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13 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

14 **In the of Matter Central Valley Region)**
15 **Order No. R5-2012-0116 - Waste Discharge)**
16 **Requirements General Order for Growers)**
17 **Within The East San Joaquin River Basin)**
18 **That Are Members Of The Third-Party)**
19 **Group)**
20 **Petitioners' Response to SWRCB's**
21 **Proposed Order to Review Central Valley**
22 **Region**
23 **Order No. R5-2012-0116 Under its Own**
24 **Motion**

25 We submit these comments on behalf of Petitioners, Asociación de Gente Unida por el
26 Agua, et. al. in response to the State Water Resources Control Board's Proposed Order to review
27 Central Valley Region Order No. R5-2012-0116 under its own motion.

28 While we appreciate the State Water Resources Control Board's (SWRCB or Board)
concern for this matter, and deliberate approach to assess issues and arguments raised in our
petition that are of serious concern to petitioners and other people of this state, we find the
Board's proposed action to further delay a decision both unnecessary and one more in a long line
of actions that further defer residents of the East San Joaquin River Basin their right to protection
from degradation of their groundwater, and pollution of their environment.

1 Fifteen years have now passed since the passage of legislation requiring the Regional
2 Water Boards to review and revise their conditional waivers of waste discharge for irrigated
3 agriculture, and more than ten years have passed since the legislative deadline to do so. How
4 much longer must the residents of the region and people of this state wait for adequate protection
5 of their groundwater?
6

7 Residents of this region are heavily dependent upon groundwater, and are increasingly
8 reliant on contaminated groundwater. According to the State Board's own draft report
9 "Communities Reliant Upon Contaminated Groundwater" 300,000 residents just in Stanislaus
10 and Merced Counties rely upon contaminated groundwater. Up to 100,000 people in these two
11 counties rely upon domestic wells¹ and as such are particularly vulnerable to groundwater
12 contamination. According to the 2008 Existing Conditions Report, nitrate concentrations in
13 groundwater in the eastern San Joaquin Valley exceeded drinking water standards in
14 approximately 25% of domestic water supply wells, and 23 different pesticides were detected in
15 41 of 60 groundwater samples collected.
16
17

18 Irrigated agriculture is responsible for a significant share of the existing nitrate
19 contamination and current practices on irrigated lands continue to contribute to nitrate pollution
20 of groundwater. The Existing Conditions report makes that finding,² as does the oft cited report
21 on the topic by Thomas Harter and Jay R. Lund: *Addressing Nitrate in California's Drinking*
22 *Water, With a Focus on Tulare Lake Basin and Salinas Valley Groundwater.*³ That report
23
24

25 ¹ Data cited was added to the record in the EJ Comment letter to Central Valley Regional Water Quality Control
26 Board, dated May 21, 2012, signed by California Rural Legal Assistance Foundation, Clean Water Action and
27 Community Water Center.

28 ² *Irrigated Lands Regulatory Program, Existing Conditions Report*, Page 4-223-224, Central Valley Regional Water
Quality Control Board, 2008

³ Harter, T., J. R. Lund, et. al. 2012. *Addressing Nitrate in California's Drinking Water with a Focus on Tulare Lake
Basin and Salinas Valley Groundwater. Report for the State Water Resources Control Board Report to the
Legislature*. Center for Watershed Sciences, University of California, Davis. <http://groundwater-nitrate.ucdavis.edu>.

1 indicates that nitrate contamination is ongoing and that irrigated agriculture is responsible for
2 96% of the nitrate contribution to groundwater in the Tulare Lake Basin and Salinas Valley,⁴ and
3 notes that prevention of groundwater contamination is far more economical than clean-up.⁵
4

5 *Addressing Nitrate in California's Drinking Water* estimates that if trends continue, up to
6 80% of the financially susceptible population will be impacted by nitrate contamination by
7 2050,⁶ and we are now seeing that climate change – the current drought one acute indication
8 thereof – may further accelerate contamination of groundwater sources, exacerbating the
9 vulnerability of those reliant on community water systems and domestic wells.
10

11 How much longer does this Board anticipate delaying protection to the thousands upon
12 thousands of residents whose water is threatened each day by continued discharge?

13 While the implications of addressing degradation and pollution may be complex, the
14 issues raised in the Petition at hand are not. As laid out fully in our Petition, the Waste Discharge
15 Requirements for Growers within the East San Joaquin River Basin that are Members of The
16 Third Party Group (Order No. R5-2012-0116) (Order) does not and cannot comply with state
17 law.
18

19 The Porter Cologne Water Quality Control Act⁷ and the State's Anti-degradation Policy⁸
20 require that the Regional Board issue waste discharge requirements that protect the region's
21 water quality for designated beneficial uses . However, this Order implicitly and explicitly
22 allows both degradation and pollution to continue from the region's approximately 835,000 acres
23 of irrigated lands in violation of those mandates. Furthermore, the Order, while permitting
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26 ⁴ Id., pg. 17

27 ⁵ Id. pg. 38 (Estimated annual costs for clean-up are between \$13 and \$30 billion)

28 ⁶ Id. pg. 51

⁷ California Water Code §§ 13000 et seq.

⁸ State Water Board Resolution 68-16.

1 degradation, fails to make required findings that such degradation is consistent with the
2 maximum benefit to the people of the state.⁹ The Order, too, fails at any attempt to quantify or
3 qualify the degradation that would likely occur under the Order, or its likely impact. Similarly,
4 the Order, by failing to identify likely levels and locations of degradation and pollution hinders
5 any potential efforts to direct corrective action. As a matter of law, the Order violates both Porter
6 Cologne and state Anti-degradation Policy.
7

8 To the extent that these deficiencies disproportionately impact low income communities
9 and communities of color, the Order also violates California's Civil Rights¹⁰ and Fair Housing
10 Laws.¹¹ Finally, by failing to adequately consider the "established policy of the state that every
11 human being has the right to safe, clean, affordable, and accessible water,"¹² the Order violates
12 the Human Right to Water Act.¹³
13

14 We would be pleased to submit additional briefing on any matter raised in our Petition if
15 this Board so desires and we are available to answer any questions the Board may have.
16

17 Respectfully Submitted on August 1, 2014,
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21 Phoebe Seaton, Leadership Counsel for Justice and Accountability

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24 Laurel Firestone, Community Water Center
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26 _____
27 ⁹ Id.

¹⁰ California Government Code § 11135

¹¹ California Government Code §§ 65008, 12900, *et seq.*

¹² California Water Code § 106.3

¹³ Id.
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