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16

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

19
20 IN THE MATTER OF PETITION OF
SOUTHERN SAN JOAQUIN VALLEY
21 WATER QUALITY COALITION,
CALIFORNIA FARM BUREAU
22 FEDERATION, AND SAN JOAQUIN
COUNTY RESOURCE
23 CONSERVATION DISTRICT ON
BEHALF OF THE SAN JOAQUIN
24 COUNTY AND DELTA WATER
QUALITY COALITION FOR REVIEW
25 OF ACTION AND FAILURE TO ACT
BY CENTRAL VALLEY REGIONAL
26 WATER QUALITY CONTROL BOARD

SWRCB/OCC File No. A-2239(a)-(c)

RESPONSE OF PETITIONERS SOUTHERN
SAN JOAQUIN VALLEY WATER QUALITY
COALITION, THE CALIFORNIA FARM
BUREAU FEDERATION, AND THE SAN
JOAQUIN COUNTY RESOURCE
CONSERVATION DISTRICT ON BEHALF
OF THE SAN JOAQUIN COUNTY AND
DELTA WATER QUALITY COALITION

1 The Southern San Joaquin Valley Water Quality Coalition, the California Farm Bureau
2 Federation, and the San Joaquin County Resource Conservation District on behalf of the San
3 Joaquin County and Delta Water Quality Coalition, (collectively, “Petitioners”) submit this
4 response to petitions by California Sportfishing Protection Alliance and California Water Impact
5 Network (collectively, “CSPA”), and Asociación de Gente Unida por el Agua, Fairmead
6 Community and Friends, and Planada en Accion (collectively, “AGUA”), relating to the
7 California Regional Water Quality Control Board, Central Valley Region’s (“Regional Board”)
8 adoption of Resolution No. R5-2012-0116, Waste Discharge Requirements General Order for
9 Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party
10 Group (“WDR” or “ESJ WDR”).

11 **I. INTRODUCTION**

12 This response focuses on the Regional Board’s compliance with the State Water
13 Resources Control Board’s (“State Board”) *Nonpoint Source Program Strategy and*
14 *Implementation Plan* (“NPS Policy”), and the State Board’s *Statement of Policy with Respect to*
15 *Maintaining High Quality Waters*, Resolution No. 68-16 (“Resolution 68-16”).

16 In 1968, the State Board adopted Resolution 68-16, also referred to as the
17 “Antidegradation Policy,” with the goal of maintaining the state’s “high quality” waters, that is,
18 waters with quality that exceeds the water quality objectives (“WQOs”) in the applicable Basin
19 Plan. To meet this objective, Resolution 68-16 requires a regional board, before permitting
20 degradation of high quality waters, to find that any change in water quality (1) would be
21 consistent with the maximum benefit to the people of the state; (2) would not unreasonably affect
22 present or probable future beneficial uses of such water; and (3) would not result in water quality
23 less than prescribed in state policies. (Resolution 68-16, p. 1.) Resolution 68-16 further requires
24 a regional water board, when issuing a permit to allow a discharge of waste into existing high
25 quality waters, to establish requirements that result in the best practicable treatment or control
26 (“BPTC”) to ensure pollution or nuisance will not occur, and that the highest water quality
27 consistent with maximum benefit to the people of the state will be maintained. (*Ibid.*)
28

1 The State Board adopted the NPS Policy more recently, in 2004, to improve the state’s
2 ability to address nonpoint source (“NPS”) pollution. Under the NPS Policy, implementation
3 programs for NPS pollution control may be developed by the regional water boards, the State
4 Board, an individual discharger, or by or for a coalition of dischargers in cooperation with a third-
5 party representative, organization, or government agency. (NPS Policy, p. 8.) To ensure that
6 adopted programs are sufficiently protective, the NPS Policy requires each program to meet
7 several requirements, including that the adopted program achieves and maintains WQOs,
8 describes water quality management practices to be implemented and the process for evaluating
9 these practices, and provides sufficient feedback mechanisms to allow the regional board and
10 others to evaluate the program’s effectiveness. (See NPS Policy, pp. 11-15.)

11 In adopting the Eastern San Joaquin WDR, the Regional Board properly concluded that
12 the WDR was protective of water quality and consistent with the requirements of both Resolution
13 68-16 and the NPS Policy. Under the WDR, the third-party group representing the Eastern San
14 Joaquin River Watershed is required, among other things, to (1) maintain a list of participants,
15 including parcel information; (2) prepare and implement a monitoring and reporting program that
16 meets the requirements of the Monitoring and Reporting Program (“MRP”) for both surface water
17 and groundwater; (3) report exceedances of water quality standards to the Regional Board; and,
18 (4) develop, submit, and implement management plans when there are exceedances of water
19 quality standards. Further, the WDR establishes requirements that will limit the degradation of
20 high quality waters through the implementation of BPTC by all dischargers participating in the
21 WDR through farm management performance standards, nitrogen planning, farm planning, and
22 feedback monitoring. Collectively, these requirements establish a comprehensive program that
23 extensively monitors agricultural discharges, identifies areas of concern on a watershed basis,
24 surveys and evaluates member management practices, employs BPTC, and ensures that extensive
25 member outreach occurs when there are water quality issues of concern.

26 CSPA would like a more rigid program that employs individual monitoring and requires
27 specific control technologies, among other requirements; AGUA would like a similarly
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1 demanding program. But the Regional Board recognized that its job was not to develop the
2 strictest program, however infeasible, but to establish a workable program consistent with the
3 law. The Regional Board thus explained that the WDR is intended to “restore and/or maintain the
4 *highest reasonable* quality of state waters” (Draft Program Environmental Impact Report, p. 2-6,
5 emphasis added, hereinafter “Draft PEIR”), while maintaining the economic viability of
6 agriculture since “irrigated agriculture in the Central Valley provides valuable food and fiber
7 products to communities worldwide. (ESJ WDR, Order R5-2012-0116-R1 (Revised October
8 2103) (hereinafter “WDR”) Attachment A, Information Sheet, p. 3; see also Draft Program
9 Environmental Impact Report, p. 2-6.) The Board further explained that the WDR is intended to
10 encourage implementation of management practices that improve water quality, but to do so
11 “without jeopardizing the economic viability for all sizes of irrigated agricultural operations in the
12 Central Valley or placing an undue burden on rural communities to provide safe drinking water.”
13 (WDR, Attachment A, Information Sheet, p. 3; Draft PEIR, p. 2-6.)

14 AGUA and CSPA’s positions, however, ignore these considerations; they ignore the
15 complex hydrology in the Central Valley, the nature of nonpoint source pollution from large
16 numbers of similarly situated individuals, and the practical and economic considerations the
17 Regional Board must employ. Their arguments, moreover, disregard the evidentiary record, the
18 Regional Board’s findings, the Water Code (such as Water Code § 13267), and the substantial
19 discretion afforded the Regional Board in employing its technical expertise and in implementing
20 the law. Because of these reasons, the State Board should reject AGUA and CSPA’s petitions for
21 review.

22 **II. ARGUMENT**

23 **A. The Regional Board’s Approval of the WDR Does Not Violate Resolution 68-16**

24 CSPA and AGUA imagine a different Resolution 68-16 than the one in existence.
25 Contrary to their claims, nothing in Resolution No. 68-16 requires individual waterbody-by-
26 waterbody baseline analyses. Nor does it require individual monitoring. CSPA and AGUA’s
27 misplaced arguments stem from a fundamental misreading of Resolution 68-16, believing the
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1 policy to demand the highest water quality no matter the costs. The State Board, however,
2 adopted a different policy than that supposed by CSPA and AGUA, one that seeks a balance “to
3 achieve the highest water quality consistent with the maximum benefit to the people of the state.”
4 Resolution 68-16 thus balances four important positive factors: quality water, food production,
5 economic vitality, and employment. The two substantive provisions of the policy continue in that
6 theme of balance. The first provision clarifies that it is applicable to waters that are of better
7 quality than when water quality standards were established, rather than all waters. Once
8 applicable, the policy generally requires high quality water to be maintained but permits the state
9 to depart from this standard when it is for the benefit of the people of the state and best
10 practicable controls are implemented.

11 The balance advanced in the antidegradation policy is consistent with the Porter-Cologne
12 Act, which has an underlying requirement of reasonableness to the regulation of water quality in
13 the state. Section 13300 states that the Regional Boards may only regulate water quality
14 “reasonabl[y], considering all demands being made and to be made on those waters.” Similarly,
15 under Section 13050, “pollution means any alteration of the quality of water which may
16 unreasonably affect” the waters of the state. While the Regional Board is required to ensure the
17 “reasonable protection of beneficial uses,...it is recognized that it may be possible for the quality
18 of water to be changed to some degree without unreasonably affecting beneficial uses.” (Wat.
19 Code, § 13241 [setting forth the Act’s water quality objectives].) These multiple references to
20 reasonableness indicate the legislature’s desire for moderation and balance.

21 In applying this policy guidance to the Eastern San Joaquin General Order, one must
22 recognize the importance of Central Valley agriculture to the farms, the employment sector, the
23 business communities and the residents of this area. The Central Valley of California is renowned
24 worldwide as the most productive food production region of the world. Agriculture is the
25 principal element of California’s economy and it is the lifeblood of the Central Valley. One must
26 also recognize, however, the importance of achieving and maintaining the quality of the state’s
27 waters in these water courses and aquifers.
28

1 Both CSPA and AGUA’s primary contention with the Regional Board’s adoption of the
2 ESJ WDR is that it violated Resolution No. 68-16. Although both petitions include additional
3 allegations, the underlying theme is the WDR fails to comply with Resolution No. 68-16. As
4 such, we respond to AGUA and CSPA’s arguments collectively unless otherwise indicated.

5 **1. The WDR’s Determination of High Quality Waters as a Baseline Was Proper and**
6 **Complies with Resolution 68-16**

7 Petitioners CSPA and AGUA contend the WDR fails to comply with Resolution 68-16
8 and that the Regional Board failed to make adequate findings.¹ Specifically, the environmental
9 Petitioners argue that the WDR does not comply with Resolution 68-16 because the Regional
10 Board failed to establish a proper baseline for all waterbodies and all constituents within the
11 Eastern San Joaquin watershed. (See AGUA Petition for Review, pp. 6, 9, 15-16; [“The Board
12 failed to establish a baseline for enforcement of antidegradation policy, and failed to require any
13 information to establish a baseline to determine levels of degradation occurring and permitted
14 under this permit.” *Id.* at p. 9.].) To support its argument, AGUA relies solely on *Asociacion de*
15 *Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (“*Asociacion*”)
16 (2012) 210 Cal.App.4th 1255 and its reference of the Administrative Procedures Update 90-004,
17 *Antidegradation Policy for Implementation of NPDES Permitting* (APU 90-004). (*Ibid.*)

18 The term “baseline” is not used in either Resolution 68-16 or the federal antidegradation
19 policy, and no specificity or direction on how such a determination should be made is provided
20 within the policies themselves. Rather, the determination is left to the discretion of the Regional
21 Board. In order to self-direct the baseline analysis, Petitioners’ rely on APU 90-004; such
22 reliance for determining baseline is misplaced. APU 90-004 is a guidance document to aid in the
23 National Pollutant Discharge Elimination System (“NPDES”) permitting process. (APU 90-004,
24 p.1.) The ESJ WDR regulates discharges from irrigated agriculture, not point sources subject to
25 NPDES permits. Thus, while APU 90-004 may be used for general instructive purposes (see

26 _____
27 ¹ As a general point, the Regional Board’s antidegradation findings are appropriate; the findings recognized that due
28 to significant variation in conditions within the Eastern San Joaquin watershed area, an antidegradation analysis
would be required for at least some of the waterbodies, and performed an adequate antidegradation analysis for the
WDR. (WDR, Attachment A, Information Sheet, pp. 31-44; Draft PEIR, Appendix A, pp. 57-68. 114-116, 167.)

1 *Asociacion, supra*, 210 Cal.App.4th at p. 1270), its application is not germane to discharges from
2 irrigated agriculture. (WDR, Attachment A, Information Sheet, p. 33; [“Administrative
3 Procedures Update 90-004, Antidegradation Policy for Implementation of NPDES Permitting,
4 provides guidance for the Regional Water Boards in implementing Resolution 68-16 and 40 CFR
5 131.12, as these provisions apply to NPDES permitting. APU 90-004 is *not applicable* in the
6 context of this Order because nonpoint discharges from agriculture are exempt from NPDES
7 permitting.” Emphasis added.].)

8 Further, CSPA and AGUA’s contention that a baseline analysis is needed for every
9 individual waterbody fails. Nothing within Resolution No. 68-16 requires individual waterbody-
10 by-waterbody baseline analysis. AGUA’s own support, APU-90-004 states, “baseline quality is
11 pollutant specific, not waterbody specific.” (APU-90-004, p. 4.)

12 With no specific guidance pertinent to the determination of baseline, it was within the
13 Regional Board’s discretion to determine high quality waters. As stated by the Regional Board:

14
15 Very little guidance has been provided in state or federal law with respect to
16 applying the antidegradation policy to a program or general permit where
17 multiple water bodies are affected by various discharges, some of which may be
18 high quality waters and some of which may, by contrast, have constituents at
19 levels that already exceed water quality objectives. Given these limitations, the
20 board has used readily available information regarding the water quality status of
21 surface and ground waters in the Eastern San Joaquin River Watershed to
22 construct provisions in this Order to meet the substantive requirements of
23 Resolution 68-16. (WDR, Attachment A, Information Sheet, p. 36.)

24 Using this information, the Regional Board found that at least some of the waters within
25 the Eastern San Joaquin watershed are high quality waters.² (WDR, Attachment A, Information
26 Sheet, pp. 37, 43.) Based on this finding, the Regional Board then conducted a prior
27 antidegradation analysis in compliance with Resolution 68-16.

28 ² “Given the significant variation in conditions over the broad areas covered by this Order, any application of the antidegradation requirements must account for the fact that at least some of the waters into which agricultural discharges will occur are high quality waters (for some constituents). Further, the Order provisions should also account for the fact that even where a water body is not high quality (such that discharge into that water body is not subject to the antidegradation policy), the board should, under State Water Board precedent, impose limitations more stringent than the objectives set forth in the Basin Plan, if those limits can be met by ‘best efforts.’” (WDR Attachment A, Information Sheet, p. 37.)

1 **2. The WDR’s Monitoring Requirements Comply with Resolution 68-16**

2 Contrary to CSPA and AGUA’s assertions, the WDR’s representative monitoring program
3 is comprehensive and complies with Resolution 68-16 as well as the NPS Policy. The monitoring
4 program was designed to include a sufficient number of sites, parameters, and frequency of
5 monitoring to be able to identify and address any water quality problems and be representative of
6 the effect of irrigated lands discharges on receiving waters. The monitoring program must also
7 “collect sufficient information to answer critical questions” developed by the previous conditional
8 waiver. (See WDR Attachment A, Information Sheet, p. 10 listing the requirements of a surface
9 water quality monitoring program.)

10 **a. Resolution 68-16 Does Not Require Individual Monitoring**

11 i. Individual monitoring is cost prohibitive

12 CSPA demands the impossible in seeking the use of individual monitoring.³ If individual
13 monitoring were required for the Eastern San Joaquin Watershed, as CSPA seeks, it would
14 necessarily be required for the whole of the Central Valley and its over 25,000 farms—a cost-
15 prohibitive requirement, as the record for the Program Environmental Impact Report for the
16 Irrigated Lands Regulatory Program (“PEIR”) demonstrates.

17 Alternative 5 in the PEIR included individual farm monitoring. The cost estimate for
18 monitoring alone for Alternative 5 was \$296.5 million per year. (See ICF Technical
19 Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program,
20 July 2010, at page 2-26, Table 2-22, hereinafter “ICF Technical Memorandum”). With tracking,
21 reporting, and administration costs associated with this type of program, total compliance costs
22 were estimated at \$311,665,122. (ICF Technical Memorandum at page 2-26, Table 2-22.) This
23 total *excluded* the \$936,615,659 in management practices and \$55,482,437 in additional Regional
24 Board staff costs to deal with the information submitted. (*Ibid.*) Under Alternative 5, the
25 additional staff costs were to be passed onto growers through additional program fees. (*Ibid.*)

26
27 _____
28 ³ As an alternative to individual monitoring, CSPA vaguely requests the use of statistically significant monitoring.
(CSPA Petition for Review, p. 5.)

1 In sum, then, the on-farm monitoring advanced by CSPA would contain at least a
2 *\$1.3 billion* annual price tag for Central Valley growers:

3 Annual Compliance Costs:	\$ 311,655,122
4 Annual Management Practices:	\$ 936,615,659
5 Annual Program Fees for Regional Board staff positions:	\$ 55,482,437
6 <i>Total Annual Cost:</i>	<u><i>\$1,303,753,218</i></u>

7 In addition to the extreme costs, the amount of data that would be collected from the
8 25,000 individual growers within the Central Valley would be so voluminous that the Regional
9 Board would be unable to manage the data or conduct any meaningful analysis as required under
10 Resolution No. 68-16. Thus, individual monitoring is impractical and infeasible.

- 11 ii. Watershed-based monitoring is effective for determining if growers are
12 implementing BPTC for agricultural discharges in the Central Valley

13 Regardless of the costs associated with requiring individual monitoring, CSPA claims the
14 Regional Board must require such monitoring because it cannot otherwise protect water quality or
15 determine whether implemented best management practices are effective. (CSPA Petition for
16 Review, pp. 4-5.) AGUA, although not specifically requesting individual monitoring, similarly
17 asserts that watershed-level reporting is insufficient. (AGUA Petition for Review, p. 12.) CSPA
18 and AGUA’s assertions of the inadequacies of watershed-based monitoring are belied by the
19 record evidence under the previous order (“Coalition Group Conditional Waiver”) for the Central
20 Valley.

21 Under the Coalition Group Conditional Waiver, watershed-based monitoring was shown
22 to be effective for determining the quality of the Coalition area’s waters, whether growers were
23 implementing BPTC, and for improving water quality. When an exceedance was found more
24 than once in a three-year period, the Coalitions worked with Regional Board staff to develop a
25 “Management Plan” for more intensive monitoring and effective outreach to the farms in the
26 affected area, resulting in implementation of Management Plans for 98 water bodies in the
27 Central Valley, prioritized based on need. (Karen Larsen & David Scholes, PowerPoint
28

1 Presentation on the Status of Irrigated Lands Regulatory Program Coalition Group Monitoring
2 and Reporting Program, Central Valley Water Board Meeting, Slide 9 (April 23, 2009).) The
3 implemented Management Plans required Coalitions to identify and contact growers with direct
4 discharge potential to waterbodies when an exceedance was detected. The Coalitions
5 successfully made these contacts and followed-up with each grower to identify current
6 management practices and new management practices to improve water quality. (See e.g., San
7 Joaquin County and Delta Water Quality Coalition, 2011 Management Plan Update Report, pp.
8 27-36, at <[http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/
9 management_plans_reviews/coalitions/sanjoaquin_county_delta_waterquality/2012apr1_sjcdwqc
10 _mpur.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/management_plans_reviews/coalitions/sanjoaquin_county_delta_waterquality/2012apr1_sjcdwqc_mpur.pdf)> [as of Jan. 9, 2014] [Coalition’s documentation of fulfillment of performance goals];
11 *id.* at pp. 41-80 [Coalition’s documentation of management practice implementation and
12 effectiveness].) More importantly, these new management practices did improve water quality.
13 (See, e.g., *id.* at pp. 4, 69 [showing San Joaquin County and Delta Water Quality Coalition’s
14 management plan efforts resulted in significant reduction in exceedances]; Central Valley
15 Regional Water Quality Control Board, Board Meeting Transcript, p. 158 (June 9, 2011) [noting
16 that East San Joaquin Water Quality Coalition reporting showed eight exceedances of the WQO
17 for chlorpyrifos at two specific subwatershed monitoring sites between 2005 and 2008, and no
18 exceedances between 2008 and 2010].)

19 Under the ESJ WDR, its associated MRP will do even more to improve water quality as a
20 result of more effective monitoring practices. While the previous requirement included
21 monitoring of a broad suite of parameters once every three years, the new MRP always requires
22 monitoring in at least one of the “Core” monitoring sites located in each of the similarly situated
23 “zones.”⁴ (WDR, Attachment A, Information Sheet, p. 11.) As the Regional Board explained,
24 “[t]his approach will ensure that each ‘zone’ includes one or more sites in which comprehensive
25

26
27 ⁴ As part of their August 2008 Monitoring and Reporting Program Plan (“2008 MRPP”), the East San Joaquin Water
28 Quality Coalition designated six zones within its area based on hydrology, crop types, land use, soil types, and
rainfall. (WDR, Monitoring and Reporting Program, p. 3, fn. 2.) The zones identified in the 2008 MRPP are the
same zones as those identified in the WDR. (*Ibid.*)

1 assessment monitoring is being conducted, which should allow the board to track and identify any
2 significant changes.” (*Ibid.*) If an exceedance is found more than once in a three-year period, the
3 WDR, similar to the previous Coalition Group Conditional Waiver, requires the third-party to
4 develop a Management Plan to identify new management practices necessary to achieve
5 compliance, set a time schedule for implementing the identified management practices, and
6 evaluate the effectiveness of the new management practices. (WDR, Attachment A, Information
7 Sheet, p. 13, 19.) Management Plans may also be required if there is a trend of degradation that
8 threatens a beneficial use. (*Ibid.*)

9
10 Despite the proven effectiveness of previous watershed-based monitoring programs, and
11 despite the improvements in this WDR made to ensure even more effective monitoring, CSPA
12 nonetheless maintains that individual monitoring is needed to identify discharges that impair
13 water quality in “localized areas” upstream of existing monitoring sites. (CSPA Petition for
14 Review, p. 5.) This argument rests on the flawed assumption that all tributaries of an identified
15 water body have the same beneficial uses, and thus should have the same WQOs, as each
16 identified water body in the Basin Plan for which the State Board has designed beneficial uses.
17 Clearly, an agricultural drainage ditch that is not a natural water body and/or only contains water
18 in the summer months because of return flows from irrigated agriculture, does not have the same
19 beneficial uses as a main stream river to which it may ultimately be tributary. This is precisely
20 why the State Board has not identified beneficial uses, and hence WQOs, for hundreds of
21 tributary waterbodies in the Central Valley and has included specific language in the Basin Plan
22 as follows:

23 The beneficial uses of any specifically identified water body generally apply to its
24 tributary streams, except as provided below:

25 In some cases a beneficial use may not be applicable to the entire body of water.
26 In these cases the Regional Board’s judgment will be applied.

27 In should be noted that it is impractical to list every surface water body in the
28 Region. For unidentified water bodies, the beneficial uses will be evaluated on a
case-by-case basis.

1 (Basin Plan for the California Regional Water Quality Control Board, at II-2.00.)

2 The Basin Plan and the new MRP both provide the Regional Board with the necessary
3 discretion to tailor monitoring to address the complex and unique attributes of the water bodies in
4 watershed area, and to prioritize monitoring so that limited resources are spent to achieve the
5 greatest improvement in water quality.

6
7 iii. Individualized field monitoring does not comply with Water Code
8 section 13267(b)(1)

9 CSPA and AGUA argue that in order to comply with Resolution 68-16, the WDR must
10 include individualized field monitoring. (CSPA Petition for Review, pp. 4-5; AGUA Petition for
11 Review, pp. 9-11.) As discussed *supra*, individual monitoring is not required under Resolution
12 68-16 nor is it feasible or cost effective. Additionally, individual field monitoring does not
13 comply with Water Code section 13276(b)(1) as it was found to be unreasonable and cost
14 prohibitive when reviewed in the PEIR. The requirements of Resolution 68-16 must be
15 harmonized with the Water Code’s requirement that any required monitoring be reasonable and
16 cost-effective. (See Wat. Code, § 13267 (b)(1); see also Resolution 68-16 specifying “higher
17 quality shall be maintained to the maximum *extent possible consistent with the declaration of the*
18 *Legislature.*” Emphasis added.)

19 As evidenced in the PEIR, the individualized monitoring approach was extensively
20 studied. (Draft PEIR, Appendix A, p. 95.) The PEIR provides the following discussion regarding
21 individual field monitoring and regional monitoring approaches: “the waste discharge
22 characteristics of runoff from each farm would be determined [under farm-based monitoring].
23 However, with this approach, it will be difficult to characterize the actual effects agricultural
24 waste discharges are having on receiving water bodies. A good example is where a farm
25 discharges to a large river. Farm-based monitoring would not necessarily provide enough
26 information to tell whether the discharge is affecting the river’s water quality.” (*Ibid.*)
27 As described in the PEIR, monitoring only discharges from fields would not provide the needed
28 information to determine the effects on receiving water bodies given that water quality objectives

1 apply within receiving waters. (*Ibid.*) Thus, to address this, individual monitoring would also
2 need to sample receiving waters to determine the effects of each field’s discharge on the receiving
3 waters. However, such a program would have significant costs and would be unreasonable.

4 (*Ibid.*)

5 As noted in the PEIR, the cost of individual monitoring would impose a “significant” cost
6 on the industry and staff resources. (*Ibid.*) This finding is significant in light of Water Code
7 section 13267, which requires any monitoring be reasonable and cost-effective. (See Wat. Code,
8 § 13267(b)(1).) The economic analysis of alternative five (individual monitoring) revealed that
9 the increased cost could cause widespread impacts to the industry, including loss of land in
10 production, value of production, revenue; and decreased employment. For these reasons,
11 individual monitoring was found to be cost-prohibitive and unreasonable, in contrast with Water
12 Code section 13267(b)(1), as well as inconsistent with the goals of the Irrigated Lands Regulatory
13 Program to maintain the economic viability of agriculture.

14
15 iv. Contrary to CSPA’s suggestions, no court has categorically rejected
16 watershed-based monitoring as ineffective

17 Contrary to CSPA’s suggestions, the court in *Asociacion, supra*, 210 Cal.App.4th 1255
18 did not categorically rejected watershed-based monitoring as ineffective. In *Asociacion*, the court
19 took issue with a *specific* monitoring system that used supply wells, not monitoring wells. The
20 court noted evidence showing that, “[u]nlike monitoring wells, domestic/milkbarn supply wells . .
21 . are typically screened well below the water table and across substantial vertical distances,” and
22 that such supply wells generally do not show pollution until several years after its release. (*Id.* at
23 1275.) Faced with this and other evidence showing the inadequacy of supply wells in this
24 specific situation, and receiving no contrary evidence, the court was required to “conclude as a
25 matter of law that the monitoring program [wa]s inadequate.” (*Ibid.*)

26 In addition to the court not categorically rejecting watershed monitoring in *Asociacion*, the
27 use of Coalition Groups for watershed monitoring and management practices implementation has
28

1 been upheld by the State Board, as well as courts. (State Board Order WQO 2004-0003, p. 9;⁵
2 Decision of Court After Hearings on Motions for Peremptory Writ of Mandate (April 28, 2005),
3 in the matters of *Deltakeeper, et al. v. Calif. Regional Water Quality Control Bd., et al.* (Super Ct.
4 Sacramento County Case No. 04CS00235) and *Calif. Farm Bureau Federation, et al. v. State*
5 *Water Resources Control Bd.* (Super Ct. Sacramento County Case No. 04CS00264).)

6 In contrast to the facts in *Asociacion*, there is ample evidence that the monitoring wells
7 here are sufficient to determine whether growers were implementing BPTC and to maintain and
8 improve water quality. (See discussion regarding the ESJ monitoring program at pp. 8-10;
9 discussion regarding BPTC *infra* at pp. 24-26.) CSPA believes the individual monitoring would
10 provide even greater protections, but that does not make such monitoring mandatory. Given the
11 adequacy of watershed-based monitoring, along with the impossibly high costs of individual
12 monitoring, the Regional Board reasonably required watershed-based monitoring. Thus, CSPA's
13 argument that the ESJ coalition's monitoring program is inferior because it does not yield specific
14 individual discharge information with respect to monitoring of discharges and implementation of
15 management practices is null.

16 **b. The Eastern San Joaquin monitoring program is extensive**

17 The Eastern San Joaquin MRP is 29 pages of detailed monitoring requirements and its two
18 appendices add an additional 15 pages of monitoring detail for a total 44 pages of monitoring
19 protocol and requirements. The WDR advances a multi-faceted regulatory program involving
20 trend and targeted groundwater monitoring, coupled with identification of Best Management
21 Practices to ensure BPTC.

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23
24
25 ⁵ "We note that in the Central Valley there are an estimated 25,000 farming operations and that, until now,
26 this entire industry has been largely unregulated by the Regional Board. We strongly believe that in light of
27 this number of operations, it is to the benefit of both the regulators and the regulated community to
28 encourage the formation of Coalition Groups. Not only will communications and regulation be more simple
with a smaller number of regulated entities, but the monitoring requirements for Groups are much greater
and will provide much more useful information." (State Board Order WQO 2004-0003, p. 9.)

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i. The MRP is consistent with the NPS Program

The MRP states that: “This Monitoring and Reporting Program (MRP) conforms to the goals of the Non-point Source (NPS) Program as outlined in *The Plan for California’s Nonpoint Source Pollution (NSP) Program* by:

- tracking, monitoring, assessing and reporting program activities,
- ensuring consistent and accurate reporting of monitoring activities,
- targeting NPS Program activities at the watershed level,
- coordinating with public and private partners, and
- tracking implementation of management practices to improve water quality and protect existing beneficial uses.

Monitoring data collected to meet the requirements of the WDR must be collected and analyzed in a manner that assures the quality of the data. The third-party must follow sampling and analytical procedures as specified in Attachment C, Order No. R5-2008-0005, Coalition Group Monitoring Program Quality Assurance Project Plan Guidelines (QAPP Guidelines) and any revisions thereto approved by the Executive Officer.” (WDR MRP, p. 2.)

ii. Surface Water Monitoring

The requirements for surface water monitoring sites are extensive:

There are three different types of monitoring sites described below: 1) Core sites; 2) Represented sites; and 3) Special Project sites. Core sites are monitored comprehensively on an ongoing basis to track trends in surface water quality and to identify water quality problems. Represented sites generally have characteristics similar to, and are, therefore, represented by the Core sites within their common zone. When a water quality problem is identified at a Core site, the represented sites are evaluated and potentially monitored to determine whether the water quality problem is also occurring at the Represented site (some represented water bodies may not have a monitoring site, e.g. in cases where there is no access). Special Project sites are identified and monitored to investigate identified water quality problems. A Core site or Represented site may also be a Special Project site. (WDR MRP, p. 3.)

In addition, Table 1 at MRP pages 4 and 5 specifies the many monitoring sites in order to make sure all of the area is covered. All such monitoring is required to start on a timely basis and is scheduled. Table 2 on pages 7 and 8 of the MPR outline all the constituents monitored.

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iii. Groundwater Quality

The MRP explains that “[t]he groundwater quality monitoring, assessment, and evaluation requirements in this MRP have been developed in consideration of the critical questions developed by the Groundwater Monitoring Advisory Workgroup (questions are presented in the Information Sheet, Attachment A). The third-party must collect sufficient data to describe irrigated agricultural impacts on groundwater quality and to determine whether existing or newly implemented management practices comply with the groundwater receiving water limitations of the Order.” (WDR MRP, p. 12.)

The extensive groundwater program under the Eastern San Joaquin WDR is far more than merely a monitoring requirement. The WDR requires a Groundwater Quality Assessment Reports (“GAR”), Groundwater Quality Management Plans, a Management Practice Evaluation Program (“MPEP”), and a Groundwater Quality Trend Monitoring Program. On balance, the MRP states:

Each of these elements has its own specific objectives (provided below), and the design of each will differ in accordance with the specific objectives to be reached. While it is anticipated that these programs will provide sufficient groundwater quality and management practice effectiveness data to evaluate whether management practices of irrigated agriculture are protective of groundwater quality, the Executive Officer may also, pursuant to Water Code section 13267, order Members to perform additional monitoring of evaluations, where violations of this Order are documented or the irrigated agricultural operation is found to be a significant threat to groundwater quality. (WDR MRP, p. 12.)

c. The Groundwater Quality Assessment Report is an extensive analysis of the status of the groundwater

As provided in the MRP, the “GAR’s objectives are:

- Provide an assessment of all available, applicable and relevant data and information to determine the high and low vulnerability areas where discharges from irrigated lands may result in groundwater quality degradation.
- Establish priorities for implementation of monitoring and studies within high vulnerability areas.
- Provide a basis for establishing workplans to assess groundwater quality trends.
- Provide a basis for establishing workplans and priorities to evaluate the effectiveness of agricultural management practices to protect groundwater quality.

- 1 • Provide a basis for establishing groundwater quality management plans in
2 high vulnerability areas and priorities for implementation of those plans.”
3 (WDR MRP, pp. 12, 13.)

4 **d. Management Practice Evaluation Program is likewise elaborate**

5 Similar to the GAR, the MRP includes an elaborate section detailing the MPEP’s
6 objectives:

- 7 • Identify whether existing site-specific and/or commodity-specific
8 management practices are protective of groundwater quality within high
9 vulnerability groundwater areas,
10 • Determine if newly implemented management practices are improving or
11 may result in improving groundwater quality.
12 • Develop an estimate of the effect of Members’ discharges of constituents
13 of concern on groundwater quality in high vulnerability areas. A mass
14 balance and conceptual model of the transport, storage, and
15 degradation/chemical transformation mechanisms for the constituents of
16 concern, or equivalent method approved by the Executive Officer, must be
17 provided.
18 • Utilize the results of evaluated management practices to determine whether
19 practices implemented at represented Member farms (i.e., those not
20 specifically evaluated, but having similar site conditions), need to be
21 improved.” (WDR MRP, p. 15.)

22 **e. The Groundwater Quality Trend Monitoring Report outlines the
23 importance of an aggressive trend monitoring regime**

24 The objective of the Trend Monitoring is: “(1) to determine current water quality
25 conditions of groundwater relevant to irrigated agriculture, and (2) to develop long-term
26 groundwater quality information that can be used to evaluate the regional effects (i.e., not site-
27 specific effects) of irrigated agriculture and its practices.” (WDR MRP, p. 16.)

28 The monitoring program is the triggering and reporting component of the WDR. Water
quality is, however, enhanced by what such monitoring leads to. The WDR calls for management
practices evaluation workplans to assure that management modifications are engaged to address
any water quality issues.

MRP Appendix MRP-2 is the monitoring well installation and sampling plan. It requires
the third-party coalitions to submit their Monitoring Well Installation and Sampling Plans
(MWISP) to the Executive Officer for approval. Those plans contain:

- 1 a. Topographic map showing any existing nearby (about 2,000 feet) domestic,
2 irrigation, municipal supply, and known monitoring wells, utilities, surface water
3 bodies, drainage courses and their tributaries/destinations, and other major
4 physical man-made features, as reasonably known and appropriate.
- 5 b. Site plan showing proposed well locations, other existing wells, unused and/or
6 abandoned wells, and major physical site structures (such as tailwater retention
7 systems, tile-drainage systems including discharge points, chemigation and/or
8 fertigation tanks, flood control features, irrigation canals, etc.).
- 9 c. Rationale for the number of proposed monitoring wells, their locations and
10 depths, and identification of anticipated depth to groundwater. This information
11 must include an explanation of how the location, number, and depths of wells
12 proposed will result in the collection of data that can be used to assess
13 groundwater at farms not directly monitored by the MPEP and under a variety of
14 hydrogeologic conditions.
- 15 d. Local permitting information (as required for drilling, well seals, boring/well
16 abandonment).
- 17 e. Drilling details, including methods and types of equipment for drilling and
18 soils logging activities. Equipment decontamination procedures (as appropriate)
19 should be described.
- 20 f. Health and Safety Plan.

21 (WDR MRP-2, p. 2.) The Eastern San Joaquin WDR sets forth an elaborate monitoring
22 program to direct changes in management practices to address water quality exceedances
23 or degradations.

24 **f. The WDR's list of constituents is adequate and supported by the record**

25 AGUA contends the WDR does not comply with Resolution 68-16 because the
26 monitoring program does not require the monitoring of all constituents of concern. (See AGUA's
27 Opening Brief, pp. 10-11.) AGUA incorrectly postures that monitoring for all constituents is
28 required to ensure compliance with the antidegradation policy.

Although AGUA cites *no* authority for this position, it may be relying on *Asociacion*. In
Asociacion, the court found that the dairy monitoring program was inadequate for reasons
specific to that order, including the lack of testing for all constituents of concern. (*Asociacion*,
supra, p. 1275.) The court concluded "the monitoring plan requires testing only for nitrate,
electrical conductivity (which measures salts) and phosphorous" but the record showed other
pollutants, such as organic matter and pathogens, also have the potential to affect groundwater.
(*Id.* at p.1276.) In *Asociacion*, the court found the Regional Board's decision to only require

1 monitoring for a limited number of constituents was not supported by the evidence given that the
2 Regional Board failed to cite evidence contradicting appellants' evidence that other constituents
3 associated with dairy operations were causing water quality programs. (*Id.* at p. 1281).

4 Here, unlike in *Asociacion*, the Regional Board has made express findings as to adequacy
5 of the monitoring program's parameters, including the constituents of concern selected for
6 monitoring. The WDR's Information Sheet details the basic questions the updated surface water
7 quality monitoring program must answer, as well as the changes made to the new program based
8 off of data collected to date. (See WDR, Attachment A, Information Sheet, pp. 10-12.)
9 Similarly, the WDR's Information Sheet contains questions for the groundwater monitoring
10 program identified by groundwater experts. These experts, "representing state agencies, the
11 United States Environmental Protection Agency (USEPA), the United States Geological Survey
12 (USGS), academia, and private consultants," created these "critical questions" to guide the
13 groundwater program in order for it to comply with the ILRP. (*Id.* at pp. 14-15.)

14 The design of any monitoring program requires analysis and reasoned judgment (based on
15 a reasoned evaluation of available information) of how best to answer the questions of interest by
16 determining what to monitor, how frequently to monitor, where to monitor, when to monitor, and
17 the quality of the information needed. This is precisely the type of judgment that should be
18 reserved for Regional Board staff, and not second-guessed absent the presentation of convincing
19 evidence as to why the decision is technically flawed – which AGUA has not provided.

20 Notably, the foundation for the monitoring program in the ESJ WDR is the surface water
21 monitoring program in the prior irrigated lands regulatory program, which neither AGUA nor any
22 other party has challenged with respect to its list of constituents. The new MRP in the WDR
23 reflects the technical challenges of extending an existing surface water quality program to
24 groundwater. Groundwater is completely distinct and different than surface water in all respects,
25 certainly including the very different hydrology between surface waters and groundwater
26 aquifers. The state's groundwater is generally hundreds of feet below the surface (some 800 feet)
27 and percolation from the field surface to the state's groundwater will likely take four or more
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1 decades. More significant is that as irrigation water percolates through the soil column, most
2 soluble constituents degrade or tie up to soil particles such that there is very limited evidence of
3 agricultural properties other than salts and nitrates reaching down to the state’s groundwater.

4 Consequently, the recent groundwater reports (*Addressing Nitrate in California’s*
5 *Drinking Water, With a Focus on Tulare Lake basin and Salinas Valley Groundwater*, by Thomas
6 Harter) and the irrigated lands General Orders have expressly dealt only with nitrates and salts.
7 The only exception to this regulatory focus on these constituents involves a few pesticides that
8 have reached shallow groundwater. The state regulatory agency charged with pesticide
9 jurisdiction is the California Department of Pesticide Regulation (“CDPR”) which has a separate
10 and extensive regulatory program dealing with those chemicals. Those regulatory programs of
11 CDPR operate in coordination with the Regional Boards on the irrigated lands waivers and
12 General Orders, including the Eastern San Joaquin General Order.

13 Throughout the Regional Board’s development of the General Order, the entire focus has
14 therefore been on addressing nitrates and salts in groundwater, in addition to the longer list of
15 constituents tested in surface water. The environmental Petitioners have had every opportunity to
16 bring forth any data relative to groundwater problems caused by valley agriculture beyond salt
17 and nitrate, including any technical evidence to support the need to monitor additional
18 constituents in groundwater, yet they have provided none. The bald assertion that this already
19 enormous regulatory program should be expanded to address additional constituents in
20 groundwater – without technical evidence in the record to warrant this expansion – is specious.
21 Further, if such an expansion were to be considered, it could only be considered after an
22 evaluation of the additional costs associated with expanding the MRP. Again, AGUA has failed
23 to present any evidence to determine whether the increased cost of adding additional constituents
24 to the groundwater monitoring program is warranted such that it is a best practicable method of
25 preventing degradation.

26 **g. The WDR requires extensive monitoring of nitrogen application**

27 To minimize nitrogen application and ensure compliance with Resolution 68-16, the
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1 WDR sets forth extensive requirements for members and the third-party group. Under the WDR,
2 all members must implement a farm-specific Nitrogen Management Plan (“NMP”) that identifies
3 practices that will minimize excess nitrogen application relative to crop need, minimize nitrate
4 movement through surface runoff, and minimize leaching past the root zone. (WDR, pp. 18, 25;
5 see also WDR, Attachment A, Information Sheet, p. 21.) The WDR further requires members in
6 high vulnerability areas to certify their NMPs and provide to the third-party Nitrogen
7 Management Plan Summary Reports (“NMP Reports”) that indicate the nitrogen consumption
8 ratio for each crop grown for each parcel enrolled by the member. (WDR, pp. 25.)⁶ Members
9 must also provide their NMP and NMP Reports to Regional Board staff if requested or if board
10 staff or an authorized representative conducts an inspection of the member’s farm. (*Ibid.*)

11 Using information received from the NMP Reports, the third-party must then prepare an
12 annual summary to be submitted to the Regional Board. (WDR MRP, pp. 21, 23.) As part of the
13 summary, the third-party will aggregate information provided to characterize the input, uptake,
14 and loss of nitrogen fertilizer applications by specific crops in the Eastern San Joaquin River
15 Watershed. (*Id.* at p. 23.) The third-party must then, at a minimum, compare farms with the
16 same crops, similar soil conditions, and similar practices, helping the third-party identify effective
17 practices to minimize nitrogen use and protect water quality. (*Ibid.*)

18 AGUA’s several arguments about the inadequacy of nitrogen monitoring under the WDR
19 are inconsistent with the facts and ignore practical and economic considerations. AGUA first
20 incorrectly argues the nitrogen consumption ratio does not provide information about the amount
21 of nitrogen applied to the surface. (AGUA Petition for Review at p. 11.) The nitrogen
22 consumption ratio is a ratio of crop consumption to total nitrogen available for crop uptake from
23 sources including, but not limited to, fertilizers, manures, composts, nitrates in irrigation supply
24 water, and soil. (WDR, pp. 25.) Members are required to indicate the nitrogen consumption ratio
25 for each crop grown for each parcel enrolled by the member. (*Ibid.*) In doing so, members
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27 ⁶ Members will complete their NMP and NMP Reports using templates developed by the Executive Officer or by the
28 third-party in consultation with the Regional Board and, as appropriate, certain other agencies. (WDR MRP, pp. 24-
25.)

1 indicate the amount of nitrogen applied, which the third-party then uses to characterize the input,
2 uptake, and loss of nitrogen fertilizer applications by specific crops in the Eastern San Joaquin
3 River Watershed. (WDR MRP, p. 23.)

4 Second, AGUA alleges the WDR is inadequate in that it does not require the third-party to
5 submit NMP Reports to the Regional Board. (AGUA Petition for Review at p. 11.) AGUA
6 apparently desires a redundant program in which both the third-party and the Regional Board
7 review all NMP Reports. Apart from being infeasible, this request ignores the fact that the third-
8 party must prepare a summary of the NMP Reports for the Regional Board. (WDR MRP, p. 21.)
9 If Regional Board staff believes more information is desirable after reviewing the third-party's
10 summary, the staff may then request that a member provide its NMP Report. (WDR, p. 25.)

11 AGUA next claims, without any explanation, that the requirement that members and the
12 third-party maintain all required reports and materials for at least five years is too short a period.
13 (AGUA Petition for Review at p. 11.) It is not clear why AGUA believes a longer period
14 necessary. In any event, the five-year holding period may be extended because of unresolved
15 litigation or the Executive Officer's request, addressing potential concerns. (WDR, p. 35.)

16 Lastly, AGUA demands that all members must provide nitrogen plan summary reports.
17 (AGUA Petition for Review, pp. 11-12.) No matter that the member might be in area that is
18 complying with all water quality objectives and experiencing improvement in water quality,
19 AGUA believes the member must expend time and resources to prepare a nitrogen report. Such a
20 program expends limited resources to achieve little, if any, improvement to water quality. The
21 Regional Board appropriately developed reporting requirements based on a member's area. If the
22 member is in a high vulnerability area⁷ where nitrate is identified as a constituent of concern, the
23 member must provide NMP Reports to the third-party. (WDR, p. 25.) Members in low
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25 ⁷ High vulnerability areas are those where either (1) an applicable WQO or water quality trigger limit is exceeded
26 twice in a three-year period for the same constituent, and irrigated agriculture may cause or contribute to the
27 exceedances; (2) the Basin Plan requires development of a surface water quality management plan for a constituent(s)
28 discharged by irrigated agriculture; or (3) the Executive Officer determines that irrigated agriculture may be causing
or contributing to a trend of degradation of surface water that may threaten applicable Basin Plan beneficial uses.
(WDR, Definitions, Acronyms, and Abbreviations, p. 3.)

1 vulnerability areas, on the other hand, do not need to provide these reports, though they still must
2 prepare nitrogen management plans to minimize excess nutrient application relative to crop need.
3 (WDR, pp. 18, 25.) And if an area previously labeled as one of low vulnerability is found to
4 exhibit any of the features for high vulnerability areas (e.g., if farming may have contributed to
5 two exceedances of applicable WQOs in a three-year period), members in the area would then
6 need to submit summary reports. (WDR, Attachment A, Information Sheet, p. 21.) This program
7 prioritizes efforts to address known water quality issues, and ensures compliance with Resolution
8 68-16.

9 **3. The WDR Sets Appropriate Receiving Water Limitations**

10 In adopting WDRs, regional boards are authorized to set a time schedule for compliance,
11 which may be revised at the board’s discretion. (Water Code, § 13263(c).) Consistent with this
12 provision, the Regional Board established a schedule for compliance with the WDR’s receiving
13 water limitations. (WDR, p. 35.) Members implementing an approved Surface Water Quality
14 Management Plan (“SQMP”) must comply with the receiving water limitations on a time
15 schedule that is “as short as practicable,” but not later than 10 years after the SQMP is submitted
16 to the Executive Officer for approval. (*Ibid.*) All other members are subject to the receiving
17 water limitations effective immediately. (*Id.* at p. 35 fns. 14, 15.)

18 Misreading the Regional Board’s established time schedule, AGUA argues the timeline
19 for compliance permits undue delay, suggesting that members have without qualification 10 years
20 to come into compliance. (AGUA Petition for Review, p. 13.) AGUA entirely neglects to note
21 that compliance with the receiving water limitations must occur on a time schedule that is “as
22 short as practicable.” Avoiding discussing this limitation altogether, AGUA never explains how a
23 requirement that compliance occur on “as short as practicable” a time schedule somehow permits
24 undue delay. Nor can it. In requiring members to comply with the receiving water limitations, at
25 the latest, on a time schedule that is “as short as practicable,” the Regional Board established a
26 reasonable time schedule consistent with Resolution 68-16.
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1 **4. The WDR Allows for Limited Degradation Consistent with Resolution 68-16**

2 Before permitting degradation of high quality waters, Resolution 68-16 requires a regional
3 board to find that any change in water quality (1) would be consistent with the maximum benefit
4 to the people of the state; (2) would not unreasonably affect present or probable future beneficial
5 uses of such water; and (3) would not result in water quality less than prescribed in state policies.
6 The board must also assure that any authorized degradation of high quality waters is subject to
7 WDRs that will result in BPTC of the discharge necessary to ensure that (1) pollution or nuisance
8 will not occur and (2) the highest water quality consistent with the maximum benefit to the people
9 of the state will be maintained.

10 **a. The Regional Board properly made the required Resolution 68-16**
11 **findings before permitting degradation of high quality waters**

12 In *Asociacion*, the court looked to four factors in determining whether the WDR was
13 consistent with the maximum benefit to the people of the state: the past, present, and probable
14 beneficial uses of water, the economic and social costs compared to the benefits, the
15 environmental aspects, and the implementation of feasible alternative treatment or control
16 methods. (*Asociacion, supra*, 210 Cal. App. at p. 1279.) Making the required findings, the
17 Regional Board found that the limited degradation permitted under the WDR was consistent with
18 the maximum benefit to the people of the state will be maintained. (WDR, pp. 41-42.) In
19 explaining why this was so, the Regional Board acknowledged the importance of Central Valley
20 agriculture for employment and for the state and nation’s food supply, and explained, among
21 other things, that the WDR requires compliance with water quality objectives and beneficial uses,
22 requires the implementation of BPTC, and includes performance standards that would work to
23 prevent further degradation of surface and groundwater quality. (*Ibid.*) Thus, The Regional
24 Board looked at the beneficial uses of the water and balanced the costs and benefits. The
25 Regional Board also reviewed the environmental aspects of the WDR and discussed alternative
26 treatment methods. (WDR, Attachment D, Findings of Fact and Statement of Overriding
27 Consideration, p. 33.) The Regional Board complied with Resolution 68-16. AGUA’s varied
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1 attacks on the Regional Board’s findings overlook the Board’s analysis. Ignoring the Board’s
2 explanation altogether, AGUA claims the Regional Board “engaged in no . . . analysis” of why
3 the WDR would be consistent with the maximum benefit to the people of the state. (AGUA
4 Petition for Review, p. 17.) In similar fashion, AGUA asserts that the “finding that ‘limited
5 degradation’ is allowed is far too vague to mean anything,” (AGUA Petition for Review at p. 18)
6 even though the WDR explains what it means: degradation that will not cause or contribute to
7 exceedances of water quality objectives, unreasonably affect beneficial uses, or cause a condition
8 of pollution or nuisance. (WDR, p. 42).

9
10 AGUA lastly suggests that it understands what “limited degradation” is permitted under
11 the WDR, but argues it permits too much. AGUA claims that permitting degradation up to water
12 quality objectives is inadequate because it might result in accidental exceedances of water
13 quality objectives. (AGUA Petition for Review at p. 19.) AGUA asserts the WDR should
14 therefore set limits far below water quality objectives. (*Ibid.*) The theoretical possibility of an
15 exceedance does not justify placing such an undue burden on irrigated agricultural operations,
16 particularly when measures are already in place to address any exceedances. (WDR, Attachment
17 A, Information Sheet, pp. 13, 19 [if an exceedance is found more than once in a three-year period,
18 the third-party must develop a Management Plan to identify new management practices necessary
19 to achieve compliance, set a time schedule for implementing the identified management practices,
20 and evaluate the effectiveness of the new management practices].)

21 **b. The WDR Results in Implementation of BPTC**

22 As noted above, to permit degradation, the Regional Board was required to implement
23 WDRs that would result in the best practicable treatment or control (“BPTC”). “Practicable”
24 means feasible—and feasibility considerations, as the Regional Board explained, preclude the use
25 of specific technologies, practices, or treatment devices to achieve BPTC in the watershed.
26 (WDR, p. 35.) Rather than selecting specific technologies, the Regional Board established a set
27 of performance standards that focus on management practices, education, and outreach, and that
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1 establish additional measures in the event degradation trends are observed. (*Ibid.*) These
2 standards are similar to those installed under various NPS programs in California, and are similar
3 to standards the U.S. E.P.A. considers the best available, economically achievable means of
4 reducing pollution of surface and ground water from agriculture. (*Ibid.*)

5 AGUA and CSPA nonetheless both attack the WDR as insufficient to achieve BPTC.
6 Reciting flawed arguments, AGUA claims the WDR fails to require BPTC because members
7 would have, without qualification, 10 years to comply with receiving water limitations. (AGUA
8 Petition for Review, p. 20.) Again, AGUA entirely ignores the WDR’s requirement that
9 compliance occur on “as short as practicable” a time schedule—a requirement consistent with
10 Water Code section 13263, subdivision (c), which permits the regional boards to set time
11 schedules for compliance with WDRs. (WDR, p. 35.)

12 CSPA then claims the BPTC is too vague since under watershed-based monitoring it is
13 impossible to know whether BPTC is being implemented or, if it is, whether it is effective.
14 (CSPA Petition for Review, p. 8.) To begin, CSPA’s argument relies on a faulty premise. As
15 discussed, record evidence illustrates that watershed-based monitoring programs are effective for
16 determining if growers are implementing BPTC. (See discussion regarding BPTC on pp. 8-10.)
17 Moreover, CSPA’s gripe with the BPTC appears to be that it does not require specific
18 technologies or controls. But while BPTC for *point source* discharges is often based on proven
19 technology and the methods utilized by similarly situated dischargers, nonpoint source discharges
20 are markedly different in character. Given site-specific, crop-specific, and regional variability, no
21 specific set of technologies, practices, or treatment devices can be said to achieve BPTC/best
22 efforts universally in the watershed. (WDR, p. 35.) Growers need flexibility in their
23 management practices to best achieve performance given their unique situations. (WDR,
24 Attachment A, Information Sheet, p.37.) This being the case, the Regional Board established the
25 following two distinct processes to achieve BPTC: (1) establishment of a baseline set of universal
26 farm water quality management standards combined with upfront evaluation, planning and
27 implementation of management practices to attain those goals, and (2) additional planning and
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1 implementation measures where degradation trends are observed that threaten to impair a
2 beneficial use or where beneficial uses are impaired. (*Ibid.*) The process of reviewing the data
3 and instituting additional practices when necessary assures BPTC/best efforts and facilitates the
4 collection of information necessary to demonstrate the effectiveness of the practices. (WDR,
5 Attachment A, Information Sheet p. 40.) The processes will ensure the highest quality of water is
6 for the maximum benefit of the people. (*Ibid.*)

7
8 The established management standards are not, as CSPA suggest, vague, ineffective
9 performance standards, but rather are proven methods for addressing nonpoint source pollution,
10 similar to those measures set forth in *California's Management Measures for Polluted Runoff*—a
11 guidance document developed by the State Board, California Coastal Commission, and other
12 agencies—and the U.S. E.P.A.'s *National Management Measures to Control Nonpoint Source*
13 *Pollution from Agriculture*. (See WDR, pp. 36-37.) The WDR's suite of monitoring programs
14 and reporting requirements will provide the Regional Board with the information necessary to
15 determine whether actions are being taken to achieve BPTC. (WDR, Attachment A, Information
16 Sheet p.41.)

17
18 **c. The WDR contains proper time schedules**

19 In order to ensure discharges that are allowed to high quality waters will not unreasonably
20 affect beneficial uses and will not result in water quality below applicable water quality
21 objectives, the WDR contains numerous provisions including time schedules for compliance.
22 CSPA and AGUA argue that the WDR will not “accomplish timely detection of a change in water
23 quality” (CSPA Petition for Review, p. 6) and will result in an unnecessary time lag. (AGUA
24 Petition for Review, p. 13.)

25 In contrast to the environmental Petitioners' contentions, the time schedules do not allow
26 for a “time lag” and are not inconsistent with the requirements of the Basin Plan, the Water Code,
27 and Resolution 68-16. The WDR finds that discharges to high quality waters are authorized
28 pursuant to the following requirements: “The receiving water limitations in section III of the
Order, the compliance schedules in section XII, and the Monitoring and Reporting Program's

1 requirements to track compliance with the Order, are designed to ensure that the limited
2 degradation will not cause or contribute to exceedances of water quality objectives, unreasonably
3 affect beneficial uses, or cause a condition of pollution or nuisance.” (WDR, Attachment A,
4 Information Sheet, p. 44.)

5 Resolution 68-16 and Water Code section 13263 do not require instantaneous compliance
6 or otherwise provide time limitations on achieving policy objectives. Additionally, Water Code
7 section 13263(c) provides the Regional Board broad discretion to prescribe time schedules within
8 waste discharge requirements. Further, the State Board’s NPS Policy encourages time schedules
9 for NPS control implementation programs, such as the ESJ WDR, in order to allow the necessary
10 time to achieve water quality standards. (NPS Policy, Key Element 3, p. 13.) In *Asociacion*,⁸ the
11 court explicitly endorsed the use of time schedules and phased approaches, stating: “A phased
12 approach... is reasonable, and is authorized by section 13263, which allows the requirements of a
13 regional water quality control board to contain a time schedule.” (*Asociacion, supra*, 210
14 Cal.App.4th at p. 1277.)

15 AGUA argues that the ten year time schedule allows “contribution to exceedances,
16 pollution or nuisance to occur for 10 years.” (AGUA Petition for Review, p. 13.) Given the
17 nature of discharges from irrigated agriculture, which can contain nonpoint source pollution,
18 appropriate time is needed to determine effective management practices and to establish timelines
19 to implement those practices through surface water management plans, groundwater management
20 plans, and the Management Practices Evaluation Program. The WDR’s time schedule for
21 compliance does just that—provides a reasonable amount of time without allowing for an
22 unnecessary time lag.⁹

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25 _____
26 ⁸ In *Asociacion*, the court found the dairy monitoring program deficient because the Order contained no timetable for
the installation of the monitoring wells. (*Asociacion, supra*, p. 1278.) Unlike the dairy Order, the ESJ WDR
contains an explicit time schedule tied to additional requirements such as management plans.

27 ⁹ It is worth noting that the Coalition is to provide a time schedule as short as practicable, but may
28 *not exceed* ten years. (WDR, pp. 36-37, emphasis added.)

1 **B. AGUA and CSPA Argue that *Asociacion de Gente Unida por El Agua et al, v. Central***
2 ***Valley Regional Water Quality Control Board Fully Applies to This ILRP General***
3 ***Order, However, it is Distinguishable***

4 Justice Blease, writing for the majority in *Asociacion*, found that the originally proffered
5 Dairy General Order failed to comply with the Resolution 68-16. The court observed that the
6 Dairy General Order, which dealt with a traditional point source situation, unlike the Eastern San
7 Joaquin WDR which deals with nonpoint source field percolation, did not effectively prohibit
8 further degradation because it did not “prohibit dairy waste to groundwater.” (*Asociacion supra*,
9 210 Cal.App.4th at p. 1259).

10 Farm irrigation water percolating into and through the soil column, unlike waste retention
11 ponds, is impossible to contain, and it may possibly contain salts sourced from the irrigation
12 water and/or nutrients applied, which the plants cannot fully take up through their roots.
13 Consequently, this is wholly distinct from the Dairy situation. The Dairy Order dealt with
14 handling a classical waste distinct from farm irrigation percolation, and farms cannot fail to
15 irrigate. As stated above, Resolution 68-18 seeks a reasonable balance which cannot possibly be
16 reconciled with a prohibition to irrigate/percolate.

17 The *Asociacion* decision found that the original Dairy Order was inconsistent with
18 Resolution 68-18 due to less than adequate monitoring. The *Asociacion* court recognized that the
19 classical waste from dairy operations is generally “the collection and retention of waste and
20 wastewater in holding ponds.” (*Id.* at p. 1260). The court also observed that those adverse
21 impacts to groundwater were due to discharges from the cow, which is highly distinguishable
22 from the application of irrigation water to fields and/or the applying necessary plant nutrients to
23 establish a crop.

24 The *Asociacion* decision took considerable focus of Finding 13 of the Dairy Order
25 because it did not prohibit the discharge of “manure, leachate, process waste water,” etc. (*Id.* at p.
26 10.) The Eastern San Joaquin WDR has no similar “escape language.” Rather, the Eastern San
27 Joaquin WDR categorically prohibits discharges of waste to waters of the state, including
28 groundwater. (WDR, p. 17.)

1 The *Asociacion* court also took issue with the monitoring provisions of the Dairy Order.
2 The court stated that the monitoring program must be sufficient to alert if groundwater is being
3 degraded. (*Asociacion, supra*, at p. 1274). The court reasoned that because no contrary evidence
4 was presented, 1) monitoring from supply wells are not located in proper areas, 2) monitoring
5 would not show pollution for several years, and 3) monitoring does not test for all required
6 constituents. (*Id.* at p. 1275)

7 The *Asociacion* decision addressed “vadose monitoring of retention pond and corral areas,” and
8 faulted the Dairy Order for relying on monitoring supply wells far removed from these points of
9 waste discharge. (*Id.* at p. 1276) The Eastern San Joaquin WDR, however, covers all the farm
10 landscape as totally distinct from a dairy retention pond, therefore, all wells (supply, irrigation,
11 domestic or specific monitoring wells) are proper and relevant to monitoring in this agricultural
12 nonpoint source situation.

13 **C. For the Same Reasons the WDR will not violate Resolution 68-16, the WDR Will**
14 **Not, as AGUA Claims, Allow Pollution and Nuisance to Groundwater in Violation of**
15 **the Water Code section 13050 et seq.**

16 AGUA claims the WDR unreasonably effects beneficial uses, in violation of the Water
17 Code, for the very same reasons in violates Resolution 68-16. (AGUA Petition for Review, pp.
18 21-22.) Specifically, AGUA asserts that the WDR allows “limited degradation” up to the water
19 quality objectives without the required findings permitting such “limited degradation;” allows
20 discharges to contribute to exceedances of water quality objectives and nuisance for up to 10
21 years; fails to establish a baseline to assess and analyze degradation or the impacts of discharge;
22 and fails to establish adequate monitoring and reporting procedures.

23 As discussed above, none of AGUA’s claims are persuasive. The Regional Board made
24 the required finding to permit limited degradation of high quality waters, including that the
25 WDR’s provisions be consistent with the maximum benefit to the people of the state. (See
26 discussion regarding limited degradation on pp. 22-24.) The Regional Board reasonably set a
27 time schedule for compliance with the WDRs in requiring compliance on a time schedule that is
28 “as short as practicable,” but not more than 10 years after the SQMP is submitted to the Executive

1 Officer for approval. (See discussion regarding time schedules on pp. 22, 26-27.) And the
2 Regional Board established monitoring and reporting procedures that have been shown effective
3 in determining whether growers were implementing BPTC, and in improving water quality. (See
4 discussion on pages 8-10.) Thus, similar to the reasons the WDR complies with Resolution 68-
5 16, the WDR does not allow groundwater pollution or nuisance in violation of Water Code
6 section 13050 et seq.

7 **D. The WDR Complies with State Board's NPS Policy**

8
9 Under the State Board's NPS Policy, implementation programs for NPS pollution control
10 may be developed by the regional water boards, the State Board, an individual discharger, or by
11 or for a coalition of dischargers in cooperation with a third-party representative, organization, or
12 government agency. (NPS Policy, p. 8.) To ensure that adopted programs are effective in
13 implementing and enforcing the state's nonpoint source pollution control plan, the NPS Policy
14 requires each program to meet the following five elements:

- 15 • Key Element 1: The ultimate purpose of the nonpoint source pollution control
16 implementation program must be explicitly stated and, at a minimum, must
17 address nonpoint source pollution control in a manner that achieves and maintains
18 WQOs.
- 19 • Key Element 2: The nonpoint source pollution control implementation program
20 must include a description of the water quality management practices and other
21 program elements expected to be implemented, the process to be used to select or
22 develop management practices, along with an evaluation process to ensure proper
23 implementation and verification.
- 24 • Key Element 3: The nonpoint source pollution control implementation program
25 should include a time schedule and quantifiable milestones, if the Regional Board
26 so requires.
- 27 • Key Element 4: The nonpoint source pollution control implementation program
28 must include sufficient feedback mechanisms so that the Regional Board,
dischargers, and the public can determine whether the program is achieving its
stated purpose, or whether additional or different management practices or other
actions are required.
- Key Element 5: Each Regional Board must make clear, in advance, the potential
consequences for failure to achieve the objectives of its nonpoint source pollution
control implementation program, emphasizing that it is the responsibility of
individual dischargers to take all necessary implementation actions to meet water
quality requirements.

1 (NPS Policy, pp. 11-15.)

2 The Regional Board applied these elements in its consideration of the WDR, and properly
3 concluded that the WDR is consistent with each of the five key elements of the NPS Policy.
4 Regarding Key Element 3, the surface and groundwater quality management plans include time
5 schedules for implementing and meeting receiving water limitations. (WDR, Attachment A,
6 Information Sheet, p. 29.) There are also numerous consequences for those who fail to meet the
7 objectives of the program, including additional monitoring, enforcement actions, and revoking
8 coverage under the General Order. (WDR, Attachment A, Information Sheet p. 30.) As
9 discussed in further detail below, the WDR is also consistent with Key Elements 1, 2, and 4.

10 **1. Watershed-Based Monitoring Achieves and Maintains WQOs and Beneficial**
11 **Uses, Consistent with Key Element 1 of the NPS Policy**

12 In the narrative description of Key Element 1, the NPS Policy states that if a program
13 relies on the use of management practices (“MPs”), then there should be a strong correlation
14 between the MPs implemented and the relevant water quality requirements. (NPS Policy, p. 12.)
15 The Regional Board must be able to ensure that all significant pollution sources are addressed.
16 (*Ibid.*)

17 CSPA argues the WDR conflicts with Key Element 1 because, it alleges, the Regional
18 Board does not know the specific MPs implemented. (CSPA Petition for Review at p. 9.) CSPA
19 further alleges that watershed-based monitoring is insufficient to enable the Regional Board to
20 correlate the specific MPs implemented to the relevant water quality requirements. (*Ibid.*)

21 The record evidence rejects CSPA’s claims. As discussed *supra*, watershed-based
22 monitoring has been shown to be effective for determining whether growers are implementing
23 BPTC, and has worked to improve water quality. (See discussion above at pp. 8-10.) The
24 Regional Board also explicitly stated its purpose, goals, and objectives of the program. (WDR,
25 Attachment A, Information Sheet pp. 3-4.) The WDR therefore includes requirements to meet
26 applicable water quality objectives and is consistent with Key Element 1.
27
28

1 **2. Watershed-Based Monitoring Sufficiently Informs the Regional Board of the**
2 **Suitability and Effectiveness of MPs, Consistent With Key Element 2 of the NPS**
3 **Policy**

4 CSPA alleges that watershed-based monitoring is inadequate to satisfy Key Element 2,
5 and that to show MPs are successful, this element requires farm-based water quality management
6 plans and edge-of-field monitoring. (CSPA Petition for Review at pp. 10-12.)

7 Nothing in the NPS Policy states or implies that Key Element 2 can only be met through
8 farm-specific water quality management plans and farm-specific monitoring. And again, record
9 evidence illustrates that the existing watershed-based monitoring program is effective for
10 determining if growers are implementing BPTC and is working to improve water quality. (See
11 discussion above at pp. 8-10.)

12 As the Regional Board explained, the WDR requires each individual operation to develop
13 a farm evaluation that will describe their management practices in place to protect surface water
14 and groundwater quality. It further requires the development of surface/groundwater quality
15 management plans in areas where there are exceedances of water quality objectives. These plans
16 include the requirement that the third-party identify new management practices necessary to
17 achieve compliance, set a time schedule for implementing the identified management practices,
18 and evaluate the effectiveness of the new management practices. (WDR, Attachment A,
19 Information Sheet, p. 13, 19.) This approach is consistent with Key Element 2.

20 **3. Watershed-Based Monitoring Provides Feedback Mechanisms Sufficient to**
21 **Evaluate Program Effectiveness, Consistent with Key Element 4 of the NPS**
22 **Policy**

23 Contrary to CSPA's claims, the record evidence shows the existing watershed-based
24 monitoring program is effective for determining if growers are implementing BPTC. (See CSPA
25 Petition for Review at p. 12.) CSPA goes on to claim that the Regional Board concedes that
26 under the WDR it cannot determine local violations, individual compliance, or effectiveness of
27 management practices. (*Ibid.*) But attributing to the Regional Board a statement it never made
28 does not help CSPA overcome evidence rejecting its position.

1 To provide the feedback required under Key Element 4, the WDR requires surface and
2 groundwater quality monitoring, tracking of management practices, and evaluation of the
3 effectiveness of implemented practices (WDR, Attachment A, Information Sheet, p. 28; see also
4 *id.* at pp. 13, 19) —feedback that allows iterative implementation of practices to ensure that
5 program goals are achieved.
6

7 **E. The Fact that the WDR Requires Executive Officer Approval of Certain**
8 **Substantive Requirements Reflects the Realistic Technical Challenges of this**
9 **Enormous New Regulatory Endeavor**

10 AGUA argues that delegation to the Executive Director of the ability to approve certain
11 parts of the regulatory program, including (1) the Groundwater Assessment Report, (2) the high
12 and low vulnerability groundwater area determinations, (3) Trend Monitoring Plans, and the (4)
13 Management Practices Evaluation Program, is an improper delegation of authority by the
14 Regional Board.

15 These real parties similarly do not like the inherent uncertainty associated with these
16 provisions and would prefer that the program be more defined in the WDR. That said, reality is
17 not perfection. AGUA and CSPA have been pushing, and suing, the Regional Board for years to
18 adopt WDRs that cover groundwater, despite the fact that little technical data exists to warrant
19 such a program or establish its regulatory parameters. The development of the (1) the
20 Groundwater Assessment Reports, (2) the high and low vulnerability groundwater area
21 determinations, (3) Trend Monitoring Plans, and the (4) Management Practices Evaluation
22 Program, are all essential components of the regulatory program because they will identify the
23 water quality problem areas and the management practices required to prevent further
24 degradation. This information is simply not available today. If AGUA’s argument on this issue
25 is to be accepted, then the result would be a return to the prior waiver program so that the
26 Regional Board can conduct these exercises itself in order to refine the regulatory program before
27 adoption of the WDRs.
28

1 **F. AGUA’s Claim of Disparate Impacts Fails Because AGUA Did Not Meet its**
2 **Burden to Show a Causal Connection**

3 AGUA claims in a conclusory fashion that the WDR disproportionately impacts low
4 income and Latino communities in violation of Government Code section 11135, the California
5 Fair Employment and Housing Act (“CFEHA”), and Government Code section 65008, a housing
6 discrimination statute. (AGUA Petition for Review, pp. 26-27.) The WDR, however, does not
7 disparately impact these communities, nor does it engage in discrimination. AGUA has not met
8 its burden to show a causal connection between the WDR and any disparate impacts.

9 California Government Code section 11135 prohibits a state agency program from
10 discriminating on the basis of race, ethnicity, national origin, and color, among other
11 characteristics. For a plaintiff to have a successful disparate impact claim under section 11135,
12 the plaintiff must show that “the defendant’s facially neutral practice causes a disproportionate
13 adverse impact on a protected class.” (*Darensburg v. Metro. Transp. Comm’n* (9th Cir. 2011)
14 636 F.3d 511, 519.) AGUA has not met this burden. AGUA does not articulate how the WDR
15 will cause further degradation in a manner that will have a disproportionate adverse impact on the
16 Latino community. Stating that the WDR will lead to nitrate contamination and that Latino
17 communities in the Central Valley are more likely to have higher nitrate levels in their drinking
18 water does not show a sufficient causal connection. AGUA presents no specific evidence that
19 shows the WDR’s provisions will cause the contamination of groundwater in a disproportionate
20 manner. As the WDR complies with all provisions of the Water Code, the Basin Plan, and
21 Resolution 68-16, it monitors and protects all groundwater throughout the Eastern San Joaquin
22 watershed equally. As such, the WDR applies equally to all people in the region, regardless of
23 race, ethnicity, national origin, or color.


24 AGUA also claims the WDR will violate the CFEHA and Government Code section
25 65008, yet does not describe how it will do so. The CFEHA prohibits discrimination in housing,
26 and section 65008 prohibits a local government from interfering with an individual’s enjoyment
27 of his or her housing because of certain characteristics, such as race. Section 65008, however,
28 applies to local governments, not bodies of the state such as the Regional Board. In addition,

1 AGUA does not explain how the WDR threatens the housing opportunities of and discriminates
2 against the Latino community. There is also no evidence that the WDR treats the Latino
3 community differently from others when it comes to the enjoyment of housing or landownership.
4 Again, as the WDR applies to all groundwater equally, it applies to all people in the region
5 equally. AGUA has not shown a violation of the CFEHA or Government Code section 65008.
6

7 Respectfully submitted,

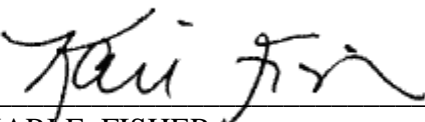
8
9 Dated: January 10, 2014

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WATER STORAGE DISTRICT

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1 **DECLARATION OF SERVICE**

2
3 I am a citizen of the United States and employed in the County of Sacramento; I
4 am over the age of eighteen years and not a party to the within entitled action; my business
5 address is 2300 River Plaza Drive, Sacramento, California 95833.

6 On January 10, 2014, I served the **RESPONSE OF PETITIONERS SOUTHERN SAN**
7 **JOAQUIN VALLEY WATER QUALITY COALITION, THE CALIFORNIA FARM**
8 **BUREAU FEDERATION, AND THE SAN JOAQUIN COUNTY RESOURCE**
9 **CONSERVATION DISTRICT ON BEHALF OF THE SAN JOAQUIN COUNTY AND**
10 **DELTA WATER QUALITY COALITION** on the party (ies) in this action, by placing a true
11 copy thereof in an appropriate, sealed envelope(s), each addressed as follows:

- 12 (X) (By Mail) I placed such sealed envelope(s), with postage thereon fully prepaid for first-
13 class mail, for collection and mailing at California Farm Bureau Federation, Sacramento,
14 California, following ordinary business practices. I am readily familiar with the practice
15 of California Farm Bureau Federation for collection and processing of correspondence -
16 said practice being that in the ordinary course of business, correspondence is deposited in
17 the United States Postal Service the same day as it is placed for collection.
- 18 (X) (By e-mail or electronic transmission) Based on a court order or an agreement of the
19 parties to accept service by e-mail or electronic transmission, I caused the documents to be
20 sent to the persons at the e-mail addresses listed below. I did not receive, within a
21 reasonable time after the transmission, any electronic message or other indication that the
22 transmission was unsuccessful.

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

25 Executed January 10, 2014 at Sacramento, California.

26
27 

28 _____
Pamela K. Hotz

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A-2239(a), (b) and (c) Petition of Asociacion De Gente Unita et al.

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