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Bureau and Santa Cruz County Farm Bureau

BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of California  
Coastkeeper Alliance, Santa Barbara  
Channelkeeper, Monterey Coastkeeper, San  
Jerardo Cooperative, California Sportfishing  
Protection Alliance, Pacific Coast Federation  
of Fishermen's Associations, and the Institute  
for Fisheries Resources for Review of Action  
and Failure to Act by the Central Coast  
Regional Water Quality Control Board.

SWRCB/OCC File No. A-2751(b)

**GROWER-SHIPPER ASSOCIATION OF  
CENTRAL CALIFORNIA, GROWER-  
SHIPPER ASSOCIATION OF SANTA  
BARBARA AND SAN LUIS OBISPO  
COUNTIES, ET AL., RESPONSE TO  
CALIFORNIA COASTKEEPER, ET AL.,  
PETITION FOR REVIEW**  
[Wat. Code, § 13320]

1 The Grower-Shipper Association of Central California, Grower-Shipper Association of Santa  
2 Barbara and San Luis Obispo Counties, Western Growers Association, Western Plant Health  
3 Association, Monterey County Farm Bureau, California Strawberry Commission and California Farm  
4 Bureau Federation on behalf of San Benito County Farm Bureau, San Luis Obispo County Farm  
5 Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County  
6 Farm Bureau and Santa Cruz County Farm Bureau (collectively, Ag Petitioners) submit this Response  
7 to the Petition for Review filed by the California Coastkeeper Alliance, Santa Barbara Channelkeeper,  
8 Monterey Coastkeeper, San Jerardo Cooperative, California Sportfishing Protection Alliance, Pacific  
9 Coast Federation of Fishermen’s Associations, and the Institute for Fisheries Resources (collectively,  
10 Coastkeeper or Coastkeeper Petitioners) in accordance with the State Water Resources Control  
11 Board’s (State Water Board) July 30, 2021 Complete Petition (30-Day Response) letter and the State  
12 Water Board’s August 13, 2021 Approval of Request for Extension letter.

13 The Ag Petitioners respond directly to certain allegations and legal arguments set forth by  
14 Coastkeeper. In no way should the Ag Petitioners’ response be considered a concession or  
15 abandonment of any of the challenges put forward by Ag Petitioners in their separate Petition. Nor  
16 should our lack of a response to some of Coastkeeper’s allegations be considered agreement on the  
17 allegations set forth. Ag Petitioners preserve all rights to further challenge any of Coastkeeper’s  
18 allegations and legal arguments contained in their Petition and any future allegations or legal  
19 arguments that Coastkeeper may advance in the future.

20 **I. INTRODUCTION**

21 The Central Coast Regional Water Quality Control Board (Central Coast Water Board)  
22 adopted General Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-  
23 2021-0040 (Ag Order 4.0) on April 15, 2021. As Ag Petitioners have stated repeatedly, regional  
24 boards must balance protection of water quality against maintaining our state and nation’s food  
25 supply and local economies. Further, discharges of waste from irrigated agriculture results from the  
26 legal and beneficial use of products (e.g., fertilizers, crop protection products) that are necessary to  
27 produce food. Importantly, the use of products themselves is not a discharge of waste, but product  
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1 residuals may become waste if discharged into waters of the state. Similarly, irrigation return flows  
2 and stormwater from agricultural properties is not a discharge of waste unless it contains residual  
3 contaminants above relative water quality standards. The Ag Petitioners disagree with certain parts of  
4 Ag Order 4.0 as expressed in the Ag Petition because it fails to balance protection of water quality  
5 against the realities of agriculture. Separate and apart from Ag Petitioners' objections to parts of Ag  
6 Order 4.0, Ag Petitioners disagree with Coastkeeper and their improper interpretations of state law  
7 and policy.

8           Ag Petitioners take issue with the many unsubstantiated claims and accusations placed on  
9 agriculture by Coastkeeper. In its Petition, Coastkeeper attempts to portray Central Coast agriculture  
10 as some powerful, unregulated entity that has complete disregard for protecting water quality. Such a  
11 characterization is patently false and far from the truth. Over many decades, Central Coast growers  
12 have adapted and implemented many management practices to protect water quality. Advancements  
13 in irrigation technology as well as changes in pesticide and fertilizer usage have occurred broadly  
14 throughout the region and continue to change constantly to address the water quality issues of  
15 concern. However, contrary to the assertions made by Coastkeeper, agriculture needs time, research,  
16 and resources to identify and develop additional management practices to meet water quality  
17 objectives. This reality should in no way be interpreted to mean that Central Coast agriculture is  
18 "resisting" reasonable water quality controls and requirements being imposed by the Central Coast  
19 Water Board. Accordingly, the State Water Resources Control Board (State Board) needs to disregard  
20 any such baseless accusations and statements in its review of Coastkeeper's Petition.

21           In summary, Ag Petitioners specifically respond to Coastkeeper's improper legal  
22 interpretations and applications of the state's Policy for Implementation and Enforcement of the  
23 Nonpoint Source Pollution Control Program (Nonpoint Source Policy), Statement of Policy with  
24 Respect to Maintaining High Quality of Waters in California (Resolution 68-16), and other included  
25 Constitutional, statutory, and common-law arguments. As explained herein, the State Board must  
26 reject Coastkeeper's claims because they are not supported by law or policy.

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**II. RESPONSE TO COASTKEEPER ARGUMENTS**

**A. Coastkeeper Petition Improperly Characterizes the Nonpoint Source Policy and Application of the Key Elements**

Coastkeeper sets forth several arguments as to why Ag Order 4.0 fails to comply with the Nonpoint Source Policy. Setting aside momentarily the specific provisions, or lack of provisions, that are being challenged by Coastkeeper, we first respond to Coastkeeper’s incorrect general characterization of the Nonpoint Source Policy, its purposes, and goals. Then we address Coastkeeper’s failed interpretations of the key elements and how regional boards in general are supposed to apply these elements when adopting waste discharge requirements (WDRs) for irrigated agriculture.

**1. The Nonpoint Source Policy Provides Guidelines for Development of Third Party NPS Control Programs – It Does Not Change or Alter Other Statutory Provisions**

Coastkeeper improperly claims that the Nonpoint Source Policy requires regional boards to achieve and maintain water quality objectives and beneficial uses.<sup>1</sup> Such a statement is incorrect in that it mischaracterizes the Nonpoint Source Policy and the role it plays in water quality regulation in general. First, regional boards are not themselves required to achieve and maintain water quality objectives and beneficial uses. Rather, regional boards have the authority to issue WDRs to discharges of waste to waters of the state.<sup>2</sup> When issuing WDRs, regional boards are required to implement any relevant “water quality control plan” or “basin plan,” and consider the beneficial uses of the waters that are to be protected.<sup>3</sup> A regional board is also required to consider a number of factors, including those specified in Water Code section 13241, which includes water quality conditions that can reasonably be achieved through the coordinated control of all factors that affect

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<sup>1</sup> California Coastkeeper Alliance, et al., Petition Requesting Review of California Regional Water Quality Control Board Order No. R3-2021-0040 (Coastkeeper Petition), p. 11.

<sup>2</sup> See Wat. Code, §§ 13260, 13263.

<sup>3</sup> Wat. Code, § 13263(a).

1 water quality and economic consideration.<sup>4</sup> Notably, a WDR may include a time schedule for  
2 implementation.<sup>5</sup>

3 Nothing within the Nonpoint Source Policy changes or shifts the underlying statutory  
4 authority provided to the regional boards and the State Board. The Nonpoint Source Policy is  
5 intended to provide guidelines for development of third-party nonpoint source (NPS) pollution control  
6 programs and it guides regional boards’ “interpretation[s] and implementation of Water Code  
7 requirements, including Water Code sections 13263 and 13267.”<sup>6</sup> As part of its guiding role, the  
8 Nonpoint Source Policy calls out the complexities associated with NPS pollution from agriculture and  
9 encourages regional boards “to be as creative and efficient as possible in devising approaches to  
10 prevent or control NPS pollution.”<sup>7</sup>

11 Coastkeeper attempts to limit Central Coast Water Board discretion by characterizing the  
12 Nonpoint Source Policy narrowly. For example, Coastkeeper states that the Nonpoint Source Policy  
13 “allows some flexibility in implementation.” In actuality, the Nonpoint Source Policy states that  
14 regional boards “have broad flexibility and discretion in using their administrative tools to fashion  
15 NPS management programs, and are encouraged to be as innovative and creative as possible, and, as  
16 appropriate, to build upon Third-Party programs.”<sup>8</sup> The key elements within the Nonpoint Source  
17 Policy are structural components to which regional boards must ensure are contained in all NPS  
18 implementation programs.<sup>9</sup> This requirement in no way eliminates a regional board’s flexibility and  
19 discretion with how it determines best to address nonpoint sources of pollution.

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21 <sup>4</sup> *Id.* §§ 13241(c), (d); see also *City of Burbank v. State Water Resources Control Bd.* (2005) 26 Cal.Rptr.3d 304, 625, fn. 7  
22 [“State law, as we have said, allows a regional board to consider a permit holder’s compliance cost to relax pollutant  
concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit.” (Emphasis omitted.)].

23 <sup>5</sup> *Wat. Code, § 13263(c); Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.*  
24 (2012) 210 Cal.App.4th 1255, 1277, (*AGUA*) [“A phased approach to the installation of monitoring wells is reasonable,  
and is authorized by section 13263, which allows the requirements imposed by a regional water quality control board to  
contain a time schedule.”].

25 <sup>6</sup> *In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the*  
26 *Eastern San Joaquin River Watershed that are Members of the Third-Party Group*, Order WQ 2018-0002 (ESJ Order), p.  
14; Nonpoint Source Policy, p. 9, [“This policy provides guidelines for development of third-party NPS control  
programs.”].

27 <sup>7</sup> Nonpoint Source Policy, p. 9.

28 <sup>8</sup> Nonpoint Source Policy, p. 10.

<sup>9</sup> Nonpoint Source Policy, p. 11, [“While the RWQCBs are free to use the administrative too(s) that they determine to be  
most appropriate for a particular implementation program, all implementation programs will have the five structural  
elements in common.”].

1                   **2. Coastkeeper Fails to Understand the Content and Application of Key Element 2**  
2                   **of the Nonpoint Source Policy**

3                   In its Petition, Coastkeeper appears to suggest that Key Element 2 requires regional boards to  
4 explicitly show with a great level of certainty the exact water quality objectives, management  
5 practices and water quality controls that are being required by a regional board to restore and protect  
6 all beneficial uses in receiving waters.<sup>10</sup> Coastkeeper’s interpretation of Key Element 2 is faulty on  
7 several fronts. First, as stated previously, regional boards must interpret and apply Key Element 2 in a  
8 manner that is consistent with regional board authority as granted under the Water Code. Relevant  
9 statutory provisions that impact how Key Element 2 is applied and interpreted include, in part, the  
10 following: 1) regional boards are prohibited from dictating management practices;<sup>11</sup> 2) regional  
11 boards must regulate to attain the highest water quality which is reasonable, considering all demands  
12 being made on the water<sup>12</sup>; 3) water quality objectives are “reasonably required” to protect beneficial  
13 uses;<sup>13</sup> and, 4) regional boards regulate the discharge, which may or may not ultimately result in a  
14 receiving water meeting a water quality objective considering that there are many controllable and  
15 uncontrollable sources unrelated to irrigated agriculture that may also impact a receiving groundwater  
16 or surface water.<sup>14</sup>

17                   Coastkeeper attempts to identify four reasons why Ag Order 4.0 does not comply with Key  
18 Element 2. Coastkeeper’s four reasons, and the arguments made in connection with these reasons,  
19 demonstrate how Coastkeeper’s interpretation of the Nonpoint Source Policy is blatantly incorrect.  
20 Coastkeeper’s first two reasons are primarily centered around a mistaken belief that regional boards  
21 are required by Key Element 2 to demonstrate a high likelihood that surface waters and groundwaters  
22 of the state will restore and protect beneficial uses through the requirements of the order in question.  
23 This is not true. Key Element 2 at its core is about ensuring that an NPS control program includes “a  
24 description of the [management practices] and other program elements that are expected to be  
25 implemented to ensure attainment of the implementation program’s state purpose(s), the process to be

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<sup>10</sup> See Coastkeeper Petition, p. 12.

27 <sup>11</sup> Wat. Code, § 13360.

28 <sup>12</sup> Wat. Code, § 13000.

<sup>13</sup> Wat. Code, §§ 13241, 13263(a).

<sup>14</sup> Wat. Code, § 13260 et seq.

1 used to select or develop [management practices], and the process to be used to ensure and verify  
2 proper [management practice] implementation.”<sup>15</sup> In other words, it is about ensuring that appropriate  
3 management practices will be properly implemented and that there is a link between management  
4 practices and outcomes.<sup>16</sup>

5 With regards to references to “high likelihood,” Coastkeeper appears to equate this to mean  
6 that receiving waters will meet water quality objectives.<sup>17</sup> Once again, Coastkeeper misconstrues the  
7 intent and purpose of Key Element 2 and WDRs in general. As explained above, Key Element 2  
8 pertains to the “high likelihood that the program will attain water quality requirements” – not that  
9 there is a high likelihood that receiving waters will meet water quality objectives.<sup>18</sup> With respect to  
10 WDRs, they set forth requirements on a particular discharge or category of discharges. In this case,  
11 Ag Order 4.0 regulates discharges from irrigated lands within the Central Coast Water Board’s  
12 jurisdictional area. In that vein, Ag Order 4.0 seeks to ensure that discharges from irrigated lands no  
13 longer cause or contribute to an exceedance of a receiving water. By controlling the volume and/or  
14 concentration of such discharges, at some point in the future, irrigated agriculture may no longer be a  
15 contributing source. However, that does not mean that the receiving water will ultimately meet water  
16 quality objectives. Many other factors, including stream modifications and other sources of pollutants  
17 will determine if and when any receiving water actually meets water quality objectives. Coastkeeper  
18 is trying to set the bar for compliance with Key Element 2 at a level that is unreasonable and  
19 inconsistent with the Nonpoint Source Policy and governing statutory provisions.

20 Coastkeeper’s arguments regarding the deletion of setbacks and riparian zones are particularly  
21 egregious. With these arguments, Coastkeeper ignores the statutory provision that prohibits regional  
22 boards from “dictating the manner of compliance.” Nonpoint source programs routinely and correctly  
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25 <sup>15</sup> Nonpoint Source Policy, p. 12.

26 <sup>16</sup> See *Environmental Law Foundation v. State Water Resources Control Board, Protectores Del Agua Subterranea v.*  
27 *State Water Resources Control Board, and Monterey Coastkeeper v. Central Valley Regional Water Quality Control*  
28 *Board, et al.*, Case Nos. 34-2018-80002851, 34-2018-80002852, and 34-2018-80002853, Superior Court of California,  
County of Sacramento, Ruling on Submitted Matters and Order: Petitions for Writ of Mandate (October 23, 2020)  
(October 2020 Ruling), p. 21.

<sup>17</sup> Coastkeeper Petition, p. 12.

<sup>18</sup> Nonpoint Source Policy, p. 12.

1 require the use of management practices (MPs) to control and reduce pollution. Key Element 2  
2 provides:

3 An NPS control implementation program shall include a description of the MPs and  
4 other program elements that are expected to be implemented to ensure attainment of  
5 the implementation program's stated purpose(s), the process to be used to select or  
6 develop MPs, and the process to be used to ensure and verify proper MP  
7 implementation.

8 Vegetated buffer strips, riparian setbacks and other similar practices may in fact be appropriate MPs  
9 for use by growers. However, the use of such MPs are to be selected and used at a growers discretion  
10 – not as dictated by regional boards as Coastkeeper suggests. Rather, Water Code section 13360(a)  
11 provides in pertinent part that:

12 No waste discharge requirement or other order of a regional board or the state board  
13 or decree of a court issued under this division shall specify the design, location, type  
14 of construction, or particular manner in which compliance may be had with that  
15 requirement, order, or decree, and the person so ordered shall be permitted to comply  
16 with the order in any lawful manner.

17 In other words, section 13360 allows regional boards or the State Board to identify the  
18 “disease and command that it be cured,” but prohibits regional boards or the State Board from  
19 dictating the cure and interfering with the ingenuity of the party subject to a waste discharge  
20 requirement.<sup>19</sup> Section 13360 expressly preserves the freedom of persons who are subject to a  
21 discharge standard to elect between available strategies to comply with the standard.<sup>20</sup>

22 Coastkeeper further over-exaggerates regional board and State Board authorities when it  
23 suggests that Ag Order 4.0 could be used to force riparian and wetland habitat restoration. Nothing  
24 within Porter-Cologne provides regional boards or the State Board with the authority to require such  
25 habitat restoration as part of issuing WDRs. Even more preposterous is the suggestion that the  
26 Central Coast Water Board’s failure to do so violates Key Element 2 of the Nonpoint Source Policy.

27 Coastkeeper’s final reason for claiming that Ag Order 4.0 fails to meet Key Element 2  
28 relates to the Central Coast Water Board’s reliance on the Department of Pesticide Regulation

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<sup>19</sup> See *Tahoe-Sierra Preservation Council v. State Water Resources Control Bd.* (1989) 210 Cal.App.3d 1421, 1438  
(*Tahoe-Sierra Preservation Council*).

<sup>20</sup> *Id.*



1 (DPR) to address certain issues related to pesticides. From the Ag Petitioners’ perspective, we  
2 disagree with Coastkeeper’s fundamental claim that certain regulatory actions should *not* be  
3 deferred to DPR. With respect to the use of pesticides, DPR has exclusive state authority to regulate  
4 such uses.<sup>21</sup> The Central Coast Water Board may only prescribe requirements related to discharges  
5 from irrigated lands that may contain residual amounts of pesticides that would then be considered  
6 wastes.<sup>22</sup> Any attempt by the Central Coast Water Board to regulate pesticide uses through Ag  
7 Order 4.0 would directly contravene state law and would be an arbitrary and capricious action on the  
8 Central Coast Water Board’s part.

9 **3. Coastkeeper Improperly Characterizes Key Element 3 and the Use of Time**  
10 **Schedules in WDRs**

11 Key Element 3 states as follows:

12 Where a RWQCB determines it is necessary to allow time to achieve water quality  
13 requirements, the NPS control implementation program shall include a specific time  
14 schedule, and corresponding quantifiable milestones designed to measure progress  
toward reaching the specified requirements.<sup>23</sup>

15 This is consistent with statutory provisions that allow and understand that there are instances where  
16 it will take time to meet water quality requirements.<sup>24</sup> At its core, Key Element 3 is laying out the  
17 requirement that NPS programs may include time schedules, and when time schedules are included,  
18 quantifiable milestones need to also be included to measure progress. Regional boards have  
19 significant discretion in determining both the length of a time schedule and the types of quantifiable  
20 milestones that should be included in an NPS program.<sup>25</sup>

21 Coastkeeper appears to take Key Element 3 to an extreme that is unsupportable and  
22 unsubstantiated by the text of the Nonpoint Source Policy. For example, Coastkeeper argues that Ag  
23 Order 4.0 fails to comply with Key Element 3 because “timelines for achieving water quality  
24 objectives in groundwater are not included in the 2021 Order, ....”<sup>26</sup> In another example,

25 <sup>21</sup> Food & Agr. Code, § 11501.1; *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 495.

26 <sup>22</sup> Wat. Code, § 13263.

<sup>23</sup> Nonpoint Source Policy, p. 13.

27 <sup>24</sup> Wat. Code, §§ 13242(b), 13263(c).

28 <sup>25</sup> *Monterey Coastkeeper v. State Water Resources Control Bd.* (September 18, 2018) (*Monterey Coastkeeper*) 28 Cal.App. 5<sup>th</sup> 342, 369.

<sup>26</sup> Coastkeeper Petition, p. 14.

1 Coastkeeper argues that time schedules cannot be used under the Nonpoint Source Policy to allow  
2 for technological advancements. Both of these arguments must be rejected as they are inconsistent  
3 with the Nonpoint Source Policy and controlling statutes.

4 Like with Key Element 2, Coastkeeper confuses water quality requirements as compared to  
5 water quality objectives. Water quality requirements are those provisions in WDRs that are designed  
6 to get the regulated discharge, or group of regulated discharges, to a point that the discharge no  
7 longer causes or contributes to an exceedance of a receiving water limit.<sup>27</sup> Water quality objectives  
8 are “the limits or levels of water quality constituents or characteristics which are established for the  
9 reasonable protection of beneficial uses of water ....”<sup>28</sup> Even if all water quality requirements are  
10 met, that does not mean that water quality objectives in receiving waters will actually be achieved.  
11 Thus, to claim that Ag Order 4.0 violates Key Element 3 because it does not include a timeline for  
12 all Central Coast groundwater to meet nitrate objectives misconstrues the intent and purposes of  
13 time schedules under the Water Code as well as the Nonpoint Source Policy. Further, it would be  
14 infeasible for the Central Coast Water Board to set such timelines considering the complex nature of  
15 nitrate and its movement to groundwater. Unknown variables such as legacy loads of nitrate in the  
16 vadose zone, septic sources, future precipitation, recharge programs and other unknowns make it  
17 impossible for the Central Coast Water Board to put a timeline on when groundwater will meet  
18 objectives, and it would be unlawful for the Central Coast Water Board to impose that responsibility  
19 solely on irrigated agriculture through Ag Order 4.0. Notably, Coastkeeper made similar arguments  
20 in the course of the ESJ Litigation before the Superior Court of California, and such arguments were  
21 rejected. In short, the court found that “Petitioners’ suggestion that the State Board employ a  
22 different method that may not be feasible, does not show a violation of the Nonpoint Source  
23 Policy.”<sup>29</sup> In other words, just because Coastkeeper would have preferred a different method does  
24 not mean that the approach used violates the Nonpoint Source Policy.

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26 <sup>27</sup> Notably, Coastkeeper ignores the fact that Ag Order 4.0 includes time schedules for meeting water quality requirements  
27 and receiving water limits. While Ag Petitioners may not agree with many of the time schedules contained in Ag Order  
28 4.0 that does not detract from the underlying fact that they do exist.

<sup>28</sup> Wat. Code, § 13050(h).

<sup>29</sup> October Ruling on Submitted Matter, p. 24.

1 Similarly, with respect to the use of time schedules because the solution set is not yet known,  
2 Coastkeeper’s argument would directly undermine the intent and purpose of a time schedule and  
3 Key Element 3. As stated in Key Element 3, the ability to achieve water quality requirements may  
4 involve various processes, including identification of short and long-term water quality goals,  
5 timelines for achieving goals, time to identify management practices, time to implement  
6 management practices, and time to identify additional practices in the event that initial actions are  
7 inadequate.<sup>30</sup> Under Coastkeeper’s approach, growers in the Central Coast would be mandated to  
8 meet water quality requirements immediately regardless if there are known practices available or  
9 not. Ultimately, Coastkeeper is attempting to use the Nonpoint Source Policy to end certain types of  
10 agriculture on the Central Coast. Although not explicitly stated, Coastkeeper is aware that, e.g.,  
11 vineyard practices likely result in immediate compliance; however, vegetable production is more  
12 complex and requires different fertilizer practices as compared to vineyards. In its arguments  
13 regarding evidence of available technology as a reason for not allowing time to comply, Coastkeeper  
14 is likely informed that such technology pertains to only certain commodities – not all commodities.  
15 But, rather than recognizing the diversity of commodities and differences in fertilizer practices,  
16 Coastkeeper makes inappropriate and illogical arguments by claiming that evidence of compliance  
17 by some subset of growers is a reason to not allow time schedules for other growers as otherwise  
18 allowed by law and policy.

19 Finally, Coastkeeper argues that Ag Order 4.0 fails to meet Key Element 3 because it does  
20 not include numeric targets for riparian and operational setbacks.<sup>31</sup> Coastkeeper claims that the lack  
21 of such riparian and operational setbacks equates to Ag Order 4.0 not having quantifiable  
22 milestones. In reality, Coastkeeper is arguing that Ag Order 4.0 must include its preferred  
23 quantifiable milestones for Coastkeeper to find that Ag Order 4.0 complies with the Nonpoint  
24 Source Policy. Unfortunately for Coastkeeper, the term “quantifiable milestones” in Key Element 3  
25 is intended to be flexible and encompass a wide variety of performance goals and measures, which  
26 may or may not include those preferred by Coastkeeper. In short, Ag Order 4.0’s inclusion, or lack  
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28 <sup>30</sup> Nonpoint Source Policy, p. 13.

<sup>31</sup> Coastkeeper Petition, p. 15.

1 thereof, of Coastkeeper preferred milestones is not the measure by which compliance with the  
2 Nonpoint Source Policy is determined. As such, Coastkeeper’s arguments must be disregarded.

#### 3 **4. Coastkeeper Fails to Understand Key Element 4**

4 Key Element 4 requires an NPS implementation program to “include sufficient feedback  
5 mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is  
6 achieving its stated purpose(s), or whether additional or different MPs or other actions are  
7 required.”<sup>32</sup> The type of feedback mechanisms to be used is not dictated by the Nonpoint Source  
8 Policy, and in fact, the Nonpoint Source Policy recognizes that there are many different types of  
9 feedback mechanisms.<sup>33</sup> In other words, the Nonpoint Source Policy does not set forth a specific  
10 regime or level of detail for what constitutes sufficient feedback mechanisms.<sup>34</sup>

11 Without much explanation, Coastkeeper makes general allegations claiming that Ag Order  
12 4.0 fails to include sufficient feedback mechanisms. At most, Coastkeeper claims the order is  
13 deficient because it does not include quantifiable vegetative setback milestones and that the  
14 monitoring regime is inadequate. At first glance, Coastkeeper’s arguments are legally deficient  
15 because they are conclusory, fail to cite applicable legal authority, and fail to identify evidence in  
16 the record in support of their position. On a larger policy scale, Coastkeeper continues to misapply  
17 the Nonpoint Source Policy and its key elements whenever an agricultural order does not include  
18 provisions advocated for by Coastkeeper during the process. In past litigation and now, Coastkeeper  
19 takes unsupported positions that the Nonpoint Source Policy demands edge-of-field monitoring,  
20 numeric milestones and some unexplained higher level of monitoring than what has been adopted.  
21 The courts have repeatedly rejected Coastkeeper’s claims. In *Monterey Coastkeeper*, mandatory  
22 individual monitoring is rejected as being “too costly, too burdensome and would overwhelm the  
23 Regional Board.”<sup>35</sup> In more recent litigation, the Superior Court rejected Coastkeeper’s arguments  
24 that “more” monitoring was needed besides what was adopted by the Central Valley Regional Water

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26 <sup>32</sup> Nonpoint Source Policy, p. 13.

27 <sup>33</sup> Nonpoint Source Policy, p. 14.

28 <sup>34</sup> October 2020 Ruling, p. 26, [“As recognized by the State Board, the NonPoint Source Policy does not require a specific level of granularity, and Section 13267 directs that the burden of monitoring reports bear a reasonable relationship to the need for the report and benefits to be obtained therefrom. (Wat. Code, § 13267.)”].

<sup>35</sup> *Monterey Coastkeeper* 28 Cal.App. 5<sup>th</sup> at 366.

1 Quality Control Board.<sup>36</sup> Just because Coastkeeper does not like the level of monitoring and  
2 reporting in an agricultural order does not mean that it fails to include sufficient feedback  
3 mechanisms. Further, Coastkeeper’s generalized statements and conclusions here fail to rise to a  
4 level that meets the State Board’s regulations for a Memorandum of Points and Authorities in  
5 support of claims made in a petition.<sup>37</sup> Specifically, Coastkeeper fails to articulate how the feedback  
6 mechanisms contained in Ag Order 4.0 are deficient as compared to Key Element 4. Thus,  
7 Coastkeeper’s generalized allegations do not meet the State Board’s minimal standards as required.  
8 For these reasons, the State Board needs to summarily reject Coastkeeper’s claims.

9 **5. Coastkeeper Improperly Uses Key Element 5 as a Broad Catchall Requirement**  
10 **for its Opposition to Third Party Programs**

11 Key Element 5 of the Nonpoint Source Policy directs regional boards to include a general  
12 description of actions that may be taken if a nonpoint source implementation program is not meeting  
13 its stated purposes and objectives. Key Element 5 is designed to ensure that dischargers and the  
14 public all have a clear understanding of a regional board’s expectations, and the type of informal or  
15 formal enforcement that may be taken in the event of noncompliance.<sup>38</sup> Most importantly, Key  
16 Element 5 is guidance, and by its own description, is not binding on regional boards.<sup>39</sup>

17 In a new, novel interpretation of Key Element 5, Coastkeeper argues that the need to  
18 articulate consequences as part of Key Element 5 means that regional boards “must look backwards,  
19 to consequences articulated in previous agricultural orders and plans.”<sup>40</sup> Coastkeeper provides no  
20 support for this position as none exists.

21 Next, Coastkeeper makes unsubstantiated arguments that the inclusion of third-party  
22 programs in Ag Order 4.0 result in a voluntary order.<sup>41</sup> Such claims are patently false and far from  
23 reality. Third-party programs are advocated and supported by the Nonpoint Source Policy and the  
24 State Board. The Nonpoint Source Policy recognizes that implementation of NPS programs is

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25 <sup>36</sup> October 2020 Ruling, p. 25-26.

26 <sup>37</sup> Cal. Code Regs., tit. 23, § 2050(7), [“A statement of points and authorities in support of legal issues raised in the  
petition, including citations to documents or the transcript of the regional board hearing if it is available.”].

27 <sup>38</sup> Nonpoint Source Policy, p. 14.

28 <sup>39</sup> *Id.*

<sup>40</sup> Coastkeeper Petition, p. 17.

<sup>41</sup> Coastkeeper Petition, p. 18.

1 significantly limited by available regional board resources.<sup>42</sup> In light of this consideration, the State  
2 Board has directly encouraged the Central Coast Water Board to use a third-party structure:

3 From a resource perspective, third parties allow a regional water board to leverage  
4 limited regulatory staff by acting as intermediaries between the regional water board  
5 staff and the growers, freeing regional water board resources to focus on problem  
6 areas or actors. Third parties also may have the expertise to provide technical  
7 assistance and training to growers at a scale that cannot be matched by regional water  
8 boards staff resources, and, in many cases, third parties already have relationships in  
9 place with the dischargers.<sup>43</sup>

10 The inclusion of a third-party program does not make Ag Order 4.0, or any other agricultural order,  
11 voluntary. Under Ag Order 4.0, growers are required to file Notices of Intent with the Central Coast  
12 Water Board, submit individual ranch information that includes identification of management  
13 practices, calculations that report the amount of nitrate fertilizers applied versus the amount removed  
14 by crops, participate in third-party monitoring programs or conduct individual monitoring, and in  
15 some cases, implement individual monitoring.<sup>44</sup> All of these provisions are directly applicable to  
16 growers and are not “voluntary.” Failure to meet any of these requirements may result in an  
17 enforcement action being taken by the Central Coast Water Board. Based on these requirements and  
18 others, there is clearly nothing that is voluntary about Ag Order 4.0. Coastkeeper’s arguments must be  
19 rejected.

20 In summary, Coastkeeper’s interpretations and application of the Nonpoint Source Policy are  
21 improper and inconsistent with the intent and meaning of the policy and each of its key elements.  
22 Accordingly, Coastkeeper’s petition must be summarily rejected.

23 **B. Coastkeeper’s Resolution 68-16 Arguments Ignore State Board Precedence and**  
24 **Recent Superior Court Determinations Upholding State Board Precedence**

25 Like with many of its other arguments, Coastkeeper makes generic arguments devoid of  
26 evidence and legal authority in its Resolution 68-16 claims. More critically, Coastkeeper ignores the  
27 State Board’s precedential findings regarding Resolution 68-16 in its ESJ Order, and further ignores  
28 the Superior Court’s findings upholding the ESJ Order in its October 2020 Ruling. As clearly noted in

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<sup>42</sup> Nonpoint Source Policy, pp. 15-16.

<sup>43</sup> State Water Board Order WQ 2013-0101, pp. 13-14.

<sup>44</sup> Ag Order 4.0, e.g., pp. 11, 12, 19, 23, 24, 29, 30, 35, and 36.

1 the ESJ Order, little specific direction was provided to regional boards regarding application of  
2 Resolution 68-16 to nonpoint sources prior to adoption of the ESJ Order. With the adoption of the  
3 ESJ Order, the State Board set the standard for determining baseline water quality as a general  
4 assessment of existing water quality data that is reasonably available, evaluated maximum benefit to  
5 the people of the state, and explained how the ESJ Order satisfies best practicable treatment or  
6 control.<sup>45</sup>

7 Then, the Superior Court upheld the State Board’s approach regarding compliance with  
8 Resolution 68-16 and rejected environmental petitioners’ claims to the contrary.<sup>46</sup> To counteract the  
9 State Board’s precedential ESJ Order, Coastkeeper would need to show how Ag Order 4.0 and the  
10 approach taken by the Central Coast Water Board is inconsistent with that taken by the Central Valley  
11 Water Board and the State Board in adoption of the ESJ Order. Coastkeeper’s arguments do no such  
12 thing and are void of any arguments claiming that Ag Order 4.0 fails to meet the State Board’s  
13 mandates for complying with Resolution 68-16 as set forth in the ESJ Order.

14 Coastkeeper’s arguments are problematic and should be rejected for other reasons as well,  
15 including the following:

- 16 • Contrary to Coastkeeper’s claims, one agricultural operation as compared to another does  
17 not mean that they are similarly situated dischargers.<sup>47</sup> In the Central Coast, grower  
18 operations vary by commodity, size, location, crop rotation, organic vs. conventional,  
19 buyer contracts, and many other operational specifics. All of these factors need to be  
20 considered to determine if one grower is “similarly situated” as compared to another  
21 grower. It is not enough to merely point out, e.g., that some growers document minimal  
22 pesticide use and thus all growers should be able to do the same. Geography, commodity,  
23 location, presence of pests, and other factors all play into grower decisions regarding the  
24 potential use of a pesticide. Accordingly, Coastkeeper’s arguments regarding what  
25 constitutes best practical treatment or control and the factors to consider are improperly  
26 applied to growers subject to Ag Order 4.0.

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27 <sup>45</sup> ESJ Order, pp. 77-80.

28 <sup>46</sup> October 2020 Ruling, pp. 29-36.

<sup>47</sup> Coastkeeper Petition, p. 18-19.

- 1           • Under the ESJ Order, regional boards are to establish baseline water quality conditions by  
2           conducting a general assessment of existing water quality data that is reasonably  
3           available.<sup>48</sup> This baseline is then used to determine what are, or are not, high quality  
4           waters subject to Resolution 68-16 to allow for degradation of high-quality waters at the  
5           time of order adoption. Coastkeeper appears to convolute application of Resolution 68-16  
6           and the State Board’s ESJ Order findings by suggesting that use of existing water quality  
7           data provides for a post hoc authorization of past degradation. Coastkeeper misses a key  
8           point. Recreating baseline water quality back to 1968 for hundreds of waterbodies and  
9           dozens of waste constituents is near impossible and impractical. Rather than delaying  
10          implementation of irrigated lands programs like Ag Order 4.0 by requiring such an effort,  
11          the State Board has provided guidance for conducting general assessments using available  
12          and existing water quality data. This allows regional boards to meet the intent and  
13          purposes of Resolution 68-16 in its adoption of broad general orders for complex  
14          discharges such as that from irrigated agriculture.
- 15          • Coastkeeper improperly believes that Resolution 68-16 dictates that degraded waters be  
16          restored.<sup>49</sup> While we all want water quality improvements and protection of beneficial  
17          uses, Resolution 68-16 is about protecting “existing” high quality waters – it does not  
18          dictate what should happen when waters are no longer considered high quality. In such  
19          cases, regional boards are directed to use the “best efforts” approach.<sup>50</sup> “The ‘best efforts’  
20          approach involves the Regional Water Board establishing limitations expected to be  
21          achieved using reasonable control measures.”<sup>51</sup> Coastkeeper makes no claims that Ag  
22          Order 4.0 is inconsistent with the best efforts approach for waters that are already  
23          degraded.

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27 <sup>48</sup> ESJ Order, p. 78.

28 <sup>49</sup> Coastkeeper Petition, p. 21.

<sup>50</sup> See State Board Order WQ 81-5.

<sup>51</sup> ESJ Order, Attachment A to Order R5-2012-0116-R4 – Information Sheet, p. 38.



1 Based on the above, Coastkeeper’s arguments regarding Resolution 68-16 must be dismissed  
2 as they fail to actually explain how Ag Order 4.0 is inconsistent with State Board precedential  
3 direction on this issue.

4 **C. The Reasonable Use Doctrine Does Not Apply to Water Quality Orders, Nor Do**  
5 **Regional Boards Have Authority to Make “Unreasonable Use” Determinations.**

6 Coastkeeper argues that Ag Order 4.0, a water quality order, violates California’s reasonable  
7 and beneficial use doctrine by failing to “prevent waste and preserve water quality and other protected  
8 beneficial uses.”<sup>52</sup> As explained below, the reasonable and beneficial use doctrine operates as a  
9 limitation on water rights in the context of scarce water supply and does not apply to the issuance of  
10 waste discharge requirements by a regional board.

11 Since its inception, the reasonable use doctrine has consistently been applied in water rights  
12 disputes concerning the *allocation* of scarce water resources. Specifically, “[w]ater use by both  
13 appropriators and riparian users is limited by the ‘reasonable use doctrine’, which forbids the waste of  
14 water or its unreasonable use.”<sup>53</sup> There is no definition of “unreasonable use” because reasonableness  
15 depends on the circumstances, i.e., the amount of water available “in an area of great scarcity and  
16 great need.”<sup>54</sup> Nor can a determination be made without considering constitutional requirements that  
17 water be put to beneficial use to the fullest extent practical, waste or unreasonable use be prevented,  
18 and water be conserved.<sup>55</sup> The State Board’s power to ensure reasonable water allocations under the  
19 reasonable use doctrine is separate from its power to regulate water quality.<sup>56</sup> Accordingly, the  
20 doctrine is intended to be applied to the allocation of water resources to ensure the maximum use of  
21 scarce water supplies. It has no application to water quality orders or WDRs, which is a function of  
22 the regional boards under Porter-Cologne.

23 More importantly, a regional board’s authority to set WDRs under Porter-Cologne does *not*  
24 include the power to make unreasonable use determinations.<sup>57</sup> Only the State Board has the power to

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26 <sup>52</sup> Coastkeeper Petition, pp. 22-23.

27 <sup>53</sup> *Millview County Wat. Dist. v. State Wat. Res. Control Bd.* (2014) 229 Cal.App.4th 879, 890 (*Millview*).

28 <sup>54</sup> *Light v. State Wat. Res. Control Bd.* (2014) 226 Cal.App.4th 1463, 1480 (quotations omitted).

<sup>55</sup> *In re Waters of Long Valley Creek System* (1979) 25 Cal.3d 339, 354.

<sup>56</sup> See *Light*, 226 Cal.App.4th at 1485.

<sup>57</sup> See Wat. Code § 13260 et seq.

1 make such determinations.<sup>58</sup> Coastkeeper miscites several statutes for the proposition that regional  
2 boards share management authority with the State Board over water resources.<sup>59</sup> These statutes say  
3 nothing about regional boards, let alone their authority (if any) over the management or allocation of  
4 state water resources.<sup>60</sup>

5 Coastkeeper goes further, citing several cases describing the *State Board's* authority to  
6 manage water resources. None of the authorities cited support Coastkeeper's primary argument that,  
7 taken together the Constitution, Water Code, and caselaw "grant broad, expansive authority for the  
8 Regional . . . Boards" to manage water resources.<sup>61</sup> Coastkeeper's reference to the State Board's  
9 "broad, open-ended, expansive authority to undertake comprehensive planning and allocation of  
10 water resources"<sup>62</sup> also has *zero* relevance to a regional board's ability to issue water quality orders  
11 under Porter-Cologne.<sup>63</sup> Coastkeeper's attempts to conflate State Board authority to determine  
12 reasonable uses of water with regional board authority to set WDRs should therefore be ignored.<sup>64</sup>

13 Coastkeeper also argues "the 2021 Order fails to use *reasonable means* available under its  
14 authority to limit growers' pollution of water, which is particularly egregious when such uses impact  
15 or exclude domestic, environmental or other critical uses."<sup>65</sup> Coastkeeper does not identify which  
16 "means" are unreasonable or explain how they are unreasonable. Instead, Coastkeeper suggests the  
17 Central Coast Water Board should prohibit growers from flood irrigating and require "alternative  
18 irrigation methods" such as micro-irrigation.<sup>66</sup> Coastkeeper improperly cites reasonable use and  
19 public trust caselaw for its suggestion that the Central Coast Water Board should limit certain  
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21 <sup>58</sup> See Wat. Code § 275; *Millview*, 229 Cal.App.4th at 891-92.

22 <sup>59</sup> Coastkeeper Petition, p. 23, n. 83 (citing Wat. Code §§ 100, 275, 1050, 1051, 1825, 10608.4, 10801(g), and 85023).

23 <sup>60</sup> *Wishtoyo Found. v. State Water Res. Control Bd.* (2017) Cal.Super.Lexis 7721, at 37 ["The statutory requirements that  
do apply to the Regional Board repeatedly address the need for the Board to consider water quality issues, not water  
supply issues."].

24 <sup>61</sup> Coastkeeper Petition, p. 23, n. 86-89.

25 <sup>62</sup> Coastkeeper Petition, p. 23, n. 87 (quoting *Nat. Audubon Soc. v. Superior Court* (1983) 33 Cal.3d 419, 449).

26 <sup>63</sup> *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 concerned only the State Board's authority to  
allocate water in light of the public trust doctrine, not water quality orders under Porter-Cologne.

27 <sup>64</sup> Coastkeeper's statement "the Regional Board adopted the 2021 Order without any consideration of the permitted  
activities' unreasonable use of water . . ." (Coastkeeper Petition, p. 23) is also irrelevant. Coastkeeper has not identified  
any unreasonable use of water or cited any authority requiring the Central Coast Water Board to alleviate it. Irrigated  
agricultural is a beneficial use of water (Wat. Code § 106) that cannot be designated "unreasonable" by the Central Coast  
Water Board.

28 <sup>65</sup> Coastkeeper Petition, p. 23 (emphasis added).

<sup>66</sup> Coastkeeper Petition, p. 23-24.

1 methods of crop irrigation to ensure the maximization of other beneficial uses. As discussed above, it  
2 is not the prerogative of the Central Coast Water Board to allocate or limit beneficial uses of water  
3 under the reasonable use doctrine.<sup>67</sup>

4 Moreover, the State Board and regional boards may not “specify the design, location, type of  
5 construction, or particular manner in which compliance may be had with [waste discharge  
6 requirements or other orders], and the person so ordered shall be permitted to comply with the order  
7 in any lawful manner.”<sup>68</sup> Growers therefore cannot be forced to employ certain irrigation methods as  
8 Coastkeeper suggests. Coastkeeper’s assertion that the Central Coast Water Board was required to  
9 limit or dictate certain irrigation methods (e.g., flood irrigation) to preserve access to safe drinking  
10 water and avoid critical environmental conditions therefore cannot stand.<sup>69</sup>

11 Altogether, Coastkeeper’s entire argument is based on a misapplication of the reasonable use  
12 doctrine, which is made obvious by the scant caselaw Coastkeeper cites for authority.

13 **D. Coastkeeper’s Application of the Public Trust Doctrine to Ag Order 4.0 is Erroneous.**

14 Coastkeeper argues “[t]he 2021 Order fails to satisfy the Regional Board’s obligations under  
15 the public trust doctrine.”<sup>70</sup> Like the reasonable use doctrine, Coastkeeper has misapplied the public  
16 trust doctrine to WDRs.

17 The California Supreme Court has outlined the responsibility of the State Board regarding the  
18 public trust doctrine. “The state has an affirmative duty to take the public trust into account in the  
19 *planning and allocation of water resources*, and to protect the public trust uses whenever feasible.”<sup>71</sup>  
20 Like the reasonable use doctrine, the public trust doctrine is administered by the State Board when  
21 allocating water supply.<sup>72</sup> In *National Audubon Society*, the Supreme Court “recognized that the  
22 public trust doctrine and the appropriative water rights system administered by the [State] Board . . .  
23 [e]ach developed comprehensive rules and principles which, if applied to the full extent of their

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25 <sup>67</sup> Coastkeeper’s argument that “[t]he Human Right to Water . . . serves as a standard to determine if a particular water use  
26 is reasonable” lacks authority and is irrelevant for purposes of water quality orders. That “the Regional Board has a  
27 mandatory duty to perform a ‘reasonable use analysis’” suffers the same faults. (Coastkeeper Petition, p. 24.)

28 <sup>68</sup> Wat. Code § 13360(a); *Tahoe-Sierra Preservation Council v. State Wat. Res. Control Bd.* (1989) 210 Cal.App.3d 1421,  
1438 [water boards “may identify the disease and command that it be cured but not dictate the cure.”].

<sup>69</sup> Coastkeeper Petition, p. 24.

<sup>70</sup> Coastkeeper Petition, p. 24.

<sup>71</sup> *Nat. Audubon Soc.*, *supra*, 33 Cal.3d at 446-47.

<sup>72</sup> *Light*, *supra*, 226 Cal.App.4th at 1480.

1 scope, would occupy the field of *allocation* of stream waters to the exclusion of any competing  
2 system of legal thought.”<sup>73</sup> Ag Order 4.0 is a *water quality* order. Water quality orders are not  
3 contemplated by the public trust doctrine because they do not provide for an “allocation” of water.<sup>74</sup>

4 Regional boards are neither required nor authorized to administer the public trust doctrine via  
5 WDRs under Porter-Cologne.<sup>75</sup> The State Board is the “trustee” of public trust, and regional boards  
6 have no similar jurisdiction to manage public trust interests.

#### 7 **E. Coastkeeper’s CEQA Arguments Are Flawed.**

8 Coastkeeper argues that Ag Order 4.0 violates the California Environmental Quality Act  
9 (“CEQA”) due to changes to the project between staff’s 2020 initial draft order and the March 25,  
10 2021 Revised Draft Order.<sup>76</sup> Specifically, Coastkeeper takes issue with changes to the riparian and  
11 operational setback provisions, arguing that the changes violate CEQA.<sup>77</sup> Such statements are  
12 incorrect.

13 At first glance, Coastkeeper’s arguments are legally deficient because they are conclusory and  
14 fail to cite applicable legal authority in support of their position. (This alone is cause for rejection as  
15 it fails to meet the State Board’s minimum standards for a Petition.<sup>78</sup>) Without much explanation,  
16 Coastkeeper makes general allegations claiming that Ag Order 4.0 violates CEQA due to changes  
17 made to riparian and wetland habitat restoration provisions. However, Coastkeeper does not explain  
18 how Ag Order 4.0 violates CEQA and instead alludes to “substantial changes” that were made.<sup>79</sup> As  
19 support for its allegations, Coastkeeper points to statements from one commenter who supported the  
20 inclusion of riparian and operational setback provisions in the draft document.<sup>80</sup> However, a  
21 comment letter expressing support for a draft provision of Ag Order 4.0, specifically the setback  
22 provisions, is not legal justification for concluding the CEQA process was flawed.

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25 <sup>73</sup> *Nat. Audubon Soc., supra*, 33 Cal.3d at 445 (emphasis added).

26 <sup>74</sup> See *Wishtoyo, supra*, Cal.Super.Lexis 7721 at n. 8.

27 <sup>75</sup> See Wat. Code § 13260 et seq.

28 <sup>76</sup> Coastkeeper Petition, p. 26.

<sup>77</sup> *Ibid.*

<sup>78</sup> See Cal. Code Regs., tit. 23, §2050(a)(7).

<sup>79</sup> *Ibid.*

<sup>80</sup> Coastkeeper Petition, pp. 26-27.

1 Second, Coastkeeper takes issue of the fact that a draft staff document contained some  
2 provisions that were ultimately not adopted by the Central Coast Water Board, which is the governing  
3 entity.<sup>81</sup> A change in a draft document does not necessarily equate to a violation of CEQA. This is  
4 especially true when Coastkeeper provides no legal or factual support for its position.

5 Third, as evidenced earlier in its Petition, it appears that Coastkeeper is alleging the project  
6 violates CEQA because Ag Order 4.0 does not force riparian and wetland habitat restoration. As  
7 described herein in Section II. A. 2, riparian and wetland habitat restoration provisions cannot be  
8 forced on growers by the Central Coast Water Board through WDRs. Nothing within Porter-Cologne  
9 provides regional boards or the State Board with the authority to require such habitat restoration as  
10 part of issuing WDRs. Additionally, vegetated buffer strips, riparian protection areas, and setbacks  
11 cannot be required MPs within Ag Order 4.0 because the Central Coast Water Board cannot dictate  
12 the manner of compliance.<sup>82</sup> Notwithstanding these statutory bounds of Porter-Cologne, Coastkeeper  
13 attempts to attack the removal of these provisions through CEQA. However, removal of faulty  
14 provisions out of the final adopted order does not violate CEQA.

15 Coastkeeper’s generic arguments alleging violations of CEQA are devoid of evidence and  
16 legal authority and fail to rise to a level that meets the State Board’s regulations for a Memorandum  
17 of Points and Authorities in support of claims made in a petition.

18 For these reasons, the State Board needs to summarily reject Coastkeeper’s CEQA claims.

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28 <sup>81</sup> Coastkeeper Petition, p. 26.  
<sup>82</sup> Wat. Code, § 13360.

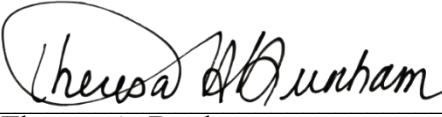
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**III. CONCLUSION**

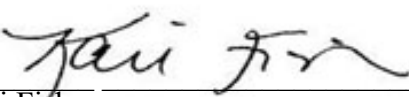
Based on the response provided, Ag Petitioners respectfully request that the State Board reject the arguments set forth by Coastkeeper in their Petition.

Dated: October 28, 2021

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