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Water Quality Coalition  
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9 BEFORE THE STATE WATER RESOURCES CONTROL BOARD  
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11 In the Matter of Waste Discharge Requirements  
General Order No. R5-2012-0116 For Growers  
12 Within the Eastern San Joaquin River  
Watershed That Are Members of the Third-  
13 Party Group.

SWRCB/OCC File Nos. A-2239(a)-(c)

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

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24 The East San Joaquin Water Quality Coalition (Coalition) is the approved third-party to  
25 represent growers within the Eastern San Joaquin River Watershed that are subject to Waste  
26 Discharge Requirements General Order for Growers Within the Eastern San Joaquin River  
27 Watershed That Are Members of the Third-Party Group, Order No. R5-2012-0116 (General  
28 Order). Accordingly, the Coalition is the real party in interest on behalf of its grower members

1 that are subject to the terms and conditions of the General Order. On behalf of its grower  
2 members, the Coalition submits the following responses to the Petition of Asociación de Gente  
3 Unida por el Agua (AGUA), Fairmead Community and Friends, and Planada en Accion  
4 (Petition A-2239(a), referred to as AGUA Petition); and California Sportfishing Protection  
5 Alliance and California Water Impact Network (Petition A-2239(b), referred to as CSPA Petition)  
6 (collectively referred to as Petitioners).<sup>1</sup> The petitions in question challenge the General Order  
7 adopted by the Central Valley Regional Water Quality Control Board (Regional Board) on  
8 December 7, 2012.<sup>2</sup>

### 9 I. FACTUAL BACKGROUND

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

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

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

27 <sup>2</sup> The General Order was subsequently revised on October 3, 2013. The October 2013 revisions do not impact the  
28 challenges contained in the AGUA Petition or the CSPA Petition, and are not relevant to the response contained  
herein.

1 water quality from irrigated lands in the Eastern San Joaquin River Watershed, and contains new  
2 requirements for the protection of groundwater from irrigated agriculture in the same watershed  
3 area. Pursuant to the terms of the General Order, the Coalition submitted a Third-Party  
4 application for Waste Discharge Requirements General Order R5-2012-0116 for Growers in the  
5 Eastern San Joaquin River Watershed on December 4, 2012. (See General Order, p. 28.) The  
6 Regional Board’s Executive Officer issued a Notice of Applicability to the Coalition on  
7 January 11, 2013. On January 7, 2013, the AGUA and CSPA Petitions were filed pursuant to  
8 Water Code section 13320. On November 8, 2013, the State Water Resources Control Board’s  
9 (State Board) Office of Chief Counsel issued a letter with respect to consolidation of complete  
10 petitions, and requested response within 30 days (30-Day Response). (Cal. Code of Regs., tit. 23,  
11 § 2050.5(a).) The time to respond was extended by letter dated November 22, 2013. The  
12 Coalition provides this response in accordance with the State Board’s request dated November 8  
13 and 22, 2013, collectively.

## 14 II. LEGAL FRAMEWORK FOR GENERAL ORDER

15 The Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-  
16 Cologne) is the applicable California law governing water quality. Porter-Cologne established a  
17 system of nine regional water quality control boards (regional boards), each with authority in a  
18 specific geographic area. (Wat. Code, §§ 13100, 13200, 13201.) The State Board has oversight,  
19 approval, or review authority with respect to actions of regional boards. (*Id.*, §§ 13140, 13164,  
20 13245, 13320.) Porter-Cologne requires regional boards to adopt water quality control plans—  
21 known as “basin plans”—for waterbodies within their jurisdiction. (Wat. Code, § 13240.) A  
22 basin plan must include: the beneficial uses of the waterbodies in the region; the water quality  
23 objectives (WQOs) to reasonably protect the beneficial uses; and a program of implementation  
24 for the WQOs. (*Id.*, §§ 13050(h), (j), 13241, 13242.) Regional board basin plans must be  
25 approved by the State Board.

26 The applicable basin plan for Eastern San Joaquin River Watershed is the *Water Quality*  
27 *Control Plan for the Sacramento and San Joaquin River Basins* (4th ed. Rev. Sept. 2009) (Basin  
28 Plan). The Basin Plan describes beneficial uses of individual waterbodies, and includes WQOs to

1 protect the uses. The WQOs are both numeric and narrative. The Basin Plan also includes by  
2 reference water quality control policies adopted by the State Board. Relevant here are the Basin  
3 Plan's reference to *State Water Board Resolution No. 68-16* and the State Board's *Nonpoint*  
4 *Source Management Plan*. Regional Board actions must conform to these plans and policies.  
5 (Wat. Code, §§ 13146, 13247.)

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

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

29 To date, the State Board has issued some guidance with respect to application of  
30 Resolution No. 68-16. (See *Antidegradation Policy for Implementation of NPDES Permitting*  
31 *(APU 90-004)*, Memorandum to Regional Board Executive Officers from William R. Attwater,  
32 Chief Counsel, State Board (Oct. 7, 1987), regarding Federal Antidegradation Policy (Attwater  
33 Memo), and Questions and Answers Resolution No. 68-16 (Feb. 16, 1995) (State Board Guidance

1 Memo.) However, the guidance issued has some limitations in that their application was geared  
2 to either discharges subject to National Pollutant Discharge Elimination System (NPDES) permits  
3 (i.e., APU 90-004 and Attwater Memo), or was prepared in concert with answering questions  
4 concerning the application of Resolution No. 68-16 to clean up sites subject to the federal  
5 Comprehensive Environmental Response Compensation, and Liability Act (i.e., State Board  
6 Guidance Memo). Thus, while the available guidance may be instructive with respect to  
7 application of Resolution No. 68-16 to discharges from irrigated agriculture, it is not directly  
8 applicable in its entirety, and is therefore not determinative.

9       The state's *Policy for Implementation and Enforcement of the Nonpoint Source Pollution*  
10 *Control Program* (Nonpoint Source Policy) (otherwise referred to as the state's Nonpoint Source  
11 Management Plan) was originally developed and subsequently upgraded to ensure compliance  
12 with section 319 of the Clean Water Act (CWA) and section 6217 of the Coastal Zone Act  
13 Reauthorization Amendments of 1990 (CZARA). As updated in 2004, it also fulfills the  
14 requirements of Water Code section 13369(a)(2)(B). Although not defined directly in state or  
15 federal law, nonpoint source pollution is generally considered to be water pollution from sources  
16 that do not meet the definition of point source as defined in the CWA. This would include return  
17 flows from irrigated agriculture and agricultural storm water runoff, which are both specifically  
18 excepted from the definition of point source in the CWA. (33 U.S.C. § 1362(14).) The Regional  
19 Board has found that the General Order regulates nonpoint source pollution and, accordingly,  
20 must implement the Nonpoint Source Policy. Nonpoint source control programs are required to  
21 implement the following five key elements: Key Element 1 - "Implementation programs must, at  
22 a minimum, address NPS pollution in a manner that achieves and maintains water quality  
23 objectives and beneficial uses, including any applicable antidegradation requirements . . ."  
24 (Nonpoint Source Policy, p 12); Key Element 2 - "An NPS control implementation program shall  
25 include a description of the MPs [management practices] and other program elements that are  
26 expected to be implemented to ensure attainment of the implementation program's stated  
27 purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure  
28 and verify proper MP implementation . . ." (Nonpoint Source Policy, p. 12); Key Element 3 -

1 “Where a RWQCB [Regional Board] determines it necessary to allow time to achieve water  
2 quality requirements, the NPS control implementation program shall include a specific time  
3 schedule, and corresponding quantifiable milestones designed to measure progress toward  
4 reaching the specified requirements . . . .” (Nonpoint Source Policy, p. 13); Key Element 4 - “An  
5 NPS control implementation program shall include sufficient feedback mechanisms so that the  
6 RWQCB [Regional Board], dischargers, and the public can determine whether the program is  
7 achieving its stated purpose(s), or whether additional or different MPs or other actions are  
8 required . . . .” (Nonpoint Source Policy, p. 14); Key Element 5 - “Each RWQCB [Regional  
9 Board] shall make clear, in advance, the potential consequences for failure to achieve an NPS  
10 control implementation program’s stated purposes . . . .” (Nonpoint Source Policy, p. 14).

### 11 III. ARGUMENT

#### 12 A. The Regional Board Complied With Resolution No. 68-16 When It Adopted the 13 General Order, and the General Order Complies With Associated Requirements

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

#### 21 1. Regional Board Determination of High Quality Waters Is Consistent With 22 Resolution No. 68-16

23 As a preliminary matter, the Regional Board made appropriate findings in that it  
24 recognized the significant variation in conditions over the Eastern San Joaquin River Watershed  
25 area, determined that an antidegradation analysis would be required for at least some of the  
26 waterbodies, and performed an antidegradation analysis for the General Order. (General Order,  
27 Attachment A, pp. 36-37.) Petitioners find fault in this approach by arguing that the Regional  
28 Board failed to establish a proper baseline for all waterbodies and all constituents within the

1 Eastern San Joaquin River Watershed. However, nothing in Resolution No. 68-16 requires the  
2 individual waterbody-by-waterbody baseline analysis advocated by Petitioners. Resolution  
3 No. 68-16 refers to high quality waters in general and provides no specificity or direction to the  
4 Regional Board on how such a determination should be made. Petitioners rely on APU 90-004,  
5 and an unrelated document titled *A Compilation of Water Quality Goals* for their position, but  
6 reliance on these documents in this manner is misplaced. With respect to APU 90-004, as  
7 indicated previously, it applies to application of antidegradation policies to NPDES permittees,  
8 which by definition are point source discharges. Consequently, APU 90-004 presumes that the  
9 discharge comes from a single point to a single waterbody. The guidance contained in  
10 APU 90-004 for determining whether a receiving water is a high quality water through the  
11 establishment of a baseline is specific to such circumstance where there is a single point source  
12 discharging to a single receiving water. (See APU 90-004, p. 4.) That is not the case here with  
13 the General Order. With respect to *A Compilation of Water Quality Goals*, this document is a  
14 compilation of water quality criteria and was not developed with the intent or purpose of  
15 providing guidance to the Regional Boards on issues related to application of Resolution  
16 No. 68-16. Accordingly, Petitioners' reliance thereon is inappropriate.

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

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

24         To allow discharges to high quality waters, Resolution No. 68-16 dictates that the  
25 Regional Board must make necessary findings through a two-step process. (*AGUA*,  
26 210 Cal.App.4th at p. 1278.) Under the first step, the Regional Board must find that discharges  
27 will be to the maximum benefit to the people of the state, not unreasonably affect present and  
28 anticipated beneficial uses of high quality waters, and will not result in water quality less than that

1 prescribed in state policies. (*Ibid.*) Within Attachment A to the General Order, the Regional  
2 Board explains why it finds that allowance of limited degradation is consistent with the maximum  
3 benefit to the people of the state. (See, e.g., General Order, Attachment A, pp. 43-44.) The  
4 Regional Board's findings are supported by extensive evidence in the record, including  
5 information contained in the Programmatic Environmental Impact Report (PEIR) that shows that  
6 the nation and state depend on Central Valley agriculture for food. (PEIR, Appendix A.)  
7 Thousands of acres of agricultural land could go out of production if limited degradation is not  
8 allowed. Attachment A also explains the many provisions within the General Order that ensure  
9 that the discharges that are allowed to high quality waters will not unreasonably affect beneficial  
10 uses and will not result in water quality less than those prescribed in state policies (i.e., WQOs).  
11 These provisions include, e.g., the receiving water limitations (General Order, p. 17), and the  
12 requirement to implement water quality management practices to protect water quality and  
13 achieve compliance with WQOs. (General Order, p. 18.)

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

22 The application of time schedules would further extend to management plans, and the  
23 requirement to comply with thereof, which are triggered by exceedances of a WQO, the Basin  
24 Plan itself, or if the Executive Officer determines that irrigated agriculture may be causing a trend  
25 in degradation that may threaten beneficial uses. (See, e.g., General Order, p. 33.) The time  
26 schedule provisions in the General Order allow for up to ten years. (General Order, pp. 36-37.)  
27 Anything beyond that would need to go back to the Regional Board for further consideration.  
28



1 As a side argument, Petitioners allege that delegation of approval of the management  
2 plans is an inappropriate delegation of duty to the Executive Officer under Water Code  
3 section 13223(a). We disagree. The General Order, the associated monitoring and reporting  
4 program order (Attachment B to the General Order), and Appendix MRP-1 specify the necessary  
5 criteria for what a management plan must include to be approved by the Executive Officer.  
6 Further, the General Order sets the time schedule for up to ten years. Thus, the General Order  
7 clearly sets forth the mandatory provisions within a management plan and limits the Executive  
8 Officer's discretion to determining if the submitted plan complies with these provisions. (See,  
9 e.g., *Russian River Watershed Protection Committee v. City of Santa Rosa* (1998) 142 F.3d 1136,  
10 1143 [“. . . the Executive Officer's adoption of a method of compliance was not a 'modification'  
11 of the permit in violation of section 13223."].) Management plans submitted in accordance with  
12 the requirements established by the Regional Board, and the Executive Officer's approval thereof,  
13 does not modify the General Order, and is therefore not an improper delegation of duty.

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

### 16 **3. Discharges Regulated Under the General Order Are Required to Use Best** 17 **Practicable Treatment or Control**

18 The next step under Resolution No. 68-16 is that activities that result in discharges to high  
19 quality waters are required to use best practicable treatment or control (BPTC). (*AGUA*,  
20 210 Cal.App.4th at p. 1278.) Because the Regional Board found it difficult (and unnecessary) to  
21 distinguish between discharges to high quality waters and those to waters that are not high  
22 quality, the Regional Board adopted numerous provisions to ensure that BPTC is implemented by  
23 all growers subject to the General Order. As is discussed and explained at length in  
24 Attachment A, the General Order includes performance standards to ensure BPTC due to the  
25 diverse nature of agriculture in the Eastern San Joaquin River Watershed.

26 Further, the General Order requires that there be a constant iterative approach to continue  
27 evaluation of management practices over time to maintain BPTC. For example, the General  
28 Order requires the Coalition to develop a Management Practice Evaluation Program (MPEP).

1 The MPEP must evaluate management practices for various commodities and identify those that  
2 are protective of groundwater quality for the range of conditions within the Eastern San Joaquin  
3 watershed area. (General Order, Attachment B, pp. 15-16.) The MPEP will continue to inform  
4 the Coalition and the Regional Board as to what constitutes BPTC over time for groundwater.  
5 Similarly, management plans for surface water must also include such an evaluation. (General  
6 Order, Appendix MRP-1, p. 4 [“Identify, validate, and implement management practices to  
7 reduce loading of COC’s [constituents of concern] to surface water . . . .”].)

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

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

18 First, the *AGUA* court’s review of monitoring provisions was specific to determining if the  
19 prohibition of degradation in the Dairy General Order was sufficient to prevent the need for an  
20 antidegradation analysis pursuant to Resolution No. 68-16. (*AGUA*, 210 Cal.App.4th at p. 1274  
21 [“In order for the Regional Board to sustain its claim that no analysis pursuant to Resolution  
22 No. 68-16 is required because the Order simply declares that no degradation of groundwater is  
23 allowed, the Order’s monitoring program must be sufficient to alert the Regional Board if a dairy  
24 is degrading groundwater.”].) Based on its review, the court found on this issue that the  
25 monitoring program was not adequate. (*Id.* at pp. 1272-1274 [“The monitoring program relied  
26 upon in the Order is inadequate to ensure that no further groundwater degradation will occur.”].)  
27 Here, the Regional Board has conducted an antidegradation analysis and has made the necessary  
28 findings to allow for limited degradation.

1           Second, the representative monitoring programs in the General Order are distinctively  
2 different than the monitoring reviewed by the *AGUA* court. The *AGUA* court evaluated the  
3 adequacy of monitoring drinking water supply wells and agricultural supply wells, not the  
4 comprehensive surface and groundwater monitoring programs contained in the General Order.  
5 (*AGUA*, 210 Cal.App.4th at p. 1275.) For example, one primary criticism by the *AGUA* court  
6 was that supply wells were not located in the proper areas to detect degradation. The General  
7 Order monitoring includes monitoring in proper areas and is able to detect degradation, as well as  
8 trends in degradation.

9           With respect to surface water monitoring, there are three types of monitoring sites: core  
10 sites, represented sites, and special project sites. (General Order, Attachment B, p. 3.) The core  
11 and represented sites are specifically located to detect water quality impacts from irrigated  
12 agriculture. (General Order, Attachment A, p. 10.) Monitoring at the core sites occurs monthly  
13 or seasonally, depending on the parameter of concern. (General Order, Attachment B, p. 6.) If  
14 monitoring at a core site indicates an issue of concern (i.e., exceedance of an objective), then  
15 monitoring of the representative sites associated with that core sites will occur. (General Order,  
16 Attachment B, p. 3.) As a practical matter, the core sites are downstream of certain identified  
17 agricultural areas, or zones. If monitoring at a core site indicates a problem, then the Coalition  
18 evaluates the concern to determine if monitoring at the more upstream representative sites is  
19 necessary due to a potential risk to water quality. For example, if the concern is a pesticide, then  
20 evaluation of pesticide use data can help to determine what additional monitoring may need to  
21 occur at the representative sites. (General Order, Attachment B, p. 3.) Further, the surface water  
22 monitoring program specifically requires that the monitoring being done needs to provide  
23 sufficient data to describe irrigated agricultural impacts on surface water quality and to determine  
24 whether existing or newly implemented management practices are ensuring compliance with the  
25 receiving water limitations. (General Order, Attachment B, p. 5.) Also, the parameters to be  
26 considered for monitoring is extensive, and the Coalition must identify from the list which  
27 parameters need to be monitored based on an evaluation. (See General Order, Attachment B,  
28 pp. 7-8.)

1           Should the surface water monitoring indicate that WQOs are not being met, or that there is  
2 a trend in degradation, then management plans are required. (General Order, p. 33.)  
3 Management plans are comprehensive and must meet certain specified requirements and contain  
4 certain types of information, including but not limited to, a baseline inventory of management  
5 practices being implemented by growers in the area of concern, and identification of practices that  
6 need to be implemented to comply with receiving water limitations. (See General Order,  
7 Appendix MRP-1, p. 3.)

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

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

1 occurring with certain specified practices. (See, e.g., General Order, Attachment B, pp. 15-16.)  
2 The Trend Monitoring program must accomplish several objectives, including, determining  
3 current water quality conditions and long-term groundwater quality information. (General Order,  
4 Attachment B, p. 16.) Further, the Trend Monitoring program must consist of a well network that  
5 is sufficient to provide appropriate coverage of the Eastern San Joaquin River Watershed area so  
6 that “current water quality conditions of groundwater and composite regional effects of irrigated  
7 agriculture can be assessed . . . .” (General Order, Attachment B, p. 17.)

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

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

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

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

26 CSPA Petitioners argue that the General Order does not comply with the state’s Nonpoint  
27 Source Policy. The success of CSPA’s argument hinges on a literal interpretation of the  
28 Nonpoint Source Policy that would require the Regional Board to apply each and every key

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

14           With respect to the individual key elements, the Regional Board has described its  
15 compliance with such elements in Attachment A to the General Order, and it is unnecessary to  
16 repeat that explanation here. (See General Order, Attachment A, p. 29.) We would just add that,  
17 as is discussed above, the General Order requires compliance with WQOs and maintains  
18 beneficial uses through the receiving water limitations. It includes time schedules for compliance  
19 where necessary, as is allowed by law. The General Order also contains many provisions that  
20 require the Coalition to evaluate and identify management practices (at considerable cost to the  
21 growers) that are expected to ensure compliance with water quality standards. Finally, the  
22 ongoing monitoring and reporting programs are comprehensive in nature and are unlike any other  
23 monitoring programs for nonpoint source pollution. Thus, the Regional Board and members of  
24 the public can determine the sufficiency of the program on an ongoing basis. In short, CSPA’s  
25 arguments with respect to compliance with the Nonpoint Source Policy have no basis and should  
26 be readily dismissed by the State Board.

1 **C. The General Order Does Not Disproportionately Impact Low Income Communities**  
2 **and Communities of Color**

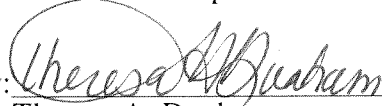
3 AGUA Petitioners include a new and novel argument that the General Order will  
4 disproportionately impact certain communities in the Central Valley. The allegations set forth by  
5 the AGUA Petitioners have no basis and must be readily dismissed by the State Board.  
6 Specifically, the General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

12 **IV. CONCLUSION**

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

15 SOMACH SIMMONS & DUNN  
16 A Professional Corporation

17 DATED: January 10, 2014

18 By:  \_\_\_\_\_  
19 Theresa A. Dunham  
20 Attorneys for Real Party in Interest East San  
21 Joaquin Water Quality Coalition  
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**PROOF OF SERVICE**

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

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

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

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

**SEE ATTACHED SERVICE LIST**

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

  
\_\_\_\_\_  
Crystal Rivera



**SERVICE LIST**  
**SWRCB/OCC File Nos. A-2239(a)-(c)**

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