sup> Where a portion of the parcel is leased to a party other than a Member and the terms of the lease give the Member no control over the drinking water supply wells on that parcel, the owner of the parcel is responsible for sampling of those drinking water supply wells.

- iv. A signature block, to be signed by the Member or landowner, certifying that a copy of the Drinking Water Notification Template has been provided to affected users.

The template shall be made available in an appropriate set of languages and designed to be understood by low-literacy populations.

## **6. Fees**

- a. Members shall pay an annual fee to the State Water Board in compliance with the WDRs fee schedule set forth in California Code of Regulations, title 23, section 2200.6. The Coalition Group is responsible for collecting these fees from Members and submitting them to the State Water Board on behalf of Members.

## **E. Requirements - Coalition Groups**

This subdivision applies to Coalition Groups that serve as third-party representatives of Members for purposes of this Order, which shall comply with all of the following:

### **1. Coverage**

- a. The Bard Coalition is currently the only approved Coalition Group in the Bard Unit of the Reservation Division, and is automatically covered under this Order. Other potential Coalition Groups wishing to act as third-party representatives must follow the procedures outlined below in Section E.11.
- b. A Coalition Group covered under this Order is responsible for managing fee collection and payment, managing communications between Members and the Colorado River Basin Water Board, and for fulfilling monitoring and reporting requirements on behalf of its Members, including but not limited to, conducting surface water and groundwater monitoring, conducting regional monitoring, and preparing and implementing Water Quality Restoration Plans (required in Section E.6).

### **2. Organizational Reporting**

- a. Within 90 days of approval of this Order, the Coalition Group shall provide the Colorado River Basin Water Board documentation of its organizational or management structure. The documentation shall identify persons responsible for ensuring that program requirements are fulfilled and shall be made readily available to Members.
- b. The Coalition Group shall prepare annual summaries of expenditures of fees and revenue used to comply with this Order. The summaries shall be provided to or made readily available to Members.

### 3. Membership Reporting

- a. By **October 30, 2019** and by **April 1 annually thereafter**, the Coalition Group shall submit to the Colorado River Basin Water Board a list of all its current Members. The list shall specifically identify any new Members or any Members terminated since the last reporting period.
- b. As part of the membership list submittal, the Coalition Group shall identify Members who have: (1) failed to implement improved water quality management practices; (2) failed to respond to an information request associated with any applicable provisions of this Order; (3) failed to participate in studies for which the Coalition Group is the lead; (4) failed to provide confirmation of participation in an outreach activity; or (5) failed to submit required fees to the Coalition Group.

### 4. Templates for Members

- a. The Colorado River Basin Water Board intends to provide templates developed in coordination with the Coalition Group and agricultural groups/experts to all Members that must be used to comply with the requirements of this Order.
- b. The Coalition Group may work with Colorado River Basin Water Board staff in the development of the templates below, and shall make those templates available to its Members within 30 days of receiving final approval of the templates from the Colorado River Basin Water Board's Executive Officer:
  - i. Farm Plan Template. Requirements for the Farm Plan Template are described above in Section D.2 and the MRP, **Attachment B**.
  - ii. INMP and INMP Summary Report Template. Requirements for the INMP and INMP Summary Report Template are described above in Section D.3 and the MRP, **Attachment B**.
  - iii. Drinking Water Notification Template. Requirements for the Drinking Water Notification Template are described above in Section D.5 and the MRP, **Attachment B**.

If desirable, differing templates may be created for different agricultural commodity groups.

### 5. Monitoring and Reporting Program

- a. The Coalition Group shall conduct required water quality monitoring and assessments in conformance with quality assurance/quality control requirements in this Order and the MRP, **Attachment B**, and provide timely and complete submittal of any reports required.

b. Surface and Groundwater Monitoring Program Plan

- i. Within **90 days of adoption** of this Order, the Coalition Group shall submit for review and approval to the Colorado River Basin Water Board's Executive Officer a Surface and Groundwater Monitoring Program Plan (Monitoring Program Plan) as described in Section V of the MRP, **Attachment B**.
- ii. Annual groundwater monitoring at representative locations is required in the Monitoring Program Plan. The goal is to determine current water quality conditions of groundwater relevant to irrigated agriculture and develop long-term groundwater quality information that can be used to evaluate the regional effects of Irrigated Agricultural Lands practices.
- iii. Quality Assurance Project Plan (QAPP)
  1. As part of the Monitoring Program Plan, the Coalition Group shall submit a Quality Assurance Project Plan (QAPP) to the Colorado River Basin Water Board's Executive Officer for review and approval that meets in the requirements in the MRP, **Attachment B**.

c. Compliance Program Reporting

- i. The Coalition Group shall submit its Members' INMP data and Farm Plan data to the Colorado River Basin Water Board in compliance with the schedule identified in the MRP, **Attachment B**.
- ii. Confidentiality
  1. The Coalition Group shall develop: (1) anonymous Member identification numbers and (2) anonymous Assessor's Parcel Number (APN) identification numbers for the reporting of Members' data. The Coalition Group shall maintain and track the IDs from year to year.
  2. The Coalition Group shall submit Farm Plan data by anonymous Member ID.
  3. The Coalition Group shall submit INMP Summary Report data by anonymous Member ID, anonymous APN ID, and by township.

4. The Colorado River Basin Water Board's Executive Officer may require that the Coalition Group directly provide data for individual Dischargers (without anonymous identifiers) in connection with the implementation of a Water Quality Restoration Plan, as described in Section E.6 below, particularly where the data suggests that the Discharger(s) are not improving their management practices.

- d. On-Farm Drinking Water Monitoring

- i. The Coalition Group, on behalf of Members, may conduct testing and monitoring of drinking water supply wells present on Members' property in compliance with the requirements in Section D.5 and the MRP, **Attachment B**.

## 6. Water Quality Restoration Plan (WQRP)

- a. The Coalition Group shall provide surface water and groundwater exceedance reports if monitoring results show exceedances of applicable numeric water quality objectives or water quality benchmarks, as specified in the MRP, **Attachment B**.
- b. The Colorado River Basin Water Board may require Coalition Groups to prepare a Water Quality Restoration Plan (WQRP) if (a) there is a water quality exceedance or (b) a trend of degradation of water quality is identified that threatens a beneficial use in receiving waters affected by its Members' activities on Irrigated Agricultural Lands. For purposes of this Order, an "exceedance" occurs when (a) a sampling result for a constituent at a single surface water monitoring location exceeds a water quality objective or benchmark limit specified in the MRP, **Attachment B** more than three out of four times for the same constituent, or (b) a single groundwater sampling result exceeds a water quality objective.
- c. The WQRP shall contain the following information:
  - i. For each constituent that indicates an exceedance or a trend of water quality degradation that threatens a beneficial use, the WQRP shall include a graph showing the concentrations over time (from available data) and a trend analysis for the constituent.
  - ii. The WQRP shall include a description of the actual or suspected waste sources that may be causing or contributing to the exceedance or trend of water quality degradation that threatens a beneficial use(s). The WQRP shall also include a list and map location of Members in the geographic area addressed in the WQRP.
  - iii. The WQRP shall identify management practices currently being implemented and additional or improved management practices that will be implemented by designated Members to prevent or minimize

the discharge of any waste that is causing or contributing to the exceedance or trend of water quality degradation. The WQRP shall also include a brief justification for selecting specific management practices.

- iv. The WQRP shall include a schedule for the implementation and completion of all tasks described in the WQRP. The schedule shall reflect the shortest practicable time required to perform each task, given the type of management practices planned or program being implemented, and the experience of commercial agriculture with the time required to implement similar management practices or programs. The schedule may not be longer than that which is reasonably necessary to achieve the receiving water limitations in Section C of these General WDRs. If the schedule exceeds one year, the schedule must include interim annual milestones that demonstrate progress towards completion of the WQRP tasks and compliance with the applicable receiving water limitations of these General WDRs.
- v. The WQRP shall include a monitoring and reporting plan to provide feedback on WQRP progress and its effectiveness in achieving compliance with the applicable receiving water limitations of these General WDRs.
- d. The WQRP must be approved by the Colorado River Basin Water Board's Executive Offer prior to implementation. The Coalition Group may propose changes and revisions to the WQRP as necessary, subject to approval by the Executive Offer prior to implementation.
- e. The Coalition Group shall work cooperatively with the Colorado River Basin Water Board to ensure all Members are taking necessary steps to address exceedances or degradation identified by the Coalition Group or the Colorado River Basin Water Board.

## **7. Education and Outreach**

- a. The Coalition Group shall conduct education and outreach activities to inform Members of program requirements and water quality problems identified by the Coalition Group or Colorado River Basin Water Board.
- b. Outreach events and materials shall include information on nitrogen application practices and the potential impact of nitrates on groundwater and, as appropriate depending on the anticipated Discharger audience, shall be provided in multiple languages. The Coalition Group shall:

- i. Provide Members with information on water quality management practices that will address water quality problems and minimize the discharge of wastes from Irrigated Agricultural Lands, and provide informational materials on potential environmental impacts of water quality management practices.
- ii. Provide an **annual** summary of education and outreach activities to the Colorado River Basin Water Board. The annual summary shall include copies of the educational and management practices information provided to the growers. The annual summary must report the total number of growers who attended the outreach events and describe how growers could obtain copies of the materials presented at these events.

## **8. Notice of Violation (NOV) Reporting**

- a. If the Coalition Group receives a Notice of Violation (NOV) from the Colorado River Basin Water Board, the Coalition Group must provide a copy of the NOV to Members in the area addressed by the NOV and appropriate information regarding the reason(s) for the violation. The notification must be provided within thirty (30) days of receiving the NOV from the Board. The Coalition Group must provide confirmation to the Colorado River Basin Water Board of the notification.
- b. A summary of all notices of violation received by the Coalition Group must be provided to all Members **annually**.

## **9. Fees**

- a. The Coalition Group shall collect the fees from Members required by the State Water Board pursuant to the fee schedule contained in California Code of Regulations, title 23, section 2200.6. The Coalition Group is responsible for submitting all fees collected directly to the State Water Board on behalf of its Members.

## **10. Termination of Representation**

- a. If a Coalition Group wishes to terminate its role as a third-party representative, the Coalition Group shall submit a notice of termination letter to the Colorado River Basin Water Board and all of the Coalition Group's Members. Termination of the Coalition Group will occur no earlier than 30 days from submittal of the notice of termination letter.
- b. The notice of termination shall inform Members of their obligation to find a new, approved Coalition Group representative or obtain coverage under individual WDRs for their discharges. At a minimum, the written notice must include:
  - i. The proposed termination date;

- ii. The reason for termination (e.g. dissolution, merger, etc.);
  - iii. Evidence that written notice was provided to all Members of the Coalition Group of the proposed termination; and
  - iv. Any successor and assign(s) seeking to assume responsibility under this Order;
- c. The Coalition Group shall continue to comply with this Order until the Colorado River Basin Water Board notifies it in writing that coverage has been terminated.

## **11. New Coalitions**

- a. New Coalition Group(s) shall obtain written approval from the Colorado River Basin Water Board's Executive Officer prior to assisting Dischargers with compliance with this Order.
- b. In evaluating whether to approve a new Coalition Group, the Executive Officer will consider the following factors:
  - i. The ability of the third party to carry out the identified Coalition Group responsibilities.
  - ii. Whether the third party is a legally defined entity (i.e., non-profit corporation; local or state government; Joint Powers Authority) or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to its members.
  - iii. Whether the third party has binding agreements with any subsidiary group (e.g., subwatershed group) to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done transparently and with accountability to the third party.
  - iv. Whether the third party has a governance structure that includes a governing board of directors composed in whole or in part of Members, or otherwise provides Members with a mechanism to direct or influence the governance of the third party through appropriate by-laws.
- c. If the Executive Officer determines that the Coalition Group applicant has the capacity to satisfactorily carry out the Coalition Group responsibilities, the Colorado River Basin Water Board's Executive Officer will issue an NOA. The new Coalition Group shall comply with the relevant terms and conditions of this Order upon receipt of the NOA.

## F. General Provisions

1. **Noncompliance.** Dischargers and Coalition Group(s) shall comply with all of the conditions of this Order. Noncompliance is a violation of the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.) and grounds for: (1) an enforcement action; (2) termination, revocation and reissuance, or modification of these waste discharge requirements; or (3) denial of an Order renewal application, or a combination thereof.
2. **Enforcement – Members.** Under these General WDRs, Coalition Group(s) are tasked with assisting Members in carrying out certain terms and conditions of this Order. However, Members, and any non-Member owner or operator, continue to bear ultimate responsibility for complying with these General WDRs. The Colorado River Basin Water Board reserves the right to take any enforcement action authorized by law. Accordingly, failure to timely comply with any provisions of this Order may subject Dischargers to enforcement action. Such actions include, but are not limited to, the assessment of administrative civil liability pursuant to Water Code sections 13323, 13268, and 13350, a Time Schedule Order (TSO) issued pursuant to Water Code section 13308, or referral to the California Attorney General for recovery of judicial civil liability.
3. **Enforcement – Coalition Group(s).** Failure to comply with the applicable terms and conditions of this Order may result in revocation of approval to act as a Coalition Group. Affected Dischargers would be required to join an approved Coalition Group or obtain coverage under other applicable general or individual WDRs. In the event of any violation or threatened violation of the conditions of these General WDRs applicable to Coalition Group(s), the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law.
4. **Reporting of Noncompliance.** Dischargers shall report any noncompliance that may endanger human health or the environment. Information shall be provided orally to the Colorado River Basin Water Board office and the Office of Emergency Services within twenty-four (24) hours of when the Discharger becomes aware of the incident. If noncompliance occurs outside of business hours, the Discharger shall leave a message on the Colorado River Basin Water Board's office voicemail. A written report shall also be provided within five (5) business days of the time that the Discharger becomes aware of the incident. The written report shall contain a description of the noncompliance and its cause, the period of noncompliance, the anticipated time to achieve full compliance, and the steps taken or planned, to reduce, eliminate, and prevent recurrence of the noncompliance.
5. **Duty to Mitigate.** Dischargers shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment.
6. **Proper Operation and Maintenance.** Dischargers shall at all times properly operate and maintain all facilities and systems of treatment and control (and

related appurtenances) which are installed or used by Coalition Groups or Dischargers to achieve compliance with the conditions of these General WDRs.

- 7. Inspection and Entry.** Consistent with Water Code section 13267, subdivision (c), Dischargers and Coalition Group(s) shall allow the Colorado River Basin Water Board, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

  - a. Enter the premises regulated by this Order, or the place where records are kept under the conditions of this Order;
  - b. Have access to and copy, at reasonable times, records kept under the conditions of this Order;
  - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
  - d. Sample or monitor at reasonable times, for the purpose of ensuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at this location.
- 8. Records Retention.** Dischargers and Coalition Group(s), as appropriate, shall retain copies of all reports required by this Order and the associated MRP. Records shall be maintained for a minimum of **ten years** from the date of the sample, measurement, report, or application. Records may be maintained electronically, and the Coalition Group must store back up files in a secure, offsite location managed by an independent entity. This period may be extended during the course of any unresolved litigation or when requested by the Colorado River Basin Water Board's Executive Officer.
- 9. Electronic Reporting.** Dischargers and Coalition Group(s), as appropriate, shall submit reports and information required under this Order in an electronic format specified by the Colorado River Basin Water Board's Executive Officer via email to [RB7-coloradoriver@waterboards.ca.gov](mailto:RB7-coloradoriver@waterboards.ca.gov).
- 10. Claims for Exemption from Public Disclosure.** If the Coalition Group and/or a Discharger asserts that all or a portion of a report submitted pursuant to this Order is subject to an exemption from public disclosure (e.g., due to proprietary or trade secret information), the Coalition Group and/or Discharger must provide an explanation of how those portions of the reports are exempt from public disclosure. The Coalition Group and/or Discharger must clearly indicate on the cover of the report (typically an electronic submittal) that all or a portion of the report is exempt from public disclosure, submit a complete report with those portions that are asserted to be exempt in redacted form, submit separately (in a separate electronic file) unredacted pages (to be maintained separately by staff). Regional Water Board staff will determine whether any such report or portion of a report qualifies for an exemption from public disclosure. If staff disagrees with the asserted exemption from public disclosure, staff will notify the Discharger prior to making

such report or portions of such report available for public inspection.

- 11. Signature and Certification.** All documents and reports requested herein shall be signed and dated by a duly-authorized representative and shall contain a statement by the Discharger, or as appropriate by an authorized representative of the Discharger (e.g., Coalition Group representative), certifying under penalty of perjury under the laws of the State of California, that the report is true, complete, and accurate. The document and/or report shall be submitted under the title: "General Order for Bard Valley Ag Dischargers."
- 12. Violation of Law.** This Order does not authorize violation of any federal, state, or local laws or regulations.
- 13. Property Rights.** This Order does not convey property rights of any sort, or exclusive privileges, nor does it authorize injury to private property or invasion of personal rights.
- 14. Modification, Revocation, Termination.** This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by a Discharger for an Order modification, rescission, or reissuance, or a Discharger's notification of planned changes or anticipated noncompliance, does not stay any Order condition. Causes for modification include, but are not limited to, the violation of any term or condition contained in this Order, a material change in the character, location, or volume of discharge, a change in land application plans, or the adoption of new regulations by the State Water Board, Colorado River Basin Water Board (including revisions to the Basin Plan), or federal government.

I, Paula Rasmussen, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on July 11, 2019.



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PAULA RASMUSSEN  
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

**FIGURE 1: IN ORDER R7-2019-0053  
BARD UNIT AREA MAP**

**GENERAL WASTE DISCHARGE REQUIREMENTS  
FOR  
DISCHARGES OF WASTE FROM IRRIGATED AGRICULTURAL LANDS FOR  
DISCHARGERS THAT ARE MEMBERS OF A COALITION GROUP IN  
BARD VALLEY  
IMPERIAL COUNTY**

