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## Central Valley Regional Water Quality Control Board

11 January 2013

Mr. Parry Klassen  
Executive Director  
East San Joaquin Water Quality Coalition  
1201 L Street  
Modesto, CA 95354

***NOTICE OF APPLICABILITY ISSUED TO THE EAST SAN JOAQUIN WATER QUALITY COALITION (COALITION) TO SERVE AS THE THIRD-PARTY UNDER GENERAL ORDER R5-2012-0116***

Thank you for submitting your 14 December 2012 request to be the third-party entity to represent owners and operators of irrigated lands within the Eastern San Joaquin River Watershed subject to General Order R5-2012-0116. Based on staff review of your application and the Coalition's record of representing growers under the Coalition Group Conditional Waiver, your Coalition meets the requirements of the General Order to serve as the third-party entity. This letter serves as the Notice of Applicability and my approval of the East San Joaquin Water Quality Coalition to serve as the third-party entity under General Order R5-2012-0116.

We have been very pleased with the Coalition's efforts to assist its members in meeting the requirements of the Conditional Waiver. We believe your Coalition is well suited to meet the requirements of the third-party and assist your members in complying with the General Order. We look forward to a productive working relationship as we work with you and your members to protect water quality in the Eastern San Joaquin River Watershed.

If you have questions regarding this letter, please contact Adam Laputz at (916) 464-4848, or by e-mail at [awlaputz@waterboards.ca.gov](mailto:awlaputz@waterboards.ca.gov).

*Original signed by*

Pamela C. Creedon  
Executive Officer

Enclosures: Table of Compliance Dates Associated with Issuance of the NOA  
Staff Memo: Notice of Applicability –Application to Serve as Third-Party to  
Represent Growers in the Eastern San Joaquin River Watershed under Order  
R5-2012-0116

COMPLIANCE DATES FOR THE THIRD-PARTY REPRESENTING GROWERS IN THE  
EASTERN SAN JOAQUIN RIVER WATERSHED UNDER ORDER R5-2012-0116

Compliance dates associated with the Notice of Applicability (NOA) issued to the East San Joaquin Water Quality Coalition to serve as the third-party under General Order R5-2012-0116.

<b>Due Date*</b>	<b>Requirements</b>
<b>11 February 2013</b>	Provide a Notice of Confirmation form to Members
<b>11 April 2013</b>	Farm Evaluation Template
	Nitrogen Management Plan Template
	Sediment and Erosion Control Plan Template
	Outline for Groundwater Quality Assessment Report
<b>13 May 2013</b>	Notice of Confirmation received from current Members
	Non-enrolled dischargers apply for membership directly to the third-party
<b>10 July 2013</b>	Membership List
<b>13 January 2014</b>	Groundwater Quality Assessment Report
	Sediment Discharge and Erosion Assessment Report
	Comprehensive Groundwater Quality Management Plan
	Agreement for Management Practices Evaluation Program Group

\*Based on the effective dates following the issuance of NOA as specified in the Order. The NOA issue date is 11 January 2013.

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## Central Valley Regional Water Quality Control Board

**TO:** Pamela C. Creedon  
Executive Officer

**THRU:** Kenneth D. Landau, Assistant Executive Officer  
Joe Karkoski, Supervising Water Resources Control Engineer

**FROM:** Adam Laputz, Senior Water Resources Control Engineer  
**IRRIGATED LANDS REGULATORY PROGRAM**

**DATE:** 10 January 2013

**SUBJECT:** NOTICE OF APPLICABILITY – APPLICATION TO SERVE AS THIRD-PARTY  
TO REPRESENT GROWERS IN THE EASTERN SAN JOAQUIN RIVER  
WATERSHED UNDER ORDER R5-2012-0116

On 14 December 2012, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) received the East San Joaquin Water Quality Coalition (Coalition) application to be the third-party entity to represent growers in the Eastern San Joaquin River Watershed and fulfill the requirements and conditions of Waste Discharge Requirements General Order R5-2012-0116 (General Order), and associated Monitoring and Reporting Program (MRP) Order R5-2012-0116. The application is included as an attachment to this memo. No other applications to serve as the third-party under the General Order were received.

The application provides detailed discussion regarding the Coalition's ability and intent to fulfill the role of the third-party entity under the General Order, representing member owners and operators of irrigated lands. In considering the application, staff also considered the Coalition's performance under the Conditional Waivers (Order No. R5-2006-0053 and Order No. R5-2003-0105). Staff considered whether the Coalition has provided timely and complete reports and whether it has generally been responsive under the previous conditional waiver program. The Coalition has a proven record for timely and complete submittals and has been responsive where deficiencies have been indicated by board staff. The application demonstrates that the Coalition meets the requirements for a third-party entity under the General Order (additional discussion is provided below). On this basis, I recommend issuance of a Notice of Applicability (NOA) for the Coalition to serve as the third-party under the General Order.

### **Review of the Coalition's Application to serve as a Third-Party**

The General Order establishes factors that the Executive Officer will consider in determining whether to approve the application (section VIII.A). These factors include the following.

1. *Ability of the third-party to carry out the identified third-party responsibilities.*
2. *Whether the third-party is a legally defined entity (i.e., non-profit corporation; local or state government; Joint Powers Authority) or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to its members.*

3. *Whether the third-party has binding agreements with any subsidiary group (e.g., subwatershed group) to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done so transparently and with accountability to the third party. If the third-party will not rely on any subsidiary group to carry out any of its responsibilities, the third-party must state that in its application letter.*
4. *Whether the third-party has a governance structure that includes a governing board of directors composed in whole or in part of Members, or otherwise provides Members with a mechanism to direct or influence the governance of the third-party through appropriate by-laws.*

Section VIII of the General Order requires the third-party to submit the application within 30 days of the effective date of the order. The application was received on 14 December 2012, which meets this condition (General Order effective date – 7 December 2012).

### ***1 – Ability of the third-party to carry out the identified third-party responsibilities***

Section IV.C of the General Order specifies third-party responsibilities. Staff has reviewed the Coalition's application in consideration of the third-party responsibilities. A summary of the review is provided below.

#### Section IV.C.1, Organizational management structure

The General Order requires that the third-party provide the board with documentation of its management structure, to include responsible persons. The General Order specifies that this information be made readily available to members. The Coalition has provided documentation of its management structure and responsible persons in the application (see pages 2 and 3 of the application). The Coalition provides that its board of directors has delegated day-to-day operations, and its representation to the Central Valley Water Board to its Executive Director, Parry Klassen. Figure 1 of the application is an organizational chart of the Coalition and lists the names of the current directors and officer titles of the board of directors. The Administrative Assistant to the Executive Director will maintain records of membership, survey information, and any member information required to be submitted under the Order. The Coalition has specified that information about the board of directors will be included as part of the Coalition's summary annual report, which is sent to all members. Staff recommends that the Coalition's management structure be explicitly described in the summary annual report so that it is readily available to members.

#### Section IV.C.2, Annual summaries of expenditures

The third-party is required to prepare annual summaries of fees and expenditures used to implement the General Order. The expense summaries must be made readily available to members. The Coalition's application provides that the Coalition will summarize annual expenditures in the summary annual report to its members. This report will be sent to all members.

#### Section IV.C.3, Notice of violation notification procedures

If the third-party group receives a notice of violation (NOV) from the board: within 30 days of receipt the third-party must provide to members in the area addressed by the NOV appropriate information regarding the reason(s) for the violation. The third-party group must provide confirmation to the board of each notification and a summary of all NOVs received by the third-party group must be provided to all members annually. The Coalition's application states that it will mail or email correspondence to all members within the area affected by the NOV within 30 days of receiving the NOV from the board. Further, a summary of all notices will be included in the summary annual report mailed to all members at the end of each year.

#### Section IV.C.4, Track and evaluate the effectiveness of water quality management practices

The General Order requires that the third-party develop and implement plans to track and evaluate the effectiveness of management practices pursuant to approved surface and groundwater quality management plans. In the application, the Coalition provides that it has been effectively implementing management plans for surface water since 2006; which includes tracking and evaluating effectiveness of water quality management practices. Staff concurs that this is being achieved by documenting growers' current and newly implemented practices and by continued monitoring of receiving water quality. Furthermore, the Coalition intends to utilize similar problem solving strategies in development and implementation of groundwater quality management plans. The application provides that management practices will be documented and tracked in a manner consistent with the Coalition's current approach, and utilizing the farm evaluation process. In considering the Coalition's ability to carry out this requirement, staff has considered the Coalition's record for submittal and implementation of management plans. In general, the Coalition has provided management plans and reports timely, and complete. Staff has had to request additional information for clarification, but the requests have been responded to adequately and promptly.

#### Section IV.C.5, Provide timely and complete submittal of plans and reports

The Coalition has been representing members under the previous conditional waiver program, Order R5-2006-0053, and its precursors, since 2003 and has a solid record of producing timely, complete and technically sound plans and reports. The Coalition intends to hire additional consultants in January 2013 to assist with the development of groundwater-specific reports. As described above, staff review of the previous waiver program reports and plans submitted by the Coalition indicates that the Coalition has the ability to continue to provide complete reports in a timely manner.

#### Section IV.C.6, Conduct required monitoring and provide timely submittal of reports

As provided in the application, under the previous conditional waiver program, staff concurs that the Coalition monitoring reports conform to quality assurance/quality control requirements and have been submitted in a timely manner and assessed as complete. The Coalition intends to seek assistance from other qualified technical experts to assist with the newly adopted groundwater components of the Order, and will continue to conduct water quality monitoring and assessments in accordance with an approved Quality Assurance Project Plan (QAPP) and meet the monitoring requirements for both surface and groundwater monitoring as described in General Order.

#### Section IV.C.7, Inform members of the General Order's requirements

The General Order requires that the third-party inform members of the new requirements within 30 days of receipt of the NOA from the board. In the application, the Coalition proposes a process to achieve this goal. The process includes that the Coalition will develop a notice of confirmation (NOC) form to be mailed to all current members and new members requesting to join the Coalition. The Coalition specifies that the NOC will include a fact sheet describing the General Order's requirements.

#### Section IV.C.8, Conduct education and outreach activities

In its application, the Coalition specifies that it currently performs education and outreach to growers through annual grower meetings, commodity group meetings and individual on-farm meetings. Many meetings provide continuing education credits. The Coalition documents member attendance at meetings and documents outreach and education events in reports to the board. The Coalition also works with CURES and commodity groups to create, publish, and

distribute management practice booklets to members. The Coalition maintains a website for members that allows access to management practice information and presents the information at the annual grower meetings. The Coalition intends to continue posting meeting agendas, slide shows and handouts on their webpage for members to review and download. Growers are asked to sign in when attending large meetings and this information is added to a member database maintained by the Coalition. Individual grower meetings are documented in a management practice survey database that records member information, the date of the meeting, and survey results. The Coalition will continue to work with growers to ensure effective outreach and education and will provide a summary of outreach/education meetings and attendees in its annual reports to the board.

Section IV.C.9, Work with the board to ensure members are addressing water quality problems

This section specifies that the third-party needs to work cooperatively with the board to ensure members are taking steps to address water quality problems and to identify members that are not in compliance with the General Order. In its application, the Coalition describes that it has successfully conveyed all information required by the previous conditional waiver program to the board in a timely manner, and, thus, the Coalition is well poised to convey all information as required by the General Order to its members. The Coalition will utilize existing member and survey databases to achieve this section's objectives. Also, the Coalition intends to implement an online system that will allow members to complete the necessary forms and document that they are fulfilling membership responsibilities through the internet. The Coalition will also provide alternative means for those that are not able to utilize online systems by mailing forms and collecting completed forms from those members. Under the previous conditional waiver program, the Coalition has worked cooperatively with the board to identify growers that require additional follow-up by the board (e.g., assistance in identification of operations that need to enroll under the program).

Section IV.C.10, Ensure activities conducted on the Coalition's behalf meet requirements

This section of the General Order requires that the Coalition take ultimate responsibility for ensuring activities conducted by other groups on behalf of the Coalition achieve the order's requirements. In its application, the Coalition provides that it engages with consultants to prepare technical reports and documents according to regulatory requirements on behalf of members and that it accepts full responsibility for all the information submitted to the board.

Section IV.C.11, Collect State Water Board fees and submit them

Under the previous conditional waiver program, the Coalition has successfully collected fees from members and submitted the fees to the State Water Board, as applicable. The Coalition has demonstrated the ability and has stated its intent to continue State Water Board fee collection under the General Order.

***2 – Whether the third-party is a legally defined entity or has a binding agreement among multiple entities that clearly describes the mechanisms in place to ensure accountability to its members.***

The Coalition is an established, California Nonprofit Public Benefit Corporation, which is organized as a 501(c)5. The organization has adopted by-laws and is directed by a volunteer board of directors (BOD). With respect to member rights, the Coalition is organized with voting members and non-voting members. To be a voting member, the person must own or operate irrigated cropland east of the San Joaquin River within Merced, Stanislaus, Tuolumne or Mariposa Counties, or portions of Calaveras County. Voting members must also agree to be subject to third-party water quality regulations set forth by the Central Valley Water Board. Non-voting members include any person that is interested in the purposes of the Coalition, and is

approved by the BOD. As part of the by-laws, the Coalition must have an annual meeting of members, and certain provisions of the by-laws may only be changed through the approval of voting members. Further, three of the eleven directors on the BOD must be voted on by the members themselves, while the others may be appointed. The requirement for an annual meeting with members and that three of the eleven voting directors be voted on by the members will help to ensure that the BOD is accountable to members. As noted in the application, the BOD composition described herein has not been officially approved by the Coalition. However, the Coalition indicates that the BOD has discussed the revision and expects approval at the 28 January 2013 meeting.

***3 – Whether the third-party has binding agreements with any subsidiary group to ensure any third-party responsibilities carried out by the subsidiary group, including the collection of fees, are done so transparently and with accountability to the third party. If the third-party will not rely on any subsidiary group to carry out any of its responsibilities, the third-party must state that in its application letter.***

The Coalition indicates in the application that it does not use other third-party groups at this time to conduct any activities on its behalf. However, if another third-party group is engaged to conduct activities, the Coalition has agreed to accept full responsibility for its actions.

***4 – Whether the third-party has a governance structure that includes a governing board of directors composed in whole or in part of Members, or otherwise provides Members with a mechanism to direct or influence the governance of the third-party through appropriate by-laws.***

The Coalition has described its governance structure and BOD. The BOD is composed of voting and non-voting members. As described above under number 2, the Coalition's expected revision to its by-laws will require that three of the eleven voting directors be elected by Coalition members. This will provide members with a mechanism to influence the governance of the third-party.

cc: Susan Fregien, Central Valley Water Board