In the Matter of Waste Discharge Requirements General Order No. R5-2012-0116 For Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third-Party Group.

The East San Joaquin Water Quality Coalition (Coalition) is the approved third-party to represent growers within the Eastern San Joaquin River Watershed that are subject to Waste Discharge Requirements General Order for Growers Within the Eastern San Joaquin River Watershed That Are Members of the Third-Party Group, Order No. R5-2012-0116 (General Order). Accordingly, the Coalition is the real party in interest on behalf of its grower members.
that are subject to the terms and conditions of the General Order. On behalf of its grower
members, the Coalition submits the following responses to the Petition of Asociación de Gente
Unida por el Agua (AGUA), Fairmead Community and Friends, and Planada en Acción
(Petition A-2239(a), referred to as AGUA Petition); and California Sportfishing Protection
Alliance and California Water Impact Network (Petition A-2239(b), referred to as CSPA Petition)
(collectively referred to as Petitioners).1 The petitions in question challenge the General Order
adopted by the Central Valley Regional Water Quality Control Board (Regional Board) on
December 7, 2012.2

I. FACTUAL BACKGROUND

The Eastern San Joaquin River Watershed includes the entire counties of Madera,
Tuolumne and Mariposa, and portions of Stanislaus, Merced, Calaveras, Fresno, and Alpine
Counties. There are approximately 1,000,000 acres of irrigated agricultural land within the
watershed area, although approximately 165,000 acres of these are regulated under the Regional
Board’s General Order for Existing Milk Cow Dairies (Dairy General Order). The Coalition was
formed over ten years ago to assist growers in complying with Conditional Waiver of Waste
Discharge Requirements for Discharges from Irrigated Lands in the Central Valley (Resolution
No. R5-2003-0105), and subsequently revised Conditional Waivers. In that capacity, the
Coalition has successfully implemented extensive monitoring and reporting requirements, and has
conducted extensive outreach and education to its grower members. The Coalition’s efforts have
led to significant improvements in water quality. (See, e.g., East San Joaquin Water Quality
Coalition’s presentation to Regional Board, June 12, 2012, 100% decrease in chlorpyrifos
exceedances since 2007, 92% decrease in copper exceedances since 2007.)

On December 7, 2012, the Regional Board adopted the General Order, which continues
and expands upon the requirements contained in the Conditional Waivers for protection of surface

---

1 The Coalition acknowledges the Petition of San Joaquin County Resource Conservation District on Behalf of the
San Joaquin County and Delta Water Quality Coalition, et al. (Petition A-2239(c)) but finds it unnecessary to provide
a response to the claims contained therein.

2 The General Order was subsequently revised on October 3, 2013. The October 2013 revisions do not impact the
challenges contained in the AGUA Petition or the CSPA Petition, and are not relevant to the response contained
herein.
water quality from irrigated lands in the Eastern San Joaquin River Watershed, and contains new
requirements for the protection of groundwater from irrigated agriculture in the same watershed
area. Pursuant to the terms of the General Order, the Coalition submitted a Third-Party
application for Waste Discharge Requirements General Order R5-2012-0116 for Growers in the
Eastern San Joaquin River Watershed on December 4, 2012. (See General Order, p. 28.) The
Regional Board’s Executive Officer issued a Notice of Applicability to the Coalition on
January 11, 2013. On January 7, 2013, the AGUA and CSPAT Petitions were filed pursuant to
Water Code section 13320. On November 8, 2013, the State Water Resources Control Board’s
(State Board) Office of Chief Counsel issued a letter with respect to consolidation of complete
petitions, and requested response within 30 days (30-Day Response). (Cal. Code of Regs., tit. 23,
§ 2050.5(a).) The time to respond was extended by letter dated November 22, 2013. The
Coalition provides this response in accordance with the State Board’s request dated November 8
and 22, 2013, collectively.

II. LEGAL FRAMEWORK FOR GENERAL ORDER

The Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-
Cologne) is the applicable California law governing water quality. Porter-Cologne established a
system of nine regional water quality control boards (regional boards), each with authority in a
specific geographic area. (Wat. Code, §§ 13100, 13200, 13201.) The State Board has oversight,
approval, or review authority with respect to actions of regional boards. (Id., §§ 13140, 13164,
13245, 13320.) Porter-Cologne requires regional boards to adopt water quality control plans—
known as “basin plans”—for waterbodies within their jurisdiction. (Wat. Code, § 13240.) A
basin plan must include: the beneficial uses of the waterbodies in the region; the water quality
objectives (WQOs) to reasonably protect the beneficial uses; and a program of implementation
for the WQOs. (Id., §§ 13050(h), (j), 13241, 13242.) Regional board basin plans must be
approved by the State Board.

The applicable basin plan for Eastern San Joaquin River Watershed is the Water Quality
Plan). The Basin Plan describes beneficial uses of individual waterbodies, and includes WQOs to
protect the uses. The WQOs are both numeric and narrative. The Basin Plan also includes by reference water quality control policies adopted by the State Board. Relevant here are the Basin Plan’s reference to State Water Board Resolution No. 68-16 and the State Board’s Nonpoint Source Management Plan. Regional Board actions must conform to these plans and policies. (Wat. Code, §§ 13146, 13247.)

The State Board adopted Resolution No. 68-16, “Statement of Policy with Respect to Maintaining High Quality of Waters in California,” on October 24, 1968, pursuant to direction by the United States (U.S.) Secretary for the Department of Interior (hereafter referred to as “Resolution No. 68-16”). It is often referred to as the state’s antidegradation policy, and it has been determined by the State Board to satisfy federal regulatory requirements where such requirements apply. (See, e.g., State Board Order No. WQ 86-17 at pp. 16-19.) In general, Resolution No. 68-16 applies to any regional board action that will lower water quality of an existing high quality water, and such lowering of water quality was not previously permitted. (Id. at p. 17; State Board Order WQ 2009-0007, p. 12.) When it is triggered, Resolution No. 68-16 applies as follows:

Resolution No. 68-16 provides that the Regional Board is authorized to allow the discharge of waste into high quality waters only if it makes specified findings. The State Board has described these findings as a two-step process. ‘The first step is if a discharge will degrade high quality water, the discharge may be allowed if any change in water quality (1) will be consistent with maximum benefit to people of the State, (2) will not unreasonably affect present and anticipated beneficial use of such water, and (3) will not result in water quality less than that prescribed in state policies (e.g. water quality objectives in Water Quality Control Plans). The second step is that any activities that result in discharges to such high quality waters are required to use best practicable treatment or control of the discharge necessary to avoid pollution or nuisance and to maintain the highest water quality consistent with maximum benefit to the people of the State.’ (Asociacion de Gente Unida Por El Agua v. Central Valley Regional Water Quality Control Bd. (2012) 210 Cal.App.4th 1255, 1278 (AGUA).)

To date, the State Board has issued some guidance with respect to application of Resolution No. 68-16. (See Antidegradation Policy for Implementation of NPDES Permitting (APU 90-004), Memorandum to Regional Board Executive Officers from William R. Attwater, Chief Counsel, State Board (Oct. 7, 1987), regarding Federal Antidegradation Policy (Attwater Memo), and Questions and Answers Resolution No. 68-16 (Feb. 16, 1995) (State Board Guidance...
However, the guidance issued has some limitations in that their application was geared to either discharges subject to National Pollutant Discharge Elimination System (NPDES) permits (i.e., APU 90-004 and Attwater Memo), or was prepared in concert with answering questions concerning the application of Resolution No. 68-16 to clean up sites subject to the federal Comprehensive Environmental Response Compensation, and Liability Act (i.e., State Board Guidance Memo). Thus, while the available guidance may be instructive with respect to application of Resolution No. 68-16 to discharges from irrigated agriculture, it is not directly applicable in its entirety, and is therefore not determinative.

The state’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy) (otherwise referred to as the state’s Nonpoint Source Management Plan) was originally developed and subsequently upgraded to ensure compliance with section 319 of the Clean Water Act (CWA) and section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). As updated in 2004, it also fulfills the requirements of Water Code section 13369(a)(2)(B). Although not defined directly in state or federal law, nonpoint source pollution is generally considered to be water pollution from sources that do not meet the definition of point source as defined in the CWA. This would include return flows from irrigated agriculture and agricultural storm water runoff, which are both specifically excepted from the definition of point source in the CWA. (33 U.S.C. § 1362(14).) The Regional Board has found that the General Order regulates nonpoint source pollution and, accordingly, must implement the Nonpoint Source Policy. Nonpoint source control programs are required to implement the following five key elements: Key Element 1 - “Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements . . . .” (Nonpoint Source Policy, p 12); Key Element 2 - “An NPS control implementation program shall include a description of the MPs [management practices] and other program elements that are expected to be implemented to ensure attainment of the implementation program’s stated purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure and verify proper MP implementation . . . .” (Nonpoint Source Policy, p. 12); Key Element 3 -
“Where a RWQCB [Regional Board] determines it necessary to allow time to achieve water quality requirements, the NPS control implementation program shall include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements . . .” (Nonpoint Source Policy, p. 13); Key Element 4 - “An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB [Regional Board], dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required . . .” (Nonpoint Source Policy, p. 14); Key Element 5 - “Each RWQCB [Regional Board] shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program’s stated purposes . . .” (Nonpoint Source Policy, p. 14).

III. ARGUMENT

A. The Regional Board Complied With Resolution No. 68-16 When It Adopted the General Order, and the General Order Complies With Associated Requirements

The central allegation in both the AGUA and CSPA Petitions is that the Regional Board’s adoption of the General Order violated Resolution No. 68-16. Petitioners include a variety of arguments associated with the allegation, but in general, all of the arguments come back to the primary tenant that the General Order fails to contain sufficient requirements to ensure compliance with Resolution No. 68-16. Accordingly, we respond to the Petitioners’ allegations collectively by explaining how the Regional Board complied with Resolution No. 68-16 in its adoption of the General Order, and how the General Order meets associated requirements.

1. Regional Board Determination of High Quality Waters Is Consistent With Resolution No. 68-16

As a preliminary matter, the Regional Board made appropriate findings in that it recognized the significant variation in conditions over the Eastern San Joaquin River Watershed area, determined that an antidegradation analysis would be required for at least some of the waterbodies, and performed an antidegradation analysis for the General Order. (General Order, Attachment A, pp. 36-37.) Petitioners find fault in this approach by arguing that the Regional Board failed to establish a proper baseline for all waterbodies and all constituents within the
Eastern San Joaquin River Watershed. However, nothing in Resolution No. 68-16 requires the individual waterbody-by-waterbody baseline analysis advocated by Petitioners. Resolution No. 68-16 refers to high quality waters in general and provides no specificity or direction to the Regional Board on how such a determination should be made. Petitioners rely on APU 90-004, and an unrelated document titled *A Compilation of Water Quality Goals* for their position, but reliance on these documents in this manner is misplaced. With respect to APU 90-004, as indicated previously, it applies to application of antidegradation policies to NPDES permittees, which by definition are point source discharges. Consequently, APU 90-004 presumes that the discharge comes from a single point to a single waterbody. The guidance contained in APU 90-004 for determining whether a receiving water is a high quality water through the establishment of a baseline is specific to such circumstance where there is a single point source discharging to a single receiving water. (See APU 90-004, p. 4.) That is not the case here with the General Order. With respect to *A Compilation of Water Quality Goals*, this document is a compilation of water quality criteria and was not developed with the intent or purpose of providing guidance to the Regional Boards on issues related to application of Resolution No. 68-16. Accordingly, Petitioners’ reliance thereon is inappropriate.

Considering the lack of applicable guidance, the Regional Board has appropriately used its discretion, supported by the evidence in the record, to find that at least some of the waterbodies in the Eastern San Joaquin River Watershed are high quality. Due to this finding, the Regional Board then properly followed Resolution No. 68-16, and conducted an antidegradation analysis to support the limited degradation that is authorized by the General Order.

2. **Regional Board Made Necessary Findings to Allow Degradation to High Quality Waters**

To allow discharges to high quality waters, Resolution No. 68-16 dictates that the Regional Board must make necessary findings through a two-step process. (*AGUA, 210 Cal.App.4th at p. 1278.*) Under the first step, the Regional Board must find that discharges will be to the maximum benefit to the people of the state, not unreasonably affect present and anticipated beneficial uses of high quality waters, and will not result in water quality less than that
prescribed in state policies. *(Ibid.)* Within Attachment A to the General Order, the Regional
Board explains why it finds that allowance of limited degradation is consistent with the maximum
benefit to the people of the state. *(See, e.g., General Order, Attachment A, pp. 43-44.)* The
Regional Board’s findings are supported by extensive evidence in the record, including
information contained in the Programmatic Environmental Impact Report (PEIR) that shows that
the nation and state depend on Central Valley agriculture for food. *(PEIR, Appendix A.)*
Thousands of acres of agricultural land could go out of production if limited degradation is not
allowed. Attachment A also explains the many provisions within the General Order that ensure
that the discharges that are allowed to high quality waters will not unreasonably affect beneficial
uses and will not result in water quality less than those prescribed in state policies *(i.e., WQOs).*
These provisions include, *(e.g., the receiving water limitations (General Order, p. 17))* and the
requirement to implement water quality management practices to protect water quality and
achieve compliance with WQOs. *(General Order, p. 18.)*

To the extent that compliance with such provisions is tied to implementation of
management practices as identified in an approved management plan that includes a time
schedule for compliance, said compliance is consistent with the Water Code. Specifically, Water
Code section 13263(c) allows the Regional Board to include time schedules for compliance as
part of the waste discharge requirement *(WDR)* provisions. WDRs are required to implement
relevant water quality control plans *(i.e., the Basin Plan.)* *(Wat. Code, § 13263(a).)* Thus,
provisions in a WDRs related to compliance with Resolution No. 68-16 may be subject to time
schedules, as authorized by the statute. *(Wat. Code, § 13263(a), (c).)*

The application of time schedules would further extend to management plans, and the
requirement to comply with thereof, which are triggered by exceedances of a WQO, the Basin
Plan itself, or if the Executive Officer determines that irrigated agriculture may be causing a trend
in degradation that may threaten beneficial uses. *(See, e.g., General Order, p. 33.)* The time
schedule provisions in the General Order allow for up to ten years. *(General Order, pp. 36-37.)*
Anything beyond that would need to go back to the Regional Board for further consideration.
As a side argument, Petitioners allege that delegation of approval of the management plans is an inappropriate delegation of duty to the Executive Officer under Water Code section 13223(a). We disagree. The General Order, the associated monitoring and reporting program order (Attachment B to the General Order), and Appendix MRP-1 specify the necessary criteria for what a management plan must include to be approved by the Executive Officer. Further, the General Order sets the time schedule for up to ten years. Thus, the General Order clearly sets forth the mandatory provisions within a management plan and limits the Executive Officer’s discretion to determining if the submitted plan complies with these provisions. (See, e.g., Russian River Watershed Protection Committee v. City of Santa Rosa (1998) 142 F.3d 1136, 1143 ["... the Executive Officer’s adoption of a method of compliance was not a ‘modification’ of the permit in violation of section 13223.’"]) Management plans submitted in accordance with the requirements established by the Regional Board, and the Executive Officer’s approval thereof, does not modify the General Order, and is therefore not an improper delegation of duty.

Thus, with consideration of the time schedules for compliance, the General Order ensures that high quality waters will be protected.

3. **Discharges Regulated Under the General Order Are Required to Use Best Practicable Treatment or Control**

The next step under Resolution No. 68-16 is that activities that result in discharges to high quality waters are required to use best practicable treatment or control (BPTC). *(AGUA, 210 Cal.App.4th at p. 1278.* ) Because the Regional Board found it difficult (and unnecessary) to distinguish between discharges to high quality waters and those to waters that are not high quality, the Regional Board adopted numerous provisions to ensure that BPTC is implemented by all growers subject to the General Order. As is discussed and explained at length in Attachment A, the General Order includes performance standards to ensure BPTC due to the diverse nature of agriculture in the Eastern San Joaquin River Watershed.

Further, the General Order requires that there be a constant iterative approach to continue evaluation of management practices over time to maintain BPTC. For example, the General Order requires the Coalition to develop a Management Practice Evaluation Program (MPEP).
The MPEP must evaluate management practices for various commodities and identify those that are protective of groundwater quality for the range of conditions within the Eastern San Joaquin watershed area. (General Order, Attachment B, pp. 15-16.) The MPEP will continue to inform the Coalition and the Regional Board as to what constitutes BPTC over time for groundwater. Similarly, management plans for surface water must also include such an evaluation. (General Order, Appendix MRP-1, p. 4 ["Identify, validate, and implement management practices to reduce loading of COC’s [constituents of concern] to surface water . . ."].)

4. The General Order’s Monitoring Requirements Are Sufficient to Ensure Compliance With the Terms of the Order

CSPA Petitioners argue that the General Order fails to comply with Resolution No. 68-16 because the representative monitoring programs are inadequate. CSPA Petitioners further advocate that monitoring at the edge-of-field and adjacent ambient waters is necessary to evaluate the effectiveness of management practices. (See, e.g., CSPA Petition, p. 5.) To support its allegations, CSPA Petitioners argue that the Court of Appeal has already rejected the type of monitoring program contained in the General Order. CSPA’s claims are false, and in fact, the representative monitoring programs contained in the General Order are not the type of monitoring that was before the Court of Appeal in the AGUA case.

First, the AGUA court’s review of monitoring provisions was specific to determining if the prohibition of degradation in the Dairy General Order was sufficient to prevent the need for an antidegradation analysis pursuant to Resolution No. 68-16. (AGUA, 210 Cal.App.4th at p. 1274 ["In order for the Regional Board to sustain its claim that no analysis pursuant to Resolution No. 68-16 is required because the Order simply declares that no degradation of groundwater is allowed, the Order’s monitoring program must be sufficient to alert the Regional Board if a dairy is degrading groundwater."].) Based on its review, the court found on this issue that the monitoring program was not adequate. (Id. at pp. 1272-1274 ["The monitoring program relied upon in the Order is inadequate to ensure that no further groundwater degradation will occur."].) Here, the Regional Board has conducted an antidegradation analysis and has made the necessary findings to allow for limited degradation.
Second, the representative monitoring programs in the General Order are distinctively different than the monitoring reviewed by the AGUA court. The AGUA court evaluated the adequacy of monitoring drinking water supply wells and agricultural supply wells, not the comprehensive surface and groundwater monitoring programs contained in the General Order. (AGUA, 210 Cal.App.4th at p. 1275.) For example, one primary criticism by the AGUA court was that supply wells were not located in the proper areas to detect degradation. The General Order monitoring includes monitoring in proper areas and is able to detect degradation, as well as trends in degradation.

With respect to surface water monitoring, there are three types of monitoring sites: core sites, represented sites, and special project sites. (General Order, Attachment B, p. 3.) The core and represented sites are specifically located to detect water quality impacts from irrigated agriculture. (General Order, Attachment A, p. 10.) Monitoring at the core sites occurs monthly or seasonally, depending on the parameter of concern. (General Order, Attachment B, p. 6.) If monitoring at a core site indicates an issue of concern (i.e., exceedance of an objective), then monitoring of the representative sites associated with that core sites will occur. (General Order, Attachment B, p. 3.) As a practical matter, the core sites are downstream of certain identified agricultural areas, or zones. If monitoring at a core site indicates a problem, then the Coalition evaluates the concern to determine if monitoring at the more upstream representative sites is necessary due to a potential risk to water quality. For example, if the concern is a pesticide, then evaluation of pesticide use data can help to determine what additional monitoring may need to occur at the representative sites. (General Order, Attachment B, p. 3.) Further, the surface water monitoring program specifically requires that the monitoring being done needs to provide sufficient data to describe irrigated agricultural impacts on surface water quality and to determine whether existing or newly implemented management practices are ensuring compliance with the receiving water limitations. (General Order, Attachment B, p. 5.) Also, the parameters to be considered for monitoring is extensive, and the Coalition must identify from the list which parameters need to be monitored based on an evaluation. (See General Order, Attachment B, pp. 7-8.)
Should the surface water monitoring indicate that WQOs are not being met, or that there is
a trend in degradation, then management plans are required. (General Order, p. 33.)
Management plans are comprehensive and must meet certain specified requirements and contain
certain types of information, including but not limited to, a baseline inventory of management
practices being implemented by growers in the area of concern, and identification of practices that
need to be implemented to comply with receiving water limitations. (See General Order,
Appendix MRP-1, p. 3.)

For groundwater, the monitoring program approach recognizes the differences between
groundwater and surface water. Unlike the surface water program, which now has an over
ten-year history of monitoring and implementation, the groundwater program is a new
requirement. Accordingly, it is necessary to conduct an initial assessment to characterize
groundwater quality conditions in the Eastern San Joaquin River Watershed area. This step is to
be accomplished through the Groundwater Quality Assessment Report. (See General Order,
Attachment B, pp. 12-13.) This report will provide the basis for establishing groundwater
monitoring priorities and monitoring for assessing groundwater quality trends, and must identify
the high and low vulnerable areas within the watershed. It also provides the basis for subsequent
evaluation of the effectiveness of management practices (i.e., MPEP). (General Order,
designations must be reviewed every five years. (General Order, Attachment B, pp. 13-14.)

As indicated, the Groundwater Quality Assessment Report does not stand-alone and is the
basis for additional groundwater monitoring and evaluation. Also required are the MPEP and
Groundwater Quality Trend Monitoring (Trend Monitoring). The MPEP is specifically designed
to determine if existing management practices (for various commodities under various conditions)
are protective of groundwater quality in high vulnerability areas. (General Order, Attachment B,
p. 15.) The results of the management practices evaluated, and identification of those that are
most protective, must then be extrapolated and applied to other similar farming operations within
the watershed area. To conduct such an evaluation, it is expected that the MPEP will include
monitoring in proper areas (i.e., shallow groundwater) to identify if groundwater degradation is
occurring with certain specified practices. (See, e.g., General Order, Attachment B, pp. 15-16.)

The Trend Monitoring program must accomplish several objectives, including, determining
current water quality conditions and long-term groundwater quality information. (General Order,
Attachment B, p. 16.) Further, the Trend Monitoring program must consist of a well network that
is sufficient to provide appropriate coverage of the Eastern San Joaquin River Watershed area so
that “current water quality conditions of groundwater and composite regional effects of irrigated
agriculture can be assessed . . . .” (General Order, Attachment B, p. 17.)

The monitoring programs, along with the other reporting elements of the General Order
(e.g., farm evaluation reports) will provide sufficient information for the Regional Board to
determine if growers subject to the General Order are in compliance with its provisions, and most
importantly, if water quality is being protected. Moreover, the representative nature of the
monitoring programs (versus edge-of-field monitoring as advocated by CSPA) complies with
Water Code section 13267. In adopting the monitoring programs, the Regional Board must
ensure that “the burden, including costs . . . shall bear a reasonable relationship to the need for the
report and the benefits to be obtained from the reports.” (Wat. Code, § 13267(b)(1).) In this case,
the Regional Board has determined that the higher costs of individual monitoring are not
reasonable and that the regional, representative monitoring in the General Order bears a
reasonable relationship to the benefits to be obtained. (See, e.g., General Order, Attachment A,
p. 25.)

Accordingly, the monitoring and reporting programs contained in the General Order are
sufficient to determine compliance.

In sum, Petitioners have failed to provide any basis for finding that the General Order
does not meet the requirements of Resolution No. 68-16. Accordingly, the State Board should
dismiss the Petitions.

B. The General Order Complies With the State’s Nonpoint Source Policy

CSPA Petitioners argue that the General Order does not comply with the state’s Nonpoint
Source Policy. The success of CSPA’s argument hinges on a literal interpretation of the
Nonpoint Source Policy that would require the Regional Board to apply each and every key
element to each and every grower covered by the General Order. Such an interpretation is clearly inconsistent with the purpose and intent of the policy. In general, the Nonpoint Source Policy encourages the Regional Board to “use whatever mix of organizational approaches it deems appropriate.” (Nonpoint Source Policy, p. 9.) It also states that the regional boards in implementing the policy “have broad flexibility and discretion in using their administrative tools to fashion NPS management programs, and are encouraged to be as innovated and creative as possible, and as appropriate, to build upon Third-Party Programs.” (Nonpoint Source Policy, p. 11.) Moreover, the Nonpoint Source Policy is about implementing a nonpoint source “program”—not individual requirements. Thus, compliance with the key elements must be considered by evaluating the General Order in its entirety, and not how the General Order applies to individuals covered by the order. In short, the General Order complies with the five key elements, and it builds on over ten-years of a successful surface water program that the Coalition has implemented under the previous Conditional Waivers.

With respect to the individual key elements, the Regional Board has described its compliance with such elements in Attachment A to the General Order, and it is unnecessary to repeat that explanation here. (See General Order, Attachment A, p. 29.) We would just add that, as is discussed above, the General Order requires compliance with WQOs and maintains beneficial uses through the receiving water limitations. It includes time schedules for compliance where necessary, as is allowed by law. The General Order also contains many provisions that require the Coalition to evaluate and identify management practices (at considerable cost to the growers) that are expected to ensure compliance with water quality standards. Finally, the ongoing monitoring and reporting programs are comprehensive in nature and are unlike any other monitoring programs for nonpoint source pollution. Thus, the Regional Board and members of the public can determine the sufficiency of the program on an ongoing basis. In short, CSPA’s arguments with respect to compliance with the Nonpoint Source Policy have no basis and should be readily dismissed by the State Board.
C. The General Order Does Not Disproportionately Impact Low Income Communities and Communities of Color

AGUA Petitioners include a new and novel argument that the General Order will disproportionately impact certain communities in the Central Valley. The allegations set forth by the AGUA Petitioners have no basis and must be readily dismissed by the State Board. Specifically, the General Order protects both surface water and groundwater quality from the impacts of irrigated agriculture throughout the whole Eastern San Joaquin River Watershed area. All areas are treated equally, and receive equal protection. It does not allow degradation in some areas and deny it in others. Considering the equal nature and balanced application of the General Order, it is impossible to see how it could disproportionately impact low income and communities of color.

IV. CONCLUSION

For the reasons explained above, the State Board must dismiss the AGUA and CSPA Petitions and uphold the General Order as adopted by the Regional Board.

SOMACH SIMMONS & DUNN
A Professional Corporation

DATED: January 10, 2014

By: Theresa A. Dunham
Attorneys for Real Party in Interest East San Joaquin Water Quality Coalition
PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On January 10, 2014, I served a true and correct copy of:

RESPONSE OF REAL PARTY IN INTEREST EAST SAN JOAQUIN WATER QUALITY COALITION TO PETITIONS OF ASSOCIACIÓN DE GENTE UNIDA POR EL AGUA (AGUA), FAIRMEAD COMMUNITY AND FRIENDS, AND PLANADA EN ACCION; CALIFORNIA SPORTFISHING PROTECTION ALLIANCE AND CALIFORNIA WATER IMPACT NETWORK; SAN JOAQUIN COUNTY RESOURCE CONSERVATION DISTRICT ON BEHALF OF THE SAN JOAQUIN COUNTY AND DELTA WATER QUALITY COALITION, CALIFORNIA FARM BUREAU FEDERATION, SOUTHERN SAN JOAQUIN VALLEY WATER QUALITY COALITION, ARVIN-EDISON WATER STORATE DISTRICT, WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT, AND SEMITROPIC WATER STORAGE DISTRICT

XXX (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 10, 2014, at Sacramento, California.

Crystal Rivera
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
<th>Fax</th>
<th>Email</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Laurel Firestone, Esq.</td>
<td>Community Water Center</td>
<td>(559) 789-7245</td>
<td>(916) 706-2731</td>
<td><a href="mailto:laurel.firestone@communitywatercenter.org">laurel.firestone@communitywatercenter.org</a></td>
<td>Attorneys for Petitioners Associacion de Gente Unida por el Agua (AGUA), Fairmead Community and Friends, and Planada en Accion</td>
</tr>
<tr>
<td>4</td>
<td>Bill Jennings</td>
<td>California Sportfishing Protection Alliance</td>
<td>(209) 464-5067</td>
<td>(209) 464-1028</td>
<td><a href="mailto:deltakeep@me.com">deltakeep@me.com</a></td>
<td>Petitioner California Sportfishing Alliance</td>
</tr>
<tr>
<td>9</td>
<td>Phoebe Seaton, Esq.</td>
<td>California Rural Legal Assistance, Inc.</td>
<td>(559) 233-6710</td>
<td>(559) 841-0724</td>
<td><a href="mailto:pseaton@crla.org">pseaton@crla.org</a></td>
<td>Attorneys for Petitioners Associacion de Gente Unida por el Agua (AGUA), Fairmead Community and Friends, and Planada en Accion</td>
</tr>
<tr>
<td>10</td>
<td>Michael R. Lozeau</td>
<td>Lozeau Drury LLP</td>
<td>(510) 836-4200</td>
<td>(510) 836-4205</td>
<td><a href="mailto:michael@lozeaudrury.com">michael@lozeaudrury.com</a></td>
<td>Attorneys for Petitioners California Sportfishing Protection Alliance and California Water Impact Network</td>
</tr>
<tr>
<td>14</td>
<td>Ms. Susana De Anda, Co-Ordinator</td>
<td>Asociacion de Gente Unida por el Agua</td>
<td>(530) 283-1007</td>
<td>(530) 283-0712</td>
<td><a href="mailto:mjatty@sbcglobal.net">mjatty@sbcglobal.net</a></td>
<td>Attorneys for Petitioners California Sportfishing Protection Alliance and California Water Impact Network</td>
</tr>
<tr>
<td>20</td>
<td>Mike Jackson</td>
<td>Law Office Of Mike Jackson</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Fairmead Community and Friends</td>
<td>1225 Gill Avenue, Madera, CA 93637</td>
<td></td>
<td></td>
<td></td>
<td>Ms. Carolee Krieger, President California Water Impact Network 808 Romero Canyon Road Santa Barbara, CA 93108 <a href="mailto:caroleekrieger7@gmail.com">caroleekrieger7@gmail.com</a> Petitioner California Water Impact Network</td>
</tr>
<tr>
<td>24</td>
<td>Mr. Silverio Damian</td>
<td>Planada en Accion</td>
<td></td>
<td></td>
<td></td>
<td>Mr. Parry Klassen, Executive Director East San Joaquin Water Quality Coalition 1201 L Street Modesto, CA 95354 <a href="mailto:pklassen@unwiredbb.com">pklassen@unwiredbb.com</a></td>
</tr>
</tbody>
</table>
Jennifer L. Spaletta, Esq.
Spaletta Law PC
P.O. Box 2660
Lodi, CA 95241
Phone: (209) 224-5568
Fax: (209) 224-5589
Email: jennifer@spalettalaw.com
Attorneys for Petitioner San Joaquin County
Resource Conservation District on behalf of the San
Joaquin County and Delta Water Quality Coalition

Mr. David Orth, Steering Committee Chairman
Southern San Joaquin Valley Water Quality
Coalition
4886 E. Jensen Avenue
Fresno, CA 93725
Email: dorth@kcrd.org

Nancy M. McDonough, Esq.
Kari E. Fisher, Esq.
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833
Phone: (916) 561-5665
Fax: (916) 561-5691
Email: nnmcdonough@cfbf.com
kfisher@cfbf.com
photz@cfbf.com
Attorneys for Petitioner California Farm Bureau
Federation

Mr. John Brodie, Watershed Coordinator
San Joaquin County Resource Conservation
District on behalf of the San Joaquin County
and Delta Water Quality Coalition
3422 W. Hammer Lane, Suite A
Stockton, CA 95219
Email: tvranglr@yahoo.com

William J. Thomas, Esq.
Wendy Y. Wang, Esq.
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Phone: (916) 325-4000
Fax: (916) 325-4010
Email: william.thomas@bbklaw.com
wendy.wang@bbklaw.com
Attorneys for Petitioners Southern San Joaquin
Valley Water Quality Coalition; Arvin-Edison Water
Storage District; Wheeler Ridge-Maricopa Water
Storage District; and Semitropic Water Storage
District

James Herink, Esq.
Sr. Staff Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: jerink@waterboards.ca.gov

Ernest A. Conant, Esq.
Law Offices Of Young Wooldridge, LLP
1800 30th Street, 4th Floor
Bakersfield, CA 93301
Phone: (661) 327-9661
Email: econant@youngwooldridge.com

Alex P. Mayer, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: amayer@waterboards.ca.gov

Ms. Pamela C. Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Email: pcreedon@waterboards.ca.gov

Lori T. Okun, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: lokun@waterboards.ca.gov
Mr. Clay Rodgers, Asst. Executive Officer
Central Valley Regional Water Quality Control Board,
Fresno Office
1685 E Street
Fresno, CA 93706-2020
Email: crodgers@waterboards.ca.gov

David P. Coupe, Esq.
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Email: dcoupe@waterboards.ca.gov

Mr. Kenneth D. Landau, Asst. Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Email: klandau@waterboards.ca.gov

Patrick E. Pulupa, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: ppulupa@waterboards.ca.gov

Mr. Joe Karkoski
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
Email: jkarkoski@waterboards.ca.gov

Philip G. Wyels, Esq.
Asst. Chief Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: pwyels@waterboards.ca.gov

---

**Courtesy Copy:**

Jeannette Bashaw
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Email: jbashaw@waterboards.ca.gov