

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

Order R5-2012-XXXX

WASTE DISCHARGE REQUIREMENTS GENERAL ORDER
FOR
GROWERS WITHIN THE EASTERN SAN JOAQUIN RIVER WATERSHED
THAT ARE MEMBERS OF THE THIRD-PARTY GROUP

TABLE OF CONTENTS

Findings	1
I. Coverage	14
II. Prohibitions	14
III. Discharge Limitations	14
A. Surface Water Limitations	14
B. Groundwater Limitations	15
IV. Provisions	15
A. General Specifications	15
B. Requirements for Members of the Third-Party Group	15
C. Requirements for the Third-Party Group	17
V. Effective Dates	19
VI. Permit Reopening, Revision, Transfer, Revocation, Termination, and Reissuance	19
VII. Required Reports and Notices – Member	20
A. Notice of Confirmation / Notice of Intent / Membership Application	20
B. Farm Evaluation	21
C. Sediment and Erosion Control Plan	21
D. Annual Nitrogen Budget	21
E. Mitigation Monitoring	22
F. Notice of Termination	22
VIII. Required Reports and Notices – Third-Party	22
A. Application to Serve as a Third-Party Representing Members	22
B. Farm Evaluation Template	23
C. Membership (Participant) List	23
D. Annual Nitrogen Budget Template	23
E. Sediment and Erosion Control Plan Template	23
F. Groundwater Quality Assessment Report and Monitoring Workplans	23
G. Surface Water Exceedance Reports	24
H. Annual Monitoring Report (AMR)	24
I. Surface Water/Groundwater Quality Management Plan (SQMP/GQMP)	24
J. Technical Reports	25
K. Notice of Termination	26
L. Total Maximum Daily Load (TMDL) Requirements	26
IX. Reporting Provisions	26
X. Record-keeping Requirements	27
XI. Annual Fees	27
XII. Time Schedule for Compliance	28

D
R
A
F
T

Figure 1. Map of the Eastern San Joaquin River Watershed Area. 30

Attachment A: Information Sheet

Attachment B: Monitoring and Reporting Program Order (contains appendices)

Attachment C: CEQA Mitigation Measures

Attachment D: Findings of Fact and Statement of Overriding Consideration

Attachment E: Definitions, Acronyms, and Abbreviations

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GROWERS IN THE EASTERN SAN JOAQUIN RIVER WATERSHED
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The California Regional Water Quality Control Board, Central Valley Region (hereafter, Central Valley Water Board), finds that:

Findings

SCOPE AND COVERAGE OF THIS ORDER

- 1 This Order serves as general waste discharge requirements (WDRs) for waste discharges from irrigated lands (or “discharges”) that could affect ground and/or surface waters of the state. The discharges result from irrigation and/or stormwater runoff from commercial irrigated lands. Discharges can reach waters of the state directly or indirectly.¹
- 2 This Order applies to owners and operators of irrigated lands within the Eastern San Joaquin River Watershed that are members of the third-party representing this area (hereinafter “Members”). Although the third-party representative has not yet been selected, this Order contains eligibility requirements for a third-party representative and describes the process by which the Executive Officer may approve a request for third-party representation. The Eastern San Joaquin River Watershed is bounded by the crest of the Sierra Nevada Mountain Range to the east, the Stanislaus River Watershed to the north, the San Joaquin River to the west, and the San Joaquin River Basin boundary to the south. This area is referred to as the “Order watershed area” or “third-party area” in this Order. See Figure 1 for a map of the third-party area.

There are some locations within the Eastern San Joaquin River Watershed where it may be more effective for owners and operators of irrigated lands that are not “Members” to enroll under an irrigated lands regulatory program (ILRP) Order that recognizes a different third-party representative. In these locations, the boundaries of the third-party area overlap with boundaries of a third-party area recognized by a different ILRP Order. Growers are only required to obtain coverage under one ILRP order.

- 3 Owners and operators of irrigated lands that are not Members (referred to in this order generally as “growers,” or “dischargers”), are required to comply with the Water Code, but are not required to join a third-party group. Growers may comply with the Water Code by joining a third party group and enrolling under a general waste discharge requirements order, filing a Report of Waste Discharge (RWD) to obtain individual WDRs, or by ceasing to discharge wastes that may affect the quality of state waters.

¹ Definitions for “waste discharges from irrigated lands,” “waste,” “groundwater,” “surface water,” “stormwater runoff,” “irrigation runoff,” and “commercial,” as well as all other definitions, can be found in Attachment E to this Order. It is important to note that irrigation water, the act of irrigating cropland, and the discharge of irrigation water unto itself is not “waste” as defined by the Water Code, but that irrigation water may contain constituents that are considered to be a “waste” as defined by Water Code section 13050(d).

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- 4 “Irrigated lands” means land irrigated to produce crops or pasture used for commercial purposes including lands that are planted to commercial crops that are not yet marketable (e.g., vineyards and tree crops). Irrigated lands also include nurseries, and privately and publicly managed wetlands.
- 5 “Waste” includes nitrogen, pesticides, soil, silt, sand, clay, rock, metals, salts, boron, and other wastes that may impact the physical properties of water, such as temperature, pH, and dissolved oxygen.
- 6 This Order is not intended to regulate water quality as it travels through or remains on the surface of a Member’s agricultural fields, including, but not limited to, furrows, beds, checks, ancillary structures associated with agricultural operations, and soil pore liquid within the root zone.
- 7 This Order does not apply to agricultural operations where wastes including, but not limited to, whey, cannery wastes, septage, municipal or industrial sludge, municipal biosolids, ash or similar types of waste are proposed to be brought onsite for the purpose of nutrient recycling or disposal. The owner/operator of such irrigated lands must submit a complete Report of Waste Discharge and receive WDRs or a waiver of WDRs from the Central Valley Water Board prior to discharging such waste.
- 8 This Order does not apply to discharges of waste that are regulated under other Water Board issued WDRs or conditional waiver of WDRs. If the other Water Board WDRs/waiver of WDRs only regulates some of the waste discharge activities (e.g., application of treated wastewater to crop land) at the regulated site, the owner/operator of the irrigated lands must obtain regulatory coverage for any discharges of waste that are not regulated by the other WDRs/waiver. Such regulatory coverage may be sought through enrollment under this Order or by obtaining appropriate changes in the owner/operator’s existing WDRs or conditional waiver of WDRs.
- 9 This Order implements the long-term ILRP in the Eastern San Joaquin River Watershed. The long-term irrigated lands program has been conceived as a range of potential alternatives and evaluated in a programmatic environmental impact report (PEIR).² The PEIR was certified by the Central Valley Water Board on 7 April 2011; however, the PEIR did not specify any single program alternative. The regulatory requirements contained within this Order fall within the range of alternatives evaluated in the PEIR. This Order, along with other Orders to be adopted for irrigated lands within the Central Valley, together will constitute the long-term ILRP. Upon adoption of this order, Order R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group Conditional Waiver), is rescinded as applied to irrigated lands within the Eastern San Joaquin River Watershed. Existing Members that had previously enrolled under the Coalition Group Conditional Waiver will be enrolled under this Order upon timely submittal of a Notice of Confirmation (see section VII.A of this Order).

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² ICF International. 2011. *Irrigated Lands Regulatory Program Final Program Environmental Impact Report*. Final and Draft. March. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA
April 2012

GROWERS REGULATED UNDER THIS ORDER

- 10 This Order regulates both landowners and operators of irrigated lands from which there are discharges of waste that could affect the quality of any waters of the state. In order to be covered by this Order, the landowners and operators must also be Members. The third-party group representing Members will assist with carrying out the conditions of this Order. Both the landowner and operator are ultimately responsible for complying with the terms and conditions of this Order.
- 11 The third-party entity proposing to represent Members in the Order watershed area (the third-party) is required to submit to the Central Valley Water Board an application to represent growers within this Order’s coverage area. The third-party representation will become effective upon Central Valley Water Board Executive Officer approval of the third party’s application. The East San Joaquin River Water Quality Coalition served as the third-party group representing owners and operators of irrigated lands within the Order watershed area during the interim irrigated lands regulatory program, Order R5-2006-0053 (Coalition Group Conditional Waiver).
- 12 The third-party will be responsible for fulfilling the regional requirements and conditions (e.g., surface and groundwater monitoring, regional management plan development and tracking) of this Order and associated Monitoring and Reporting Program Order R5-2012-XXXX (MRP). By retaining its third-party membership or establishing a new membership, a Member is agreeing to be represented by the third-party for the purposes of this Order. Any requirements or conditions not fulfilled by the third-party are the responsibility of the individual Member.
- 13 To apply for coverage under this Order, a grower that is not a current Member in the third-party group will have different application requirements depending on the timing of its request for regulatory coverage (see section VII.A of this Order for specific requirements). Growers that enroll within 90 days of the adoption of this Order will enroll under this Order by obtaining membership in the third-party group. This will streamline the initial enrollment process for the bulk of the irrigated agricultural operations within the Eastern San Joaquin River Watershed. Growers who do not enroll within 90 days of adoption of this Order, or whom are prompted to apply by Central Valley Water Board enforcement or inspection, are required to submit a Notice of Intent (NOI) to comply with the terms and conditions of this Order to the Central Valley Water Board and obtain membership with the third-party group. This additional step for late enrollees is intended to provide incentive for growers to enroll promptly. There will be an administrative fee for submitting an NOI to the board. The fee will help recover costs for board efforts to conduct outreach to ensure growers subject to this Order enroll or submit reports of waste discharge.

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REASON FOR THE CENTRAL VALLEY WATER BOARD ISSUING THIS ORDER

- 14 The Eastern San Joaquin River Watershed region has approximately one million acres of cropland under irrigation and approximately 3,900 growers with “waste discharges from irrigated lands,” as defined in Attachment E to this Order. Currently, approximately 165 thousand acres are regulated under the Water Board’s General Order for Existing Milk Cow Dairies (R5-2007-0035) and 538,121 acres are regulated under the Coalition Group Conditional Waiver. Approximately 3,600 growers and 870 thousand associated irrigated acres will require regulatory coverage under this Order or other WDRs or conditional waivers of WDRs.

- 15 The Eastern San Joaquin River watershed region contains all or portions of seven groundwater sub basins and has approximately 3,000 linear miles of surface water courses (including 700 linear miles of named surface water courses) that are, or could be, affected by discharges of waste from irrigated lands. This does not include surface water courses in the foothill and mountainous regions of the third-party area, where there are few irrigated lands operations. Discharges of waste from irrigated lands could adversely affect the quality of the “waters of the state,” as defined in Attachment E to this Order.
- 16 Within the third-party area, there are approximately 830 square-mile sections (over 530,000 acres) of land classified as Department of Pesticide Regulation (DPR) Groundwater Protection Areas. Not all of these square-mile sections of land necessarily contain irrigated agricultural lands. However, DPR identifies these areas as vulnerable to groundwater contamination from the agricultural use of pesticides, based upon either pesticide detections in groundwater or upon the presence of certain soil types (leaching and/or runoff) and a depth to groundwater shallower than 70 feet.
- 17 The Central Valley Water Board’s *Irrigated Lands Regulatory Program Existing Conditions Report* (ECR)³ identifies waters of the state with impaired water quality attributable to or influenced by irrigated agriculture, including within the third-party area. The *Irrigated Lands Regulatory Program Environmental Impact Report* (PEIR) describes that “[f]rom a programmatic standpoint, irrigated land waste discharges have the potential to cause degradation of surface and groundwater....”
- 18 Approximately 25 water bodies encompassing 450 linear miles of surface water courses have been listed as impaired pursuant to Clean Water Act section 303(d)⁴ within the third-party area. Approximately 15 of those water bodies identify the potential source of the impairment as agriculture, and the remaining water bodies identify an unknown source impairment. For example, Berenda Creek, Berenda Slough, Deadman Creek, Dry Creek, Duck Slough, Harding Drain, Highline Canal, Merced River, Mustang Creek, San Joaquin River, Stanislaus River, and the Tuolumne River are listed as impaired by the pesticide chlorpyrifos. Agriculture is identified as the potential source of impairment.
- 19 The Central Valley Water Board’s authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
- 20 Water Code section 13263 requires the Central Valley Water Board to prescribe WDRs, or waive WDRs, for proposed, existing, or material changes in discharges of waste that could affect water quality. The board may prescribe waste discharge requirements although no discharge report under Water Code section 13260 has been filed. The WDRs must implement relevant water quality control plans and the Water Code. The Central Valley Water Board may prescribe general waste discharge requirements for a category of discharges if all the following criteria apply to the discharges in that category:
 - a. The discharges are produced by the same or similar operations.
 - b. The discharges involve the same or similar types of waste.
 - c. The discharges require the same or similar treatment standards.

³ California Regional Water Quality Control Board, Central Valley Region, and Jones and Stokes. 2008. *Irrigated Lands Regulatory Program Existing Conditions Report*. Sacramento, CA.

⁴ 2008-2010 303(d) List.

- d. The discharges are more appropriately regulated under general requirements than individual requirements.

The rationale for developing general waste discharge requirements for irrigated agricultural lands in the Eastern San Joaquin River Watershed includes: (a) discharges are produced by similar operations (irrigated agriculture); (b) waste discharges under this Order involve similar types of wastes (wastes associated with farming); (c) water quality management practices are similar for irrigated agricultural operations; (d) due to the large number of operations and their contiguous location, these types of operations are more appropriately regulated under general rather than individual requirements; and (e) the geology and the climate are similar, which will tend to result in similar types of water quality problems⁵ and similar types of solutions.

- 21 Whether an individual discharge of waste from irrigated lands may affect the quality of the waters of the state depends on the quantity of the discharge, quantity of the waste, the quality of the waste, the extent of treatment, soil characteristics, distance to surface water, depth to groundwater, crop type, management practices and other site-specific factors. These individual discharges may also have a cumulative effect on waters of the state. Waste discharges from some irrigated lands have impaired or degraded and will likely continue to impair or degrade the quality of the waters of the state within the Central Valley Region if not subject to regulation pursuant to the Porter-Cologne Water Quality Control Act (codified in Water Code Division 7).
- 22 Water Code section 13267(b)(1) states: *“(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports. (2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.”*
- 23 Technical reports are necessary to evaluate Member compliance with the terms and conditions of this Order and to assure protection of waters of the state. Consistent with Water Code section 13267, this Order requires the implementation of a monitoring and reporting program (MRP) that is intended to determine the effects of Member waste discharges on water quality, to verify the adequacy and effectiveness of the Order’s conditions, and to evaluate Member compliance with the terms and conditions of the Order. A Member who is covered under this Order must comply with MRP Order R5-2012-XXXX which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or Executive Officer.

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⁵ “Water quality problem” is defined in Attachment E.

- 24 The surface water quality monitoring and trend groundwater quality monitoring under this Order is regional in nature instead of individual field discharge monitoring. The benefits of regional monitoring include the ability to determine whether water bodies accepting discharges from numerous irrigated lands are meeting water quality objectives and to determine whether practices, at the watershed level, are protective of water quality. However, there are limitations to regional monitoring's effectiveness in determining possible sources of water quality problems and assessing individual compliance with this Order's requirements.

Where regional monitoring does not allow the Central Valley Water Board to determine potential sources of water quality problems, identify whether management practices are effective, or to determine whether there are individuals causing exceedances of water quality objectives, this Order requires the third-party to provide technical reports, which may include field specific special studies, at the direction of the Executive Officer. Such technical reports are needed to determine compliance when regional monitoring or other available information is not sufficient to determine compliance or the effectiveness of management practices. Alternatively, it may be necessary for the board to conduct these investigations by obtaining information directly from Members.

- 25 The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains programs of implementation needed to achieve water quality objectives, and references the plans and policies adopted by the State Water Board. The water quality objectives are developed to protect the beneficial uses of waters of the state. Compliance with water quality objectives will protect the beneficial uses listed in Finding 27.
- 26 This Order implements the Basin Plan by requiring compliance with applicable water quality objectives and requiring the prevention of nuisance. The Order requires implementation of a monitoring and reporting program to determine effects of discharges on water quality and the effectiveness of management practices designed to comply with applicable water quality objectives.
- 27 Pursuant to the Basin Plan and State Water Board plans and policies, including State Water Board Resolution 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of waters in the Eastern San Joaquin River Watershed include:
- a. Municipal and Domestic Supply
 - b. Agricultural Supply
 - c. Industrial Service Supply
 - d. Hydropower Generation
 - e. Water Contact Recreation
 - f. Non-Contact Water Recreation
 - g. Warm Freshwater Habitat
 - h. Cold Freshwater Habitat
 - i. Migration of Aquatic Organisms
 - j. Spawning, Reproduction and Development
 - k. Wildlife Habitat
 - l. Freshwater Replenishment
 - m. Industrial Process Supply

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- 28 In May 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy). The purpose of the NPS Policy is to improve the state's ability to effectively manage NPS pollution and conform to the requirements of the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. The NPS Policy requires, among other key elements, an NPS control implementation program's ultimate purpose to be explicitly stated. It also requires implementation programs to, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.
- 29 This Order constitutes an NPS Implementation Program for the discharges regulated by the Order. The ultimate purpose of this program is expressly stated in the goals and objectives for the ILRP, described in the PEIR and Attachment A to this Order. Attachment A, Information Sheet, describes the five key elements required by the NPS Policy and provides justification that the requirements of this Order meet the requirements of the NPS Policy. This Order is consistent with the NPS Policy.
- 30 The United States Environmental Protection Agency adopted the National Toxics Rule (NTR) on 5 February 1993 and the California Toxics Rule (CTR) on 18 May 2000, which was modified on 13 February 2001. The NTR and CTR contain water quality criteria which, when combined with beneficial use designations in the Basin Plans, constitute enforceable water quality standards for priority toxic pollutants in California surface waters.

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CALIFORNIA ENVIRONMENTAL QUALITY ACT

- 31 For purposes of adoption of this Order, the Central Valley Water Board is the lead agency pursuant to CEQA (Public Resources Code sections 21100 et seq.). Pursuant to board direction in Resolutions R5-2006-0053 and R5-2006-0054, a Program Environmental Impact Report (PEIR) was prepared. In accordance with CEQA, the Central Valley Water Board, acting as the lead agency adopted Resolution R5-2011-0017 on 7 April 2011, certifying the PEIR for the Irrigated Lands Regulatory Program.
- 32 This Order relies on the environmental impact analysis contained in the PEIR to satisfy CEQA requirements. The potential responses to this Order by the regulated Members fall within the range of responses identified in the PEIR. Therefore, no other potentially adverse environmental impacts, outside of those considered in the PEIR, have been identified. If it is determined that a grower filing for coverage under this Order could create impacts not considered in the PEIR, individual WDRs would need to be prepared for that grower, along with an additional CEQA analysis, which may tier off the PEIR as necessary. (See Title 14, CCR § 15152).
- 33 The requirements of this Order are based on the elements found in Alternatives 2-6 of the PEIR. The PEIR concludes that implementation of Alternative 2-6 has the potential to cause significant adverse environmental impacts. Those impacts are associated with specific water quality management practices/monitoring wells growers may implement/install in response to regulatory requirements; and also the loss of productive farmland (agriculture resources) due to increased regulatory costs. Attachment A of this Order describes example water quality management practices that may be implemented as a result of this Order and that monitoring wells would be installed as a result of this Order. The types and degrees of implementation will be similar to those described in the PEIR for Alternatives 2-6. Also, because the increased regulatory cost of this Order is expected to fall within the range of costs described for

Alternatives 2-6, significant impacts to agriculture resources under this Order will be similar. Because of these similarities, this Order relies on the PEIR for its CEQA analysis. A listing of potential environmental impacts, the written findings regarding those impacts consistent with § 15091 of the CEQA Guidelines, and the explanation for each finding are contained in a separate Findings of Fact and Statement of Overriding Considerations document (Attachment D), which is incorporated by reference into this Order.

- 34 For the potential environmental impacts identified in Attachment D, this Order requires that Members either avoid the impacts or implement mitigation measures to reduce the potential impacts to a less than significant level. The Monitoring and Reporting Program (MRP) Order, Attachment B, includes a Mitigation Monitoring and Reporting Program to track the implementation of mitigation measures.
- 35 The PEIR finds that none of the program alternatives will cause significant adverse impacts to water quality. Consistent with alternatives in the PEIR, this Order contains measures needed to achieve and maintain water quality objectives and beneficial uses, reduce current pollutant loading rates, and minimize further degradation of water quality. As such, this Order will not cause significant adverse impacts to water quality.

STATE WATER RESOURCES CONTROL BOARD RESOLUTION 68-16

- 36 State Water Resources Control Board (State Water Board) Resolution 68-16 *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (Resolution 68-16 or “antidegradation policy”) requires that a Regional Water Quality Control Board maintain high quality waters of the state unless the board determines that any authorized degradation is consistent with maximum benefit to the people of the state, will not unreasonably affect beneficial uses, and will not result in water quality less than that described in a Regional Water Quality Control Board’s policies (e.g., quality that exceeds applicable water quality objectives). The board must also assure that any activity which discharges a waste to existing high quality waters must meet waste discharge requirements which will result in the best practicable treatment or control (BPTC) of the discharge necessary to assure that pollution, or nuisance will not occur and the highest water quality consistent with the maximum benefit to the people of the state will be maintained.
- 37 The Central Valley Water Board has information in its records that has been collected by the Central Valley Water Board, growers, educational institutions, and others that demonstrates that many water bodies within the Central Valley Region are impaired for various constituents, including pesticides, nitrates, and salts. Many water bodies have been listed as impaired pursuant to Clean Water Act section 303(d). Such impaired water bodies are not high quality waters with respect to those constituents within the meaning of Resolution 68-16, and therefore it is not necessary for the board to analyze discharges to such waters under Resolution 68-16. This Order does not authorize further degradation of such waters.

Appendix A to the PEIR for the Irrigated Lands Program describes that “*there may be cases where irrigated agricultural waste discharges threaten to degrade high quality waters.*” For discharges to water bodies that are high quality waters, this Order is consistent with Resolution 68-16. Attachment A to this Order summarizes applicable antidegradation requirements and provides detailed rationale demonstrating how this Order is consistent with Resolution 68-16. The summary indicates that this Order authorizes limited degradation of high quality waters, not to exceed water quality objectives, threaten beneficial uses, or cause a condition of pollution or nuisance. The Order will also result in the implementation of BPTC by

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those discharging to high quality waters and assure that any change in water quality will be consistent with maximum benefit to the people of the state.

CALIFORNIA WATER CODE SECTIONS 13141 AND 13241

- 38 California Water Code section 13141 states that “*prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.*” Section 13141 concerns approvals or revisions to a water quality control plan and does not necessarily apply in a context where an agricultural water quality control program is being developed through waivers and waste discharge requirements rather than basin planning. On DATE, the Basin Plan was amended to estimate potential costs and sources of financing for the long-term irrigated lands program. The estimated costs were derived by analyzing the six alternatives evaluated in the PEIR. This Order, which implements the Long-term ILRP within the Eastern San Joaquin River Watershed, is based on Alternatives 2-6 of the PEIR; therefore, estimated costs of this Order fall within the Basin Plan cost range.⁶ The total cost of compliance with this Order, e.g., summation of costs for monitoring, reporting, tracking, implementation of management practices, is expected to be 108 million dollars per year. This figure has been estimated using the same study used to develop the Basin Plan cost estimate, which applies to the whole ILRP. The basis for these estimates is provided in the *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*.⁷
- 39 California Water Code section 13260 requires that the Central Valley Water Board consider the following factors, found in section 13241, when considering adoption of waste discharge requirements.
- (a) Past, present, and probable future beneficial uses of water.
 - (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
 - (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
 - (d) Economic considerations.
 - (e) The need for developing housing within the region.
 - (f) The need to develop and use recycled water.

These factors have been considered in the development of this Order. Attachment A, Information Sheet, provides further discussion on the consideration of section 13241 factors.

RELATIONSHIP TO OTHER ONGOING WATER QUALITY EFFORTS

- 40 Other water quality efforts conducted pursuant to state and federal law directly or indirectly serve to reduce waste discharges from irrigated lands to waters of the state. Those efforts will continue, and will be supported by implementation of this Order.

⁶ When compared on a per irrigated acre basis; as the Basin Plan cost range is an estimate for all irrigated lands in the Central Valley versus this Order’s applicability to a portion thereof (irrigated lands in Eastern San Joaquin River Watershed).

⁷ ICF International. 2010. *Draft Technical Memorandum Concerning the Economic Analysis of the Irrigated Lands Regulatory Program*. Draft. July. (ICF 05508.05.) Sacramento, CA. Prepared for: Central Valley Regional Water Quality Control Board, Sacramento, CA

- 41 The Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) has the goal of developing sustainable solutions to the increasing salt and nitrate concentrations that threaten the achievement of water quality objectives in Central Valley surface and groundwater. This Order requires actions that will reduce nitrate discharges (e.g., implementation of nutrient management plans) and should result in practices to reduce salt imported with out-of-basin water supplies and salt loading (e.g., improvement in irrigation and fertilization practices). CV-SALTS may identify additional actions that need to be taken by irrigated agriculture and others to address these constituents. This Order can be amended in the future to implement any policies or requirements established by the Central Valley Water Board resulting from the CV-SALTS process. This Order includes provisions to promote coordination with CV-SALTS and to support the development of information needed for the CV-SALTS process.
- 42 Total Maximum Daily Loads (TMDLs) are established for surface waters that have been placed on the State Water Board's 303(d) list of Water Quality Limited Segments for failure to meet applicable water quality standards. A TMDL, which may be adopted by the Central Valley Water Board as Basin Plan amendments, is the sum of allowable loads of a single pollutant from all contributing point sources and nonpoint sources. The Central Valley is currently developing a pesticide TMDL and organochlorine pesticide TMDL, among others in development. This Order will implement these and other future TMDLs to the extent there are established requirements that pertain to irrigated agriculture, as well as the following approved TMDLs: San Joaquin River Deep Water Ship Channel dissolved oxygen; San Joaquin River salt, boron, selenium, diazinon, and chlorpyrifos.
- 43 The General Order for Existing Milk Cow Dairies (R5-2007-0035) and NPDES Dairy General Permit CAG015001 (Dairy General Orders) regulates discharges of waste to surface waters and groundwater from existing milk cow dairies in the Central Valley. Discharges from irrigated agricultural parcels are regulated by the Dairy General Orders if the owner or operator of the parcel applies dairy waste from its dairy operation. Irrigated agricultural parcels that receive dairy waste from external sources must obtain regulatory coverage for their discharge under this Order or waste discharge requirements that apply to individual growers. The Central Valley Water Board, dairy industry, and the third-party will establish a group to coordinate the surface water and groundwater quality monitoring required of the two orders and coordinate response to identified water quality problems.
- 44 The Central Valley Water Board approved the East San Joaquin Water Quality Coalition Management Plan on 25 November 2008. This plan includes implementation of the approved TMDLs listed in Finding 42. This plan (along with updates and modifications approved by the Executive Officer) will continue to be implemented under this Order to address the surface water quality problems identified therein, unless and until such time the Executive Officer requires modification of the plan or deems it to be complete, as described in this Order.
- 45 Pursuant to part 2.75 of Division 6 of the Water Code (commencing with section 10750), local agencies are authorized to adopt and implement groundwater management plans (hereinafter "local groundwater management plans"), including integrated regional water management plans. The legislation provides recommended components to the plans such as control of saline water intrusion, regulation of the migration of contaminated water, monitoring of groundwater levels and storage, and the development of relationships with regulatory agencies. The information collected through implementation of groundwater management plans can support or supplement efforts to evaluate potential impacts of irrigated agricultural

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discharges on groundwater. This Order requires the third-party to develop regional groundwater monitoring workplans and, where necessary, groundwater quality management plans (GQMPs). The third-party is encouraged to coordinate with local groundwater management plans and integrated regional water management plans, where applicable, when developing regional groundwater monitoring workplans and GQMPs.

- 46 The California Department of Pesticide Regulation (DPR) has developed a Groundwater Protection Program under the authority of the Pesticide Contamination Prevention Act (PCPA) (commencing with Food and Agriculture Code section 13142). The program is intended to prevent contamination of groundwater from the legal application of pesticides. In addition to activities mandated by the PCPA, DPR's program has incorporated approaches to identify areas vulnerable to pesticide movement, develop mitigation measures to prevent pesticide contamination, and monitor domestic drinking water wells located in groundwater protection areas. The Groundwater Protection Program can provide valuable information on potential impacts to groundwater from agricultural pesticides. If necessary, DPR and the county agricultural commissioners can use their regulatory authorities to address any identified impacts to groundwater or surface water attributable to discharges from agricultural fields. In addition, this Order requires the third-party to submit pesticide water quality data (both groundwater and surface water) to DPR, as well as to the Central Valley Water Board.
- 47 The California Department of Food and Agriculture (CDFA) Fertilizer Research and Education Program (FREP) coordinates research to advance the environmentally safe and agronomically sound use and handling of fertilizer materials. Nutrient management is a key component to reducing excess plant nutrients, such as nitrogen, from reaching waters of the state. Nutrient management must take site-specific conditions into consideration in identifying steps that will be taken and practices that will be implemented to minimize nitrate movement through surface runoff and leaching past the root zone. Currently, CDFA is developing a nutrient management training program. This Order requires that the third-party, in consultation with CDFA and other specified agencies, develop a template for an annual nitrogen budget worksheet. Members in vulnerable groundwater areas must use the template to develop annual nutrient budgets. The budgets must be approved by professionals that have completed the CDFA nutrient management training program. This Order leverages CDFA's work with respect to nutrient management training and technical support to the professionals and third-parties that will be developing nutrient management budgets for individual Members.
- 48 The Central Valley Water Board will continue to work cooperatively with the other state agencies to identify and leverage their efforts.

ENFORCEMENT FOR NONCOMPLIANCE WITH THIS ORDER

- 49 California Water Code section 13350 provides that any person who violates Waste Discharge Requirements may be: 1) subject to administrative civil liability imposed by the Central Valley Water Board or State Water Board in an amount of up to \$5,000 per day of violation, or \$10 per gallon if the discharge involves a discharge of pollutants; or 2) be subject to civil liability imposed by a court in an amount of up to \$15,000 per day of violation, or \$20 per gallon. The actual calculation and determination of administrative civil penalties must be set forth in a manner that is consistent with the State Water Board's Water Quality Enforcement Policy.
- 50 The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant

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violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative Members in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. Progressive enforcement actions may begin with informal enforcement actions such as a verbal, written, or electronic communication between the Central Valley Water Board and a Member. The purpose of an informal enforcement action is to quickly bring the violation to the Member's attention and to give the Member an opportunity to return to compliance as soon as possible. The highest level of informal enforcement is a Notice of Violation.

The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Violations of this Order that will be considered a priority include, but are not limited to:

- a) Failure to obtain required regulatory coverage.
- b) A discharge of waste to waters of the state that causes an exceedance of a water quality objective. The Central Valley Water Board intends to use its enforcement discretion and generally not pursue formal enforcement in the event the Member is implementing a Central Valley Water Board approved SQMP or GQMP in good faith.
- c) The discharge of waste to lands not owned, leased, or controlled by the Member without written permission from the landowner.
- d) Failure to implement practices to prevent future exceedances of water quality objectives once made aware of an exceedance.
- e) Falsifying information or intentionally withholding information required by applicable laws, regulations or an enforcement order.
- f) Failure to implement a SQMP/GQMP.
- g) Failure to pay annual fees, penalties, or liabilities.
- h) Failure to monitor or provide information to the third-party as required.
- i) Failure to submit required reports on time.

51 Under this Order, the third-party is tasked with developing monitoring plans, conducting monitoring, developing water quality management plans, and informing Members of requirements. It is intended that the following progressive enforcement steps will generally be taken in the event that the third-party fails to comply with the terms and conditions of this Order or attached MRP:

- a) First notification of noncompliance to the third-party. The Central Valley Water Board intends to notify the third-party of the non-compliance and allow a period of time for the third-party to come back into compliance. This notification may be in the form of a verbal notice, letter, or written notice of violation, depending on the severity of the noncompliance.
- b) Second notification of noncompliance to the third-party and potentially affected Members. The board intends to provide written notice to the third-party and potentially affected Members of the failure to address the first notice.
- c) Failure of the third-party to adequately respond to the second notification. Failure to adequately respond to the second notification may result in partial (e.g., affected areas or Members) or full disapproval of the third-party to act as a lead entity, depending on the severity of noncompliance. Growers that were Members affected by a partial or full third-party disapproval would be required to obtain coverage for their waste discharge under other applicable general waste discharge requirements or submit a Report of Waste Discharge to the Central Valley Water Board.

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GENERAL FINDINGS

- 52 This Order does not authorize violation of any federal, state, or local law or regulation.
- 53 This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the Member shall obtain authorization for an incidental take prior to construction or operation of the project. The Member shall be responsible for meeting all requirements of the applicable Endangered Species Act.
- 54 This Order does not supersede the Central Valley Water Board's Basin Plans and policies, including prohibitions (e.g., pesticides) and implementation plans (e.g., Total Maximum Daily Loads), or the State Water Board's plans and policies.
- 55 As stated in California Water Code section 13263(g), the discharge of waste into waters of the state is a privilege, not a right, and regulatory coverage under this Order does not create a vested right to continue the discharge of waste. Failure to prevent conditions that create or threaten to create pollution or nuisance will be sufficient reason to modify, revoke, or enforce this Order, as well as prohibit further discharge.
- 56 Any instance of noncompliance with this Order constitutes a violation of the California Water Code and its regulations. Such noncompliance is grounds for enforcement action, and/or termination of coverage for waste discharges under this Order, subjecting the discharger to enforcement under the Water Code for further discharges of waste to surface or groundwater.
- 57 All discharges from the irrigated agricultural operation are expected to comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges to storm drain systems or to other courses under their jurisdiction.
- 58 The fact that it would have been necessary to halt or reduce the discharge in order to maintain compliance with this Order shall not be a defense for violations of the Order by the Member.
- 59 This Order is not a National Pollutant Discharge Elimination System Permit issued pursuant to the Federal Clean Water Act. Coverage under this Order does not exempt a facility from the Clean Water Act. Any facility required to obtain such a permit must notify the Central Valley Water Board.
- 60 Water Code section 13260(d)(1)(A) requires persons subject to waste discharge requirements to pay an annual fee established by the State Water Board.
- 61 The Findings of this Order, supplemental information and details in the attached Information Sheet (Attachment A), and the administrative record of the Central Valley Water Board relevant to the Irrigated Lands Regulatory Program, were considered in establishing these waste discharge requirements.
- 62 The Central Valley Water Board has notified interested agencies and persons of its intent to adopt this Order for discharges of waste from irrigated lands within the Eastern San Joaquin

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River Watershed, and has provided them with an opportunity for a public hearing and an opportunity to submit comments.

- 63 The Central Valley Water Board, in a public meeting, heard and considered all comments pertaining to this Order.
- 64 Any person affected by this action of the Central Valley Water Board may petition the State Water Board to review this action. The State Water Board must receive the petition within 30 days of the date on which the Central Valley Water Board adopted this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13260, 13263, and 13267 and in order to meet the provisions contained in Division 7 of the California Water Code and regulations and policies adopted there under; all Members of the third-party group, their agents, successors, and assigns shall comply with the following:

I. Coverage

- 1. Order 2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Coalition Group Conditional Waiver), is hereby rescinded as it applied Members in the Eastern San Joaquin River Watershed discharging waste from irrigated lands to waters of the state.

II. Prohibitions

- 1. The discharge of waste to waters of the state, from irrigated agricultural operations other than those defined in the Findings of this Order, is prohibited.
- 2. The discharge of hazardous waste, as defined in California Water Code section 13173 and Title 23 CCR section 2521(a), respectively, is prohibited.
- 3. The discharge of wastes (e.g., fertilizers, fumigants, pesticides) into groundwater via backflow through a water supply well is prohibited.
- 4. The discharge of any wastes (e.g., fertilizers, fumigants, pesticides) down a groundwater well casing is prohibited.

III. Discharge Limitations

A. Surface Water Limitations⁸

- 1. Wastes discharged from Member operations shall not cause surface water to exceed applicable water quality objectives, unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance. For discharges to high quality surface waters, discharge of wastes shall comply with the applicable requirements of this Order, which will result in the implementation of the Best Practicable Treatment or Control (BPTC).

⁸ These limitations are effective immediately except where Members are implementing an approved Surface Water Quality Management Plan (SQMP) for a specified waste parameter in accordance with an approved time schedule authorized pursuant to sections VIII.I and XII of this Order.

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B. Groundwater Limitations⁹

1. Wastes discharged from Member operations shall not cause the underlying groundwater to exceed applicable water quality objectives, unreasonably affect applicable beneficial uses, or cause a condition of pollution or nuisance. For discharges to high quality groundwater, discharge of wastes shall comply with the applicable requirements of this Order, which will result in the implementation of the BPTC.

IV. Provisions

A. General Specifications

1. The third-party will represent growers that are its Members by assisting its Members in complying with the relevant terms and provisions of this Order, including required monitoring and reporting as described in MRP Order R5-2012-XXXX. However, individual Members of the third-party group continue to bear ultimate responsibility for complying with this Order.
2. Irrigated lands owners/operators with waste discharges to state waters (or “Dischargers”) that are not Members of the third-party group shall not be subject to coverage provided by the terms of this Order, and such Dischargers shall be required to obtain coverage for their waste discharge under individual waste discharge requirements or any applicable general waste discharge requirements that apply to individuals that are not represented by a third-party. See provision C.9 for third-party group requirements associated with this provision.
3. Members who are subject to this Order shall implement water quality management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality objectives.
4. Implementation of monitoring wells or management practices to meet the conditions of this Order at a location or in a manner that could cause an adverse environmental impact as identified in the *Irrigated Lands Regulatory Program, Final Program Environmental Impact Report (PEIR)*¹⁰ shall be mitigated in accordance with the mitigation measures provided in Attachment C of this Order.
5. The provisions of this Order are severable. If any provision of the Order is held invalid, the remainder of the Order shall not be affected.

B. Requirements for Members of the Third-Party Group

1. Members shall comply with all applicable provisions of the California Water Code, the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, and State Water Board plans and policies.
2. All Members shall comply with the attached Monitoring and Reporting Program R5-2012-XXXX, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer.
3. Members who are covered under this Order shall comply with the terms and conditions contained in this Order.

⁹ These limitations are effective immediately except where Members are implementing an approved Groundwater Quality Management Plan (GQMP) for a specified waste parameter in accordance with an approved time schedule authorized pursuant to sections VIII.I and XII of this Order.

¹⁰ On 7 April 2011, the Central Valley Water Board adopted Resolution R5-2011-0017, certifying the PEIR for the long-term irrigated lands regulatory program.



4. Each Member shall participate in third-party outreach events, at least annually, if any of its parcels are in a designated “high vulnerability” area or governed by a SQMP/GQMP. The Member shall review outreach materials to become informed of any water quality problems to address and the management practices that are available to address those issues.
5. All Members shall provide the third-party with information requested for compliance with this Order.
6. All Members shall implement water quality management practices in accordance with any water quality management plans approved by the Central Valley Water Board Executive Officer, and/or as necessary to improve and protect water quality and to achieve compliance with surface and groundwater limitations of this Order (section III.A and B). Water quality management practices can be instituted on an individual basis, or implemented to serve multiple growers discharging to a single location.
7. All Members shall implement sediment discharge and erosion prevention practices to minimize or eliminate the discharge of sediment above natural background levels. Members that have the potential to cause erosion or discharge sediment offsite during irrigation or storm events shall develop a Sediment and Erosion Control Plan as specified in section VII.C below or as directed by the Executive Officer.
8. All Members shall implement practices that minimize excess nutrient application relative to predicted crop need. Members located within a high vulnerability groundwater area for which nitrate is identified as a constituent of concern, shall prepare and implement a farm-specific annual nutrient budget as required by section VII.D of this Order.
9. In addition to the reports identified in section VII of this Order, the Executive Officer may require the Member to submit additional technical reports pursuant to California Water Code section 13267.
10. The requirements prescribed in this Order do not authorize the commission of any act causing injury to the property of another, or protect the Member from liabilities under other federal, state, county, or local laws. However, enrollment under this Order does protect the Member from liability alleged for failing to comply with Water Code 13260.
11. This Order does not convey any property rights or exclusive privileges.
12. This Order shall not create a vested right, and all such discharges of waste shall be considered a privilege, as provided for in Water Code section 13263.
13. The Member understands that pursuant to Water Code section 13267(c), the Central Valley Water Board or its authorized representatives, upon presentations of credentials at reasonable hours, may inspect the facilities of persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the Member is complying with the conditions of this Order. The inspection shall be made with the consent of the Member or owner of the facilities, or if consent is withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with section 1822.50). However, in the event of an emergency affecting the public health and safety, an inspection may be performed without the consent or the issuance of a warrant. The Member

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shall provide the third-party with the phone number(s) of the individual(s) with authority to provide consent to access the property.

14. The Member shall properly operate and maintain in good working order any facility, unit, system, or monitoring device installed to achieve compliance with the Order.
15. Settling ponds, basins, and tailwater recovery systems shall be designed, constructed, and maintained to prevent groundwater degradation, and to prevent erosion, slope failure, and overflow.
16. Where applicable, the Member shall follow state, county or local agency standards with respect to water wells and groundwater quality when constructing new wells, modifying existing wells, or destroying wells. Absent such standards, at a minimum, the Member shall follow the standards and guidelines described in the California Department of Water Resources' *Water Well Standards (Bulletins 74-81 & 74-90 combined)*.
17. The Member shall maintain a copy of this Order at the primary place of business, or the Member's headquarters for its farming operation so as to be available at all times to operations personnel. The Member, landowner, and his/her designee shall be familiar with the content of this Order.
18. The Member, or the third-party on its behalf as applicable, shall submit all required documents in accordance with section IX of this Order.
19. Members shall implement water quality management practices that meet the following farm management performance standards:
 - a. Minimize waste discharge offsite in surface water,
 - b. Minimize percolation of waste to groundwater,
 - c. Protect wellheads from surface water intrusion.

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C. Requirements for the Third-Party Group

In order to remain eligible to serve as a third-party representative to Members, the third-party shall perform the following:

1. Provide the Central Valley Water Board documentation of its organizational or management structure. The documentation shall identify persons responsible for ensuring that program requirements are fulfilled. The documentation shall be made readily available to Members.
2. Prepare annual summaries of expenditures of fees and revenue used to comply with this Order. The summaries shall be provided to or made readily available to Members.
3. If the third-party group receives a notice of violation (NOV) from the Central Valley Water Board, the third-party must provide to Members in the area addressed by the NOV appropriate information regarding the reason(s) for the violation. The notification must be provided to all Members within the area affected by the NOV within thirty (30) days of receiving the NOV from the board. The third-party group must provide confirmation to the board of each notification. A summary of all notices of violation received by the third-party group must be provided to all Members annually.
4. Develop and implement plans to track and evaluate the effectiveness of water quality management practices, pursuant to approved Surface Water Quality Management Plans and Groundwater Quality Management Plans.

5. Provide timely and complete submittal of any plans or reports required by this Order.
6. Conduct required water quality monitoring and assessments in conformance with quality assurance/quality control requirements. Provide timely and complete submittal of any reports required by this Order.
7. Within 30 days of receiving an NOA from the Central Valley Water Board (as described in section VIII.A), inform Members of this Order's requirements by providing a notice of confirmation form to be completed by each Member. Provide to the Central Valley Water Board a list of enrolled growers who have submitted a completed notice of confirmation per the requirements given in section VIII.C.
8. Within 60-days after receiving the Farm Evaluation from its Members as specified in section VII.B below, the third-party shall notify the sub-set of Members that are required to prepare and implement a Sediment and Erosion Control Plan based on information contained in the Farm Evaluation. The third-party's determination of whether or not a Member is required to prepare a Sediment and Erosion Control Plan shall be based on the Member's potential to discharge sediment to surface waters or cause erosion, and other appropriate factors that are identified on the Farm Evaluation Template.
9. Conduct education and outreach activities to inform Members of program requirements and water quality problems, including exceedances of water quality objectives or degradation of water quality, identified by the third-party or Central Valley Water Board. The third-party shall:
 - a. Maintain attendance lists for outreach events, provide Members with information on water quality management practices that will address water quality problems and minimize the discharge of wastes from irrigated lands, and provide informational materials on potential environmental impacts of water quality management practices to the extent known by the third-party group.
 - b. Provide an annual summary of education and outreach activities to the Central Valley Water Board. The annual summary shall include copies of the educational and management practice information provided to the growers. The annual summary must report the total number of growers who attended the outreach events, estimate the number of growers that did not attend the events, and describe the process used to ensure those growers who did not attend outreach events were provided the information discussed at the outreach events.
10. Work cooperatively with the Central Valley Water Board to ensure all Members are providing required information and taking necessary steps to address exceedances or degradation identified by the third-party or board. As part of the Annual Monitoring Report, provide an annual list to the Central Valley Water Board of growers who have: (1) failed to implement improved water quality management practices within the timeframe specified by an applicable SQMP/GQMP and failed to achieve compliance with the surface or groundwater limitations (section III); (2) failed to respond to an information request associated with any applicable SQMP/GQMP; (3) failed to participate in the third-party's site-specific or representative monitoring studies required by the Central Valley Water Board for which the third-party is the lead; or (4) failure to submit required fees to the third-party.
11. Ensure that any activities conducted on behalf of the third-party by subsidiary groups (e.g., subwatershed group) meet the requirements of this Order. The third-party is responsible for any activities conducted on its behalf.
12. Collect any fees from Members required by the State Water Board pursuant to the fee

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schedule contained in Title 23 CCR. Such fees shall then be submitted to the State Water Board.

V. Effective Dates

1. This Order is effective upon adoption by the Central Valley Water Board on **day month 2012** and remains in effect unless rescinded or revised by the Central Valley Water Board.
2. Regulatory coverage under this Order for discharges of waste from Members already enrolled under Order R5-2006-0053 is effective upon adoption by the Central Valley Water Board. Regulatory coverage under this Order is automatically terminated, if a NOC is not received by the third-party from the currently enrolled Member within ninety (90) days of adoption of this Order.
3. Regulatory coverage for Dischargers not already enrolled under Order R5-2006-0053 as of the date of adoption of this Order can be obtained directly through obtaining membership in the third-party group within ninety (90) days of adoption of this Order. Regulatory coverage is effective when the third-party notifies the Central Valley Water Board that the Discharger's application for membership has been accepted.
4. After the initial 90-day period, regulatory coverage is effective upon notification by the Central Valley Water Board that this Order applies to the grower through the issuance of a Notice of Applicability (NOA). The Central Valley Water Board shall only issue a Notice of Applicability after it has received a Notice of Intent (NOI) as required by section VII.A, and after the Central Valley Water Board has received notification from the third-party that the Discharger is a Member. The Discharger must pay any applicable State Water Board administrative fees associated with the filing of NOIs.

VI. Permit Reopening, Revision, Transfer, Revocation, Termination, and Reissuance

1. This Order may be reopened to address any changes in state statutes, regulations, plans, or policies that would affect the water quality requirements for the discharges, including, but not limited to, the Central Valley Water Board *Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins*.
2. The filing of a request by the third-party on behalf of its Members for modification, revocation and re-issuance, or termination of the Order, or notification of planned changes or anticipated noncompliance, does not stay any condition of the Order.
3. The third-party, on behalf of its Members, shall provide to the Executive Officer any information which the Executive Officer may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the Order, or to determine compliance with the requirements of this Order that apply directly to the third-party. Members shall provide to the Executive Officer, any information which the Executive Officer may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the Order as applied to the individual Member, or to determine compliance with the provisions of this Order that apply directly to the Member.
4. After notice and opportunity for a hearing, the Order may be terminated or modified for cause as applied to individual Members identified by the Central Valley Water Board. Cause for such termination or modification, includes, but is not limited to:

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- a. Violation of any term or condition contained in the Order;
- b. Obtaining the Order by misrepresentation; or
- c. Failure to fully disclose all relevant facts.

A Member's regulatory coverage shall be automatically revoked if the Notice of Confirmation is not timely submitted (see section VII.A).

5. After notice and opportunity for a hearing, the approval of the third-party to act as a lead entity representing Members may be partially (e.g., affected areas or Members) or fully revoked. Cause for such termination or modification includes, but is not limited to consideration of the factors in Finding 51 of this Order, and/or:
 - a. Violation of any term or condition contained in the Order that applies directly to the third-party;
 - b. Third-party misrepresentation;
 - c. Failure by the third-party to fully disclose all known relevant facts; or
 - d. A change in any condition that results in the third-party's inability to properly function as the third-party entity representing Member interests or in facilitating Member compliance with the terms and conditions of this Order.
6. The Central Valley Water Board will review this Order periodically and may revise this Order when necessary.

VII. Required Reports and Notices – Member

The Central Valley Water Board or the Executive Officer may require any of the following reports and notices to be submitted electronically as long as the electronic format is reasonably available to the Member, and only to the extent that the Member has access to the equipment that allows for them to submit the information electronically. If the Member does not have such access, reports and notices must be submitted by mail. Reports and notices shall be submitted in accordance with section IX, Reporting Provisions, as well as MRP Order R5-2012-XXXX. Members must prepare and maintain the following reports as instructed below, and shall submit or make available such reports to the third-party or the Central Valley Water Board as identified below.

A. Notice of Confirmation / Notice of Intent / Membership Application

1. To confirm coverage under this Order, Members that, as of the effective date of this Order, are enrolled under Order R5-2006-0053 must submit a completed notice of confirmation (NOC) to the third-party within 90 days of adoption of the Order. The third-party will provide a NOC form to Members within 30 days of receiving an NOA (see section VIII.A) from the Central Valley Water Board.
2. Within 90 days of this Order's effective date, all other growers within this Order's boundaries must become Members of the third-party to avoid additional fees and administrative requirements (see VII.A.3 below). To obtain membership, a grower must submit a completed third-party Membership application to the third-party group. Upon submittal of a complete application, the third-party group may confirm membership, after which the Member will be considered covered under this Order.
3. Beginning 91 days after this Order's effective date, any growers within this Order's boundaries that are not yet Members must submit (1) a completed Notice of Intent (NOI) to the Central Valley Water Board to comply with the conditions of this Order, (2) any required State Water

Board administrative processing fee for the NOI, and (3) a Membership application to the third-party group. Upon submittal of a complete NOI, and after receiving confirmation from the third-party group that the grower is now a Member, the Central Valley Water Board Executive Officer may then issue a Notice of Applicability (NOA), after which the Member will be considered covered under this Order. In lieu of issuing an NOA, the Executive Officer may deny the NOI and require the submittal of a report of waste discharge or issue an NOA for regulatory coverage under any applicable general waste discharge requirements for individual dischargers not represented by a third-party.

4. As an alternative to receiving regulatory coverage under this Order, a discharger may submit a report of waste discharge in accordance with Water Code section 13260 or a Notice of Intent for regulatory coverage under any applicable general waste discharge requirements for individual dischargers not represented by a third-party.

B. Farm Evaluation

Within 60-days of Executive Officer approval of the Farm Evaluation Template developed by the third-party, the Member shall complete a Farm Evaluation and submit a copy of the completed Farm Evaluation to the third-party group. A copy of the Farm Evaluation shall also be maintained at the Member's farming headquarters or primary place of business, and must be produced upon request by Central Valley Water Board staff. By 1 March of each year, the Member must update its Farm Evaluation and submit it to the third-party.

C. Sediment and Erosion Control Plan

If the Member is required to develop a Sediment and Erosion Control Plan, the Member will be notified by the third-party within 60-days after submittal of its Farm Evaluation. Notifications shall also include a copy of the Sediment and Erosion Control Plan Template. Upon notification by the third-party or Executive Officer that the Member is required to develop a Sediment and Erosion Control Plan, the Member will have 60-days to complete a Sediment and Erosion Control Plan. A copy of the Sediment and Erosion Control Plan shall be maintained at the farming operations headquarters or primary place of business; and must be produced, if requested, should Central Valley Water Board staff, or an authorized representative, conduct an inspection of the Member's irrigated lands operation.

D. Annual Nitrogen Budget

Members located within a high vulnerability groundwater area for which nitrate is identified as a constituent of concern must prepare or have prepared a Proposed Annual Nitrogen Budget Worksheet(s) for the upcoming year, and a Final Annual Nitrogen Budget(s) for the previous crop year in accordance with the Annual Nitrogen Budget Worksheet template approved by the Executive Officer as described in section VI.C of the MRP. The Proposed Annual Nitrogen Budget Worksheet(s) must be prepared or approved by a certified nutrient management plan specialist. Certified nutrient management plan specialists include Professional Soil Scientists, Professional Agronomists, Crop Advisors¹¹ certified by the American Society of Agronomy, or Technical Service Providers certified in nutrient management in California by the National Resource Conservation Service (NRCS). By 1 March of each year, beginning the year after the Central Valley Water Board Executive Officer approves an Annual Nitrogen Budget worksheet template developed by the third-party, Members subject to this requirement shall submit to the third-party the Final Annual Nitrogen

¹¹ Should the California Department of Food and Agriculture and the California Certified Crop Adviser's establish a specific nutrient management certification, any Certified Crop Adviser who prepares a nutrient management plan must have a nutrient management certification.

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Budget(s) for the previous crop year, and the corresponding Proposed Annual Nitrogen Budget(s) that was prepared for the previous crop year. Proposed and Final Annual Nitrogen Budget(s) shall be maintained at the Member's farming operations headquarters or primary place of business; and, must be produced, if requested by board staff or, should board staff or authorized representative conduct an inspection of the Member's irrigated agricultural operation.

E. Mitigation Monitoring

As specified in this Order, certain members are required to implement the mitigation measures included in Attachment C. Such Members shall submit mitigation monitoring by 1 March of each year to the third-party. Mitigation monitoring shall include information on the implementation of CEQA mitigation measures, including the mitigation measure implemented, potential environmental impact the mitigation measure addressed, location of the mitigation measure [parcel number, county], and any steps taken to monitor the ongoing success of the measure.

F. Notice of Termination

If the Member wishes to terminate coverage under this Order and withdraw its membership from the third-party, the Member shall submit a complete notice of termination (NOT) to the Central Valley Water Board and the third-party. Termination of regulatory coverage will occur on the date specified in the NOT, unless the Central Valley Water Board specifies otherwise. All discharges of waste to surface and groundwaters shall cease before the date of termination, and any discharges on or after this date shall be considered in violation of the California Water Code, unless other WDRs or waivers of WDRs regulate the discharge.

VIII. Required Reports and Notices – Third-Party

The Central Valley Water Board or the Executive Officer may require any of the reports and notices to be submitted electronically, as long as the electronic format is reasonably available to the third-party. The third-party shall submit reports and notices in accordance with section IX, Reporting Provisions. The third-party must prepare the following reports:

A. Application to Serve as a Third-Party Representing Members

Within 30 days of the effective date of this Order, the third-party must submit a letter to the Executive Officer requesting that the third-party serve as a third-party representing Members to carry out the third-party responsibilities. The Executive Officer will consider the following factors in determining whether to approve the request by issuing a Notice of Applicability (NOA) to the third-party.

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.



5. Should the Central Valley Water Board terminate an organization's role as a third-party or the third-party submit a notice of termination, the Executive Officer will apply the above factors in evaluating the request of any successor organization to serve as a third-party and determining whether to approve the request by issuing an NOA.

B. Farm Evaluation Template

The third-party shall submit a Farm Evaluation Template to the Central Valley Water Board within 90-days from receiving an NOA from the board. The third-party shall distribute the Farm Evaluation Template to its Members within 30-days of approval by the Central Valley Water Board Executive Officer. Requirements for the Farm Evaluation Template are described in MRP section VI.A.

C. Membership (Participant) List

The third-party shall submit a list of its Members to the Central Valley Water Board within 120-days of receiving an NOA from the board then annually by 31 July of each year. The membership list shall identify Members. This list shall also identify growers that have had their membership revoked and Members that are pending revocation. The membership list shall contain, at a minimum, the following information for each member: all parcel numbers covered under the membership, the county of each parcel, the number of irrigated acres for each parcel, the member's name, mailing address, and the contact name and phone number of the individuals authorized to provide access to the enrolled parcels. In lieu of providing Members' phone numbers as part of the membership list, the third-party may provide the office contact name(s) and phone number(s) of a representative of the third-party. Any listed third-party office contact must be available for Central Valley Water Board staff to contact Monday through Friday (except established state holidays) from 8 am to 5 pm.

D. Annual Nitrogen Budget Template

The third-party shall submit an Annual Nitrogen Budget template to the Central Valley Water Board and the Central Valley Salinity Coalition within 90-days of receiving an NOA from the board. The Executive Officer may approve the template or require revisions thereto. Within 60-days of approval by the Executive Officer, the third-party shall distribute the Annual Nitrogen Budget template to its Members in high groundwater vulnerability areas. Requirements for the Annual Nitrogen Budget Template are described in MRP section VI.C.

E. Sediment and Erosion Control Plan Template

The third party shall submit a Sediment and Erosion Control Plan Template to the Central Valley Water Board within 120-days of receiving an NOA from the board. The Executive Officer may approve the template or require revisions thereto. Upon approval by the Central Valley Water Board Executive Officer, the Sediment and Erosion Control Plan Template shall be available for distribution to Members pursuant to section VII.C of this Order. Requirements for the Sediment and Erosion Control Plan Template are described in MRP section VI.B.

F. Groundwater Quality Assessment Report and Monitoring Workplans

The Groundwater Quality Assessment Report and Groundwater Quality Monitoring workplans shall be submitted to the Central Valley Water Board and Central Valley Salinity Coalition within one (1) year of receiving an NOA from the board. The Groundwater Assessment Report shall include the elements described in MRP section IV.B, and the Groundwater Monitoring workplans shall include the elements described in MRP section IV.D. The third party shall implement the Groundwater Monitoring workplans upon approval by the Executive Officer.

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G. Surface Water Exceedance Reports

The third-party shall provide exceedance reports if surface water monitoring results show exceedances of adopted numeric water quality objectives or trigger limits, which are based on interpretations of narrative water quality objectives. Surface water exceedance reports shall be submitted in accordance with the requirements described in section V.C of the MRP.

H. Annual Monitoring Report (AMR)

The third-party shall submit the AMR to the Central Valley Water Board, Secretary of the California Department of Food and Agriculture, Director of the California Department of Pesticide Regulation, and the Executive Director of the Central Valley Salinity Coalition by 1 May of each year.¹² The AMR shall include the elements described in section V.B of the MRP.

I. Surface Water/Groundwater Quality Management Plan (SQMP/GQMP)

1. SQMP/GQMP General Requirements

SQMP/GQMPs submitted by the third-party shall conform to the requirements provided in MRP, Appendix MRP-2. Existing SQMPs that were developed and approved under the previous Order (Conditional Waiver Order R5-2006-0053) continue to apply under this Order and shall be implemented as previously approved. Changes to any management plan may be implemented by the third-party only after approval by the Executive Officer. The Executive Officer may require changes to a management plan if the current management plan approach is not making adequate progress towards addressing the water quality problem or if the information reported by the third-party does not allow the Central Valley Water Board to determine the effectiveness of the management plan. Members shall comply with the revised management plans once they are approved by the Executive Officer.

For newly triggered SQMP/GQMPs, the third-party shall submit a SQMP/GQMP to the Central Valley Water Board within forty-five (45) days. For any SQMP or GQMP that addresses salt or nitrates, the SQMP or GQMP shall also be submitted to the Central Valley Salinity Coalition. This 45-day period begins the first business day after the third party's receipt of the field or laboratory results that reported the triggering exceedance. The Central Valley Water Board will post the proposed SQMP/GQMP for a public review and comment period. Stakeholder comments will be considered by Central Valley Water Board staff to determine if additional revisions are appropriate. The third-party may, at its discretion, implement outreach or monitoring contained in a proposed management plan before approval. Members shall comply with the management plans once they are approved by the Executive Officer.

The third-party shall ensure continued implementation of SQMP/GQMPs until closed by the Executive Officer pursuant to the provisions contained in the attached Monitoring and Reporting Plan, Appendix MRP-2, section III. The third-party shall submit a progress report annually in compliance with the provisions contained in the attached Monitoring and Reporting Plan, Appendix MRP-2, section I.F.

2. Conditions Requiring Preparation of SQMP/GQMP

Surface Water Quality Management Plan (SQMP)

¹² The Central Valley Water Board retains sole responsibility for reviewing the AMR and determining compliance with the applicable provisions of this Order.

A SQMP shall be developed by the third-party where: (1) an applicable water quality objective or applicable water quality trigger limit is exceeded (considering applicable averaging periods¹³) twice in a three year period for the same constituent at a monitoring location (trigger limits are described in section VII of the MRP) and irrigated agriculture may cause or contribute to the exceedances; (2) the Basin Plan requires development of a surface water quality management plan for a constituent or constituents discharged by irrigated agriculture, or (3) the Executive Officer determines that irrigated agriculture may be causing or contributing to a trend of degradation of a high quality surface water that may threaten applicable Basin Plan beneficial uses.

Groundwater Quality Management Plan (GQMP)

A GQMP shall be developed by the third-party where: (1) there is a confirmed exceedance¹⁴ (considering applicable averaging periods) of a water quality objective or applicable water quality trigger limit (trigger limits are described in section VII of the MRP) in a groundwater well and irrigated agriculture may cause or contribute to the exceedance; (2) in high vulnerability groundwater areas to be determined as part of the Groundwater Assessment Report process (see MRP section IV); (3) the Basin Plan requires development of a groundwater quality management plan for a constituent or constituents discharged by irrigated agriculture; or (4) the Executive Officer determines that irrigated agriculture may be causing or contributing to a trend of degradation of a high quality groundwater that may threaten applicable Basin Plan beneficial uses.

If the extent of Member contribution to a water quality exceedance(s) or degradation trend is unknown, the third-party may propose activities to be conducted to determine the cause, or eliminate irrigated agriculture as a potential source instead of initiating a management plan. Requirements for source identification studies are set forth in MRP Order R5-2012-XXXX, Appendix MRP-2, section I.G.

3. SQMP/GQMP Not Required

At the request of the third-party or upon recommendation by Central Valley Water Board staff, the Executive Officer may determine that the development of a SQMP/GQMP is not required. Such a determination may be issued if there is sufficient evidence indicating that Members discharging waste to the affected surface or groundwater are meeting the water quality limitations given in section III of this Order.

J. Technical Reports

Where monitoring required by this Order is not effective in allowing the board to determine the practices and operations that may be contributing to violations of the discharge limitations or the effectiveness of water quality management practices being implemented, the Executive Officer may require technical reports be provided to determine the effects of irrigated agricultural operations or implemented management practices on surface water or groundwater quality. If requested by the

¹³ Exceedances of water quality objectives or water quality triggers will be determined based on available data and application of the appropriate averaging period. The averaging period is typically defined in in the Basin Plan, as part of the water quality standard established by the USEPA, or as part of the criteria being used to interpret narrative objectives. If averaging periods are not defined in the Basin Plan, USEPA standard, or criteria, or approved water quality trigger, the Central Valley Water Board will use the best available information to determine an appropriate averaging period.

¹⁴ A "confirmed exceedance of a water quality objective in a groundwater well" means that the monitoring data are determined to be of the appropriate quality and quantity necessary to verify that an exceedance has occurred.



Executive Officer, the request will be made in accordance with Water Code section 13267, which requires that the burden for the report, including costs, must bear a reasonable relationship to the Central Valley Water Board's need for the report and benefits to be obtained from the report.

K. Notice of Termination

If the third-party wishes to terminate its role in carrying out the third-party responsibilities set forth in section VIII of this Order and other applicable provisions, the third-party shall submit a notice of termination letter to the Central Valley Water Board and all of its Members. Termination of the third-party will occur 30-days from submittal of the notice of termination letter, unless otherwise specified in the letter. With its notice of termination sent to its Members, the third-party shall inform its Members of their obligation to obtain coverage under other WDRs or a waiver of WDRs for their discharges, or inform such Members that they shall cease all discharges of waste to surface and groundwaters.

L. Total Maximum Daily Load (TMDL) Requirements

Approved TMDLs in the Basin Plan that apply to water bodies within the third-party's geographic area and have allocations for irrigated agriculture shall be implemented in accordance with the applicable Basin Plan provisions. Where required, the third-party shall coordinate with Central Valley Water Board staff to develop a monitoring design and strategy for TMDL implementation. Where applicable, SQMPs shall address TMDL requirements.

IX. Reporting Provisions

1. Members and the third-party are required to submit required reports and notices in accordance with the requirements in this Order and attached Monitoring and Reporting Program Order R5-2012-XXXX, unless otherwise requested by the Executive Officer.
2. All reports shall be accompanied by a cover letter containing the certification specified in section IX.3 below. The cover letter shall be signed by a person identified below, or by a duly authorized representative of that person:

For all reports:

- a. For a sole proprietorship: by the proprietor;
- b. For a partnership: by a general partner;
- c. For a corporation or the third-party: by a principal executive officer of at least the level of senior vice-president; or

A person is a duly authorized representative only if:

- i. The authorization is made in writing by a person described in subsection a, b, or c of this provision; and
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility or organization, such as the position of manager. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and
 - iii. The written authorization is submitted to the Central Valley Water Board.
3. Each person signing a report required by this Order or other information requested by the Central Valley Water Board shall make the following certification:

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“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”

4. All reports prepared and submitted to the Executive Officer in accordance with the terms of this Order will be made available for public inspection at the offices of the Central Valley Water Board, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including the Public Records Act, Water Code section 13267(b)(2), and the California Food and Agriculture Code. If the third-party or a Member or the third-party asserts that all or a portion of a report is subject to an exemption from public disclosure, it must clearly indicate on the cover of the report that it asserts that all or a portion of the report is exempt from public disclosure. The complete report must be submitted with those portions that are asserted to be exempt in redacted form, along with separately-bound unredacted pages (to be maintained separately by staff). The Member/third-party shall identify the basis for the exemption. If the Executive Officer cannot identify a reasonable basis for treating the information as exempt from disclosure, the Executive Officer will notify the Member/third-party that the information will be placed in the public file unless the Central Valley Water Board receives, within 10 calendar days, a satisfactory explanation supporting the claimed exemption. Data on waste discharges, water quality, meteorology, geology, and hydrogeology shall not be considered confidential. NOIs shall generally not be considered exempt from disclosure.
5. To the extent feasible, all reports submitted by Members shall be submitted electronically to irrlands@waterboards.ca.gov, unless the Member is unable to submit the report electronically. If unable to submit the report electronically, the grower shall mail or personally deliver the report to the Central Valley Water Board. All reports from the third-party shall be submitted electronically to its Central Valley Water Board-assigned staff liaison. Upon notification by the Central Valley Water Board, all reports shall be submitted directly into an online reporting system, to the extent feasible.

X. Record-keeping Requirements

The Member and the third-party shall maintain any reports or records required by this Order for five years. The maintained reports or records shall be made available to the Central Valley Water Board upon request. This includes all monitoring information, calibration and maintenance records of sampling equipment, copies of reports required by this Order, and records of all data used to complete the reports. Records shall be maintained for a minimum of five years from the date of sample, measurement, report, or application. This five-year period shall be extended during the course of any unresolved litigation regarding the discharge or when requested in writing by the Executive Officer.

XI. Annual Fees

1. Water Code section 13260(d)(1)(A) requires persons subject to waste discharge requirements to pay an annual fee established by the State Water Resources Control Board (State Water Board).

- Members shall pay an annual fee to the State Water Board in compliance with the Waste Discharge Requirement fee schedule set forth at 23 CCR section 2200. The third-party is responsible for collecting these fees from Members and submitting them to the board on behalf of Members.

XII. Time Schedule for Compliance

When a SQMP or GQMP is required pursuant to the provisions in section VIII.I, the following time schedules shall apply as appropriate in order to allow Members sufficient time to achieve compliance with the surface and groundwater limitations described in section III of this Order. The Central Valley Water Board may modify these schedules based on evidence that meeting the compliance date is technically or economically infeasible, or when evidence shows that compliance by an earlier date is feasible (modifications will be made per the requirements in section VI of this Order). Any applicable time schedules for compliance established in the Basin Plan supersedes the schedules given below (e.g., time schedules for compliance with salinity standards that may be established in future Basin Plan amendments through the CV-SALTS process, or time schedules for compliance with water quality objectives subject to an approved TMDL).

Surface water: The time schedule identified in the SQMP for compliance with Surface Water Limitation III.A must be as short as practicable, but may not exceed 10 years from the date the SQMP is submitted for approval by the Executive Officer. The proposed time schedule in the SQMP must be supported with appropriate technical or economic justification as to why the proposed schedule is as short as practicable.

Groundwater: The time schedule identified in a GQMP for compliance with Groundwater Limitation III.B must be as short as practicable, but may not exceed 10 years from the date the GQMP is submitted for approval by the Executive Officer. The proposed time schedules in the GQMP for complying with water quality objectives must be supported with appropriate technical or economic justification as to why the proposed schedules are as short as practicable.

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This Order becomes effective on **DATE** and remains in effect unless rescinded or revised by the Central Valley Water Board.

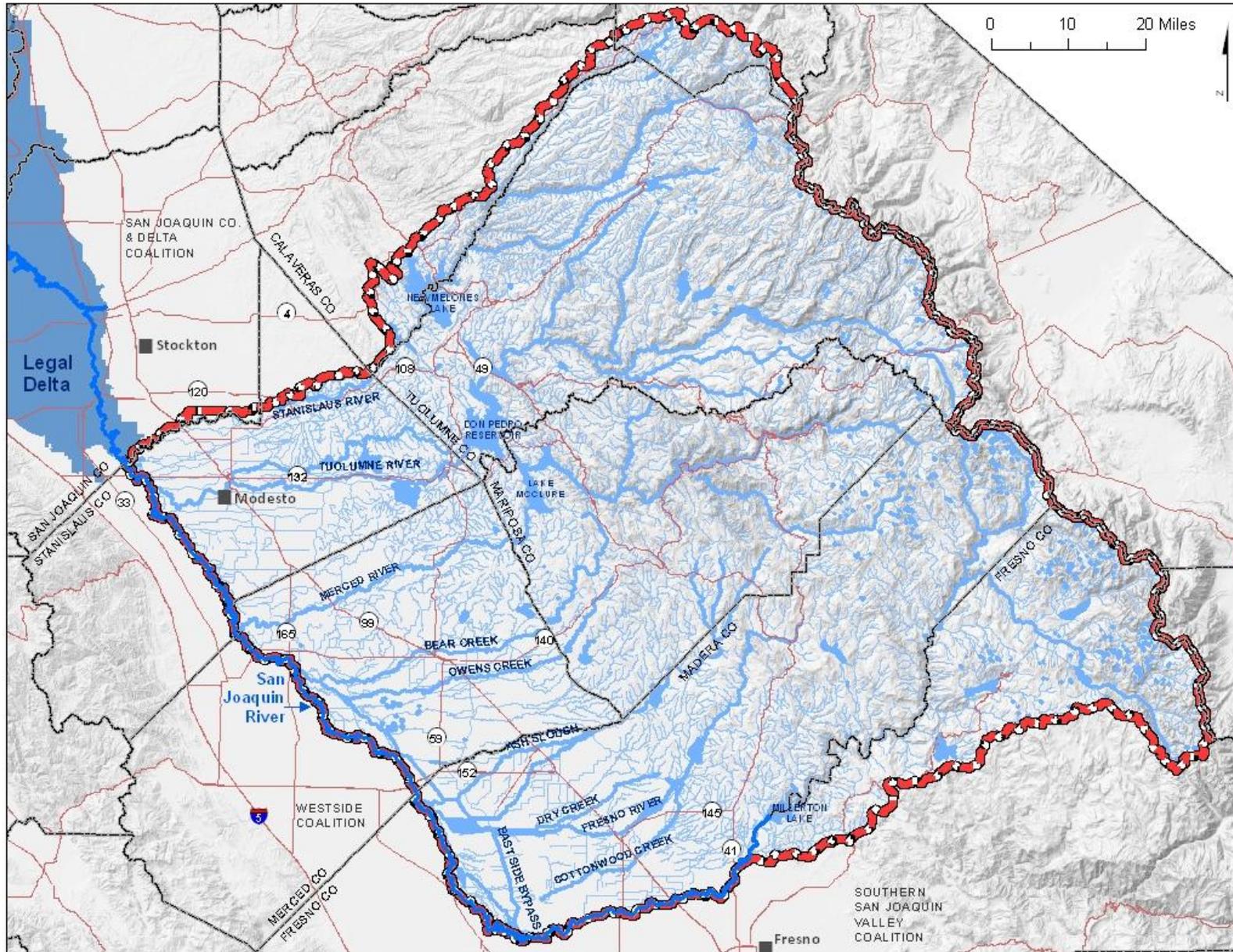
I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on **DATE**.

PAMELA C. CREEDON, Executive Officer

Date

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Figure 1. Map of the Eastern San Joaquin River Watershed Area.



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