

REPLACEMENT WATER SETTLEMENT AGREEMENT

This Replacement Water Settlement Agreement (Agreement), effective as of the last date of execution below (Effective Date), is between the Chief Deputy Director of the California State Water Resources Control Board, acting as lead prosecutor with the support of the State Water Resources Control Board's Office of Enforcement (State Board Prosecutors) on the one hand, and the Kaweah Basin Water Quality Association, Tule Basin Water Quality Coalition, and Kings River Watershed Coalition Authority, (referred to collectively as the "Coalitions") on the other, each of which is sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties," based on the terms, conditions, and recitals below. The identified water coalitions were established for the purpose of assisting agricultural growers and landowners in meeting waste discharge requirements established by the Central Valley Regional Water Quality Control Board (Central Valley Water Board).

RECITALS

A. The State Board Prosecutors have alleged that some drinking water sources in the Subject Area¹ contain nitrate levels that exceed applicable state and federal maximum contaminant levels (MCL) for drinking water, and that these nitrate levels are due, in part, to the application of fertilizers containing nitrogen for the growing of commercial crops (the Nitrate Contamination Claims).

B. This Agreement reflects the public health importance of clean drinking water, and efforts to proactively evaluate the scope of, and finance the provision of, replacement water to certain drinking water systems and to individual wells that are or may be impacted with nitrate levels above the MCL, and to explore longer-term alternatives and financing for more lasting solutions.

C. The purposes of the Agreement are for the Coalitions to provide replacement water in the manner as identified within the terms of this Agreement in exchange for the State Board Prosecutors forbearing certain types of enforcement as described within the terms of this Agreement. The Parties may choose to work cooperatively towards the development and implementation of funding mechanisms and solutions for the provision of permanent replacement water and other remedies, as appropriate.

D. The Coalitions and their members deny any responsibility or liability for the Nitrate Contamination Claims, but nonetheless have been afforded the opportunity by the State Board Prosecutors to provide replacement drinking and cooking water to certain systems and to individual wells impacted by nitrate levels above the MCL, on the terms and conditions provided below. This Agreement thus represents an interim settlement of the State Board Prosecutors' claims against certain agricultural owners and operators in the Subject Area.

¹ A map of the Subject Area, which reflects the Kings, Tule, and Kaweah Coalition boundaries, is provided as Attachment A, and is incorporated herein by reference.

In consideration of the covenants contained in this Agreement, and for other further good and valuable consideration, including but not limited to the terms herein and the avoidance of further costs, inconvenience, and uncertainties related to the Nitrate Contamination Claims, the Parties agree as follows:

AGREEMENT

1.0 Term

1.1 The term of this Agreement shall commence on December 19, 2018, and end on December 18, 2022 (Term), and automatically renew for two-year periods thereafter until December 18, 2028, or later if agreed upon by the parties. During the initial four years of the Agreement, reflecting the Coalitions' capital expenditures, no termination will be allowed. After the initial four-year term, if any Party wishes to terminate the Agreement, it shall provide written notice to the other Parties not less than sixty (60) days prior to the end of that two-year term. The written notice shall include the terminating Party's reasons for termination, and the Parties shall meet and confer regarding the reason for termination if requested by either Party. Termination under this section by one Coalition, or by the State Board's Prosecutors as applied to one Coalition, shall not terminate the agreement as it applies to the other Coalitions and their members.

1.2 This Agreement shall terminate before the end of the Term, upon (a) adoption or implementation of a legislative, regulatory, policy-based, or similar form of funding source that is designed, in whole or in part, to fund the provision of replacement water to nitrate-impacted drinking water sources in the Subject Area; (b) amendments to the Central Valley Water Board's General Orders that render this Agreement moot due to the provision of drinking water on the same or accelerated schedule; or (c) the implementation of long-term solutions addressing nitrate contamination in the targeted area of a kiosk. In the event of a termination pursuant to (i), the Agreement will continue until implementation of alternative water sources is achieved, with the goal of having no interruption in the provision of clean water to affected persons/communities. Regarding (c), the elimination of a single kiosk or resolution of a single coalition does not terminate the Agreement related to other kiosks and/or Coalition areas.

2.0 Scope

2.1 During the Term of this Agreement, the Coalitions and/or their agents or independent contractors will ensure that eight (8) water kiosks are developed and available for dispensing drinking water for drinking and cooking uses at no cost to users, the total of which will be distributed among the Coalitions in areas as described in Attachment B (Kiosk Locations), subject to relocation given landowners, City and/or any other entity with proprietary interest permission.

2.2 The Kiosk Locations will be a source of drinking water, compliant with federal and state regulations. The Coalitions will be responsible for obtaining permission from landowners, City, and/or any other entity with a proprietary interest in the land upon which a kiosk is installed.

2.3 The kiosks will be installed upon the following schedule:

(a) At least one kiosk in each coalition boundary area (i.e., three altogether) will be available and operational by April 30, 2019, regardless of the dates of execution of this Agreement.

(b) Three additional kiosks will be available and operational by October 1, 2019.

(c) The final two kiosks (i.e., eight in total) will be available and operational by January 31, 2020.

(d) The Coalitions will have discretion as to the location and during what phase (e.g., first or second half of 2019) each kiosk is constructed. The Coalitions will inform the State Board Prosecutors if a proposed location is objected to by the landowner, City, and/or any other entity with a proprietary interest in the land upon which a kiosk is proposed within ten (10) days of a formal objection. The Coalitions should then propose an alternative location for the State Board Prosecutors' consideration. Once a new location is agreed upon, the State Board Prosecutors will consider an appropriate extension of the final deadlines related to the construction of the kiosk in question.

(e) In the event that a Coalition is unable to meet the timelines described in subsections (a)-(d) due to unforeseen circumstances that are outside the control of the Coalition (e.g., delays in permits, etc.), the Coalition shall notify the State Board Prosecutors as soon as is reasonably possible with respect to the delay and the circumstances associated with the delay. The Coalition should then propose an alternative timeline for State Board Prosecutors' consideration, approval of which shall not be unreasonably held.

(f) The water provided at Kiosk Locations will not be counted against any landowner's, City's, and/or any other entity's water total when considering water conservation goals and targets that are regulated by the State Water Resources Control Board.

2.4 Alternative drinking water delivery may occur through a third-party service provider to certain individuals that are unable to utilize a kiosk. The Coalitions shall consider providing bottled water in certain circumstances, such as when all of the following apply: (i) the current drinking water source at a residence is contaminated with nitrate above a drinking water standard; (ii) consumer is not receiving or eligible for bottled water delivery through another existing program; and (iii) consumer resides within an economically disadvantaged community. Condition (iii) applies only during the first year of the Agreement. The Coalition may confirm that the kiosks are not a viable option for any bottled water candidate, but no personal or medical information is required for bottled water delivery. If the consumer or address needs the water to be tested in order to qualify for replacement water, the Coalitions will be responsible for the cost of such sampling, or for arranging for the cost of sampling through other means. In no instance should the consumer be required to pay to test his or her water. If the consumer receives water from a public water supply system, and state- and/or county-mandated testing indicates that the water provided by the public water supply system complies with nitrate standards, then the

Coalition is not responsible for testing samples from the consumer's home and the consumer is not considered to be eligible for bottled water.

2.5 Kiosks are intended to be the main source of replacement water for a large majority of residents with water that exceeds the nitrate MCL within the Coalition boundaries. In the event that bottled water delivery criteria need to be modified to address mobility or age issues, rather than convenience, the Parties may discuss additional criteria.

2.6 The State Board Prosecutors may audit kiosks or homes receiving bottled water to ensure that adequate replacement water is being provided to address drinking and cooking uses. If the State Board Prosecutors' audit indicates that kiosk facilities or capacities are inadequate for the intended purpose of this Agreement, the State Board Prosecutors will report the audit results to the appropriate coalition. The Parties shall agree to work cooperatively to address the inadequacy as promptly as possible.

3.0 Confirmation of Kiosk Installation and Advertising of Same

3.1 Subject to the schedule described above in Section 2.3: (a) The Coalitions will provide written notice within two weeks of a kiosk becoming operational to the State Board Prosecutors; (b) once a kiosk is operational, the Coalition will publicly notice the availability of safe drinking water to residents within the ten-mile radius of the kiosk, which notice may be accomplished through direct mail, notices in the newspaper and/or on Coalitions or other relevant websites; or (c) other appropriate and effective methods.

3.2 The Coalitions may contract with appropriate third-party service provider(s) to assist in notifying the targeted communities of the availability of replacement water at the kiosk closest to them, and of the availability of bottled water delivery depending on certain circumstances.

4.0 Confirmation of Coalition Members

4.1 Prior to bringing an enforcement action against any irrigated agricultural entity within the Coalition boundary areas, the State Board Prosecutors shall ask the Coalitions if the entity is a member of one of the three Coalitions. If the Coalition certifies that the entity is a member of the Coalition, then the terms of Section 5.0 of this Agreement shall apply to the entity in question.

4.2 At any time subsequent to the execution of this Agreement, the Coalitions may modify the list of Coalition members, provided that members: (a) operate within the Coalition boundaries; (b) contribute to the replacement water program described herein, in whatever applicable payment structure the Coalitions deem appropriate; and (c) are in compliance with irrigated agriculture permits issued by the Central Valley Water Quality Board. Adjudicated non-compliance with condition (c) will result in the loss of the enforcement protection provided herein, as will notification to the State Board Prosecutors of violations of conditions (a) or (b).

4.3 The State Board Prosecutors agree that those covered by this Agreement may be expanded to include additional parties that agree to assist in paying for the replacement water program. Such a request needs to be made in writing. Extension of coverage to any additional participants is subject to approval by the State Board Prosecutors. State Board Prosecutors may determine additional qualifying criteria for members not in the Coalitions.

5.0 Enforcement Actions; Third Party Claims

5.1 During the Term of this interim Agreement, the State Board Prosecutors covenants and agrees that it will not issue, prosecute, or otherwise pursue any actions, lawsuits, or claims, including but not limited to any administrative, regulatory, or enforcement action for replacement water and/or groundwater cleanup where replacement water is being provided within the Coalition boundary against a Coalition or a member arising out of or related to any past, present, actual, or threatened discharge of nitrate or nitrogen in the Subject Area. Except as provided for in Section 5.3, the scope of the waiver of claims provided in this Section 5.1 shall include cleanup and abatement orders to provide replacement water (and/or remediate groundwater contamination caused by nitrate) under California Water Code section 13304, cease and desist orders under California Water Code section 13301, and any other actions, lawsuits, or other claims for replacement water, whether based on statute, common law, or other theories of liability.

5.2 Without exception, Section 5.1 does not restrict the State Board Prosecutors from pursuing any actions against a member of a coalition or any of the Coalitions under an applicable General Order, or under Division 7 of the Water Code, except as such actions pertain to replacement water and/or groundwater cleanup due to nitrate contamination. Without exception, Section 5.1 does not restrict the State Board Prosecutors from issuing any administrative orders related to the collection of information under existing regulatory statutes, such as Water Code section 13267 or Government Code sections 11180 et seq. Without exception, Section 5.1 does not restrict the State Board Prosecutors from pursuing any actions against a member of a Coalition for activities that could give rise to liability on property that is not enrolled in one of the Coalitions that are parties to this agreement.

5.3 The enforcement protection offered by this Agreement does not extend to members that may be subject to the existing discussions related to the City of Corcoran. Owners, operators, coalition members, and anyone that may be held responsible under the California Water Code or on other statutes, common law, or theories of liability, for nitrate contamination or activities that have caused or contributed to nitrate water quality issues associated with wells 1A, 2A and 3A owned by the City of Corcoran, will not have enforcement protection from any enforcement action by the State Board Prosecutors, notwithstanding participation in this Agreement and satisfaction of Section 4.0 criteria.

5.4 During the Term of this Agreement, if a private party asserts any lawsuit or other claim (whether based in tort, contract, or another theory of liability) against a Coalition and/or member arising out of or relating to any actual or threatened discharge of nitrate or nitrogen in the Subject Area, the State Board Prosecutors, upon request by the Coalition or affected Coalition member(s), shall cooperate with the Coalition or Coalition member(s) in good faith by

providing the Coalition or member(s) any and all information requested by the private party that is in its possession, custody, or control.

5.5 The Coalition's written confirmation that said member is in "good standing" with the Coalition shall constitute conclusive evidence that the member is entitled to the benefits and protections of this Section 5.0. "Good standing" in this context means that the member satisfies the Section 4.0 criteria. The State Board Prosecutors shall immediately dismiss any action, lawsuit, or claim, including but not limited to any administrative, regulatory, or enforcement action for replacement water due to nitrate contamination upon verification that said action was initiated on a member in good standing of the Coalition.

6.0 Status Reports

6.1 Every four months during the first two years of this Agreement, starting on May 1, 2019, the Coalitions and/or their agent or independent contractor shall provide the State Board Prosecutors a status report regarding the progress of the replacement water efforts taken pursuant to this Agreement. The status report should include the progress of kiosk installation and operation, the volume of water dispensed at kiosks that are in operation, number of residents provided with replacement water directly rather than at a kiosk, and outreach efforts. The State Board Prosecutors may require additional status reports from the Coalitions or request reasonable additional information provided to it by its contractors related to this effort on reasonable advance written notice. After the successful completion of all eight kiosks, status reports may occur annually. The Coalitions may also provide a courtesy copy of such status reports to the Central Valley Regional Water Quality Control Board's (Central Valley Water Board) Executive Officer.

7.0 Cooperation

7.1 During the Term of this Agreement, the Parties agree to cooperate in the following areas:

- (a) Making efforts to obtain approval and implementation of a legislative, regulatory, policy-based, or similar form of funding source that is designed, in whole or in part, to fund the provision of replacement water to nitrate-impacted drinking water sources in the Subject Area.
- (b) Making efforts to identify and assess the technological, regulatory, and/or economic feasibility of alternatives for long-term replacement water for nitrate-impacted drinking water sources in the Subject Area and/or State.
- (c) Providing technical and/or administrative support to implement the terms of this Agreement.

8.0 No Admissions

8.1 Neither the Coalitions nor any of their members make any admissions of guilt, fault, and/or liability by providing interim bottled water or any other form of replacement water to residents in the Subject Area, by entering into this Agreement, or otherwise.

9.0 Confidentiality

9.1 The State Board Prosecutors initiated their investigation against certain landowners within the Coalitions in 2017. The State Board Prosecutors and the Coalitions acknowledge and agree that this Agreement is the product of negotiation between the Parties of disputed claims, and that this Agreement is being implemented during a pending enforcement action.

9.2 If the State Board Prosecutors receive a subpoena or request for records, whether through a Public Record Act request or otherwise, that seeks, or may seek, disclosure of documents generated through settlement negotiations, the State Board Prosecutors acknowledge and agrees that they will notify and consult with the Coalitions as soon thereafter as practicable regarding the subpoena or request.

9.3 All Parties understand that Coalition members, and the data provided by the Coalitions to the Water Boards and data generated by the Water Boards, are subject to the California Public Records Act.

10.0 Withdrawal of Existing Enforcement

10.1 The State Water Board will withdraw existing subpoenas issued to the Coalitions. Letters sent to landowners within the Coalitions will be considered to have been resolved by the execution of this Agreement.

11.0 Coordination with Central Valley Water Board

11.1 The Central Valley Water Board is not a signatory to this Agreement. However, it is anticipated, pursuant to direction from the Central Valley Water Board and Advisory Team, that this Agreement will be provided to the Central Valley Water Board and Advisory Team for review, and that it is the intent of the Central Valley Water Board to work cooperatively with all Parties in the implementation of this Agreement. For the Coalitions, a primary purpose for this Agreement is that the provision of replacement water as provided pursuant to this Agreement fulfills all or parts of an Early Action Plan (EAP) that is part of proposed Central Valley Water Board basin plan amendments for a Nitrate Control Program. Such amendments are currently pending before the State Water Resources Control Board and may be accepted or rejected by the State Water Resources Control Board. Action by the State Water Resources Control Board regarding adoption or rejection of such basin plan amendments does not have an effect on this Agreement.

12.0 Miscellaneous

12.1 **Notices.** All notices required under this Agreement shall be sent in writing, via certified or registered mail and email, to the following contact information:

To the Water Board Representatives:

California State Water Resources Control Board
Office of Enforcement
Attn: Julie Macedo, Senior Staff Counsel
801 K Street, Suite 2300
Sacramento, CA 95814
Email: julie.macedo@waterboards.ca.gov

To Counsel:

Theresa Dunham
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Email: tdunham@somachlaw.com

Joseph D. Hughes
Klein, DeNatale, Goldner, LLP
4550 California Avenue, Second Floor
Bakersfield, CA 93309
Email: JHughes@KleinLaw.com

Alex M Peltzer
Peltzer & Richardson
3746 W. Mineral King Ave.
Visalia, CA 93291

To Coalition Representatives:

Kaweah Basin Water Quality Association
Attn: Donald Ikemiya
P.O. Box 2840
Visalia, CA 93279
Email: dikemiya@ppeng.com

Tule Basin Water Quality Coalition
Attn: David DeGroot
2904 W. Main Street
Visalia, CA 93291
Email: davidd@4-creeks.com

Kings River Watershed Coalition Authority
Attn: Charlotte Gallock
P.O. Box 8259
Fresno, CA 93747
Email: cgallock@krcd.org

12.2 Construction of Agreement. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties therefore expressly acknowledge and agree that this Agreement shall not be deemed to have been prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

12.3 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to California choice of law rules, and any litigation pertaining to this Agreement shall be conducted in the state or federal courts located in Sacramento County, California.

12.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations and/or corporations connected with them, including without limitation their insurers, sureties, and/or attorneys.

12.5 Severability. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

12.6 Counterparts. The Parties may execute this Agreement in one or more counterparts, via email or otherwise, each of which shall be deemed an original agreement, and all of which shall be considered one and the same instrument, and a signature transmitted by email shall be deemed to be an original signature.

12.7 Benefit of Counsel. The advice of legal counsel has been obtained by each of the Parties prior to entering into this Agreement.

12.8 Entire Agreement. This Agreement constitutes the entire, fully integrated understanding between and among the Parties with regard to the matters herein set forth. There are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties relating to the subject matter of this Agreement which are not fully expressed. This Agreement may be modified only by a writing signed by all parties.

12.9 No Third Party Beneficiaries. The Agreement is not intended for the benefit of any person or entity not a Party and shall not be enforceable by any person or entity who is not a Party.

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Signatories:

TULE BASIN WATER QUALITY COALITION



David Gisler, President

Date: 12/21/2018

KAWEAH BASIN WATER QUALITY ASSOCIATION

By Donald Ikenija

Date: _____

KINGS RIVER WATERSHED COALITION
AUTHORITY

By _____

Date: _____

TULE BASIN WATER QUALITY COALITION

By _____

Date: _____

STATE WATER RESOURCES CONTROL BOARD

By _____
JONATHAN BISHOP

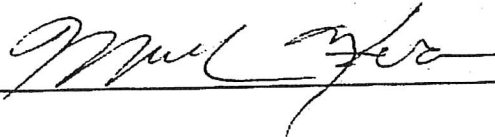
Date: _____

KAWEAH BASIN WATER QUALITY ASSOCIATION

By _____

Date: 12-20-18

KINGS RIVER WATERSHED COALITION
AUTHORITY

By 

Date: _____

TULE BASIN WATER QUALITY COALITION

By _____

Date: _____

STATE WATER RESOURCES CONTROL BOARD

By _____
JONATHAN BISHOP

Date: _____

KAWEAH BASIN WATER QUALITY ASSOCIATION

By _____

Date: _____

KINGS RIVER WATERSHED COALITION
AUTHORITY

By _____

Date: _____

TULE BASIN WATER QUALITY COALITION

By _____

Date: 12/24/2018

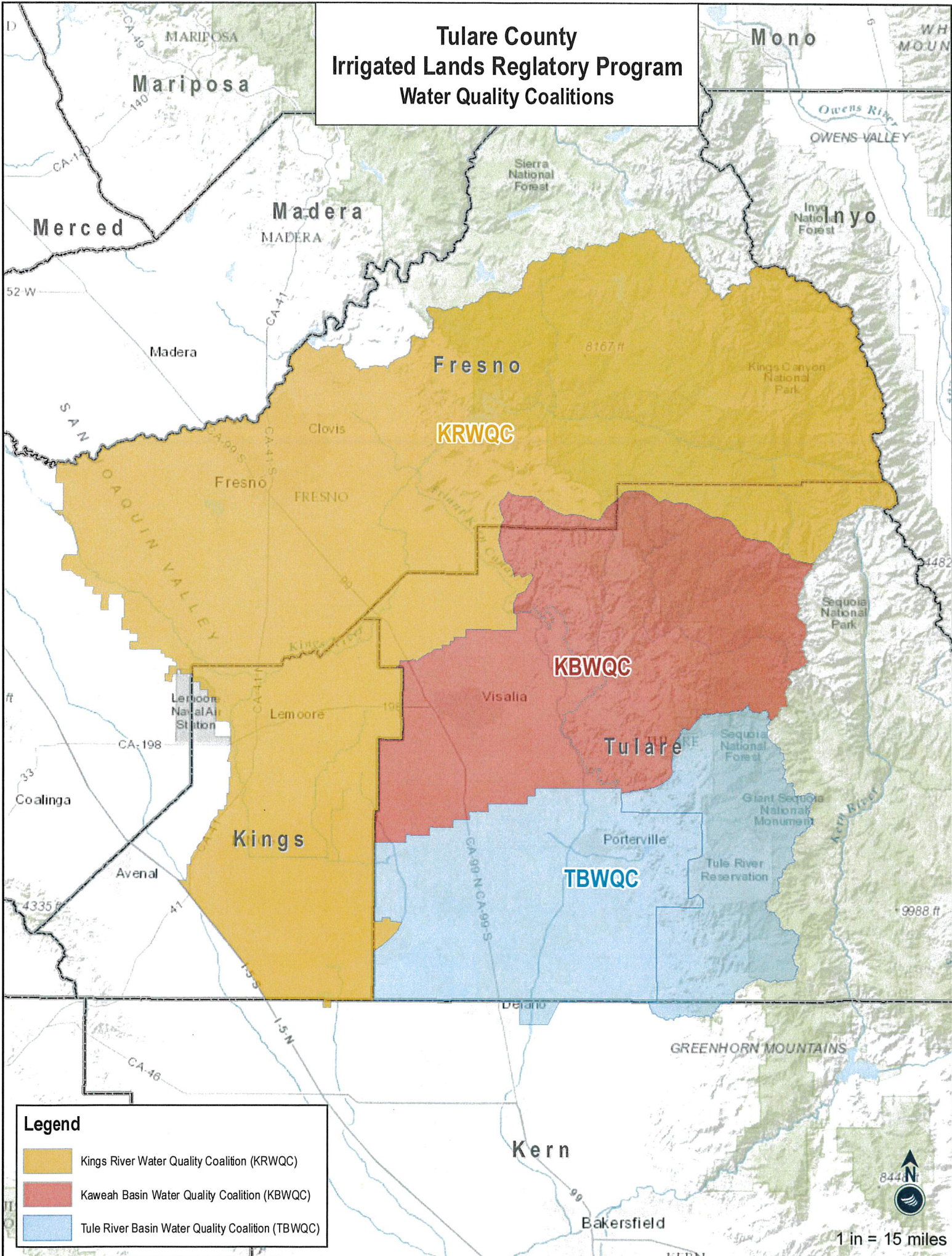
STATE WATER RESOURCES CONTROL BOARD

By  _____




JONATHAN BISHOP

Exhibit A

Tulare County Irrigated Lands Regulatory Program Water Quality Coalitions



Legend

-  Kings River Water Quality Coalition (KRWQC)
-  Kaweah Basin Water Quality Coalition (KBWQC)
-  Tule River Basin Water Quality Coalition (TBWQC)



1 in = 15 miles

Exhibit B

