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Construction Industry Coalition on Water Quality
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Regional County Representatives of California
Union Pacific
Valley Ag Water Coalition
Western Growers Association
Western States Petroleum Association
Wine Institute

October 17, 2013

The Honorable Edmund G. Brown, Jr.
Governor
State of California
State Capitol
Sacramento, CA 95814

RE: State Water Resources Control Board and Wetlands

Dear Governor Brown:

The State Water Resources Control Board (Board) for several years has been working on a policy aimed at creating a new state definition of "wetlands" and an accompanying new regulatory framework. Our organizations have submitted our concerns with the Board throughout the entire process on a number of key provisions – the most problematic being the potential adoption of a state definition of "wetlands" that is different than the one currently being used by the federal government.

Several new issues have surfaced that – at a minimum – warrants the Board to postpone any near term action on the issue. As recently as August 2013, the U.S. Environmental Protection Agency has taken two actions specific to this issue that will have a direct impact on the Board's process

and could create a conflict between the federal wetlands regulatory process and the newly proposed state process.

First, EPA has released a draft scientific report focused on wetlands. The report - Connectivity of Streams and Wetlands to Downstream Waters – was undertaken to create a better understanding between the connectivity and isolation of waters of the United States. The information from this report will be the basis for future regulatory activities by the federal government.

Second, EPA jointly with the U.S. Army Corps of Engineers (Corps) have sent a draft rule to clarify the jurisdiction of the Clean Water Act as it relates to wetlands to the Office of Management and Budget for interagency review. The purpose of the proposed rule is to clarify the uncertainty concerning the jurisdiction of the Clean Water Act that has arisen as an outgrowth of recent Supreme Court decisions. We anticipate formal action on this rule next year.

Our organizations are concerned that the state's effort to regulate wetlands will be in conflict – not only with the existing federal process – but with the proposed rulemaking process currently underway by EPA and the Corps. Any conflict between regulatory processes could create a permitting nightmare for a wide array of public and private projects.

We respectfully request that you ask the Board to await the outcome of federal action before creating a new statewide standard in a vacuum that is duplicative or could lead to litigation and delays.

Should you have any questions, please contact Cliff Moriyama at (916) 215-5215.

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