Deborah A. Sivas, State Bar No. 135446
Leah J. Russin, State Bar No. 225336
Alicia Thesing, State Bar No. 211751
Marta R. Darby, Certified Law Student No. 31357
Samuel D. Eisenberg, Certified Law Student No. 31358
Julia K. Forgie, Certified Law Student No. 31360
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
E-mail: dsivas@stanford.edu

Attorneys for Petitioners
MONTEREY COASTKEEPER,
SANTA BARBARA CHANNELKEEPER,
SAN LUIS OBISPO COASTKEEPER

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Adoption of Order No. R3-2012-0011, by the Central Coast Regional Water Quality Control Board for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands	**SWRCB/OCC FILES A-2209 (a) - (e)**

RESPONSE OF MONTEREY COASTKEEPER, SAN LUIS OBISPO COASTKEEPER, AND SANTA BARBARA CHANNELKEEPER

Pursuant to the State Water Resources Control Board's ("State Board") September 25, 2012 extension notice, Petitioners Monterey Coastkeeper, San Luis Obispo Coastkeeper, and Santa Barbara Channelkeeper (collectively "Coastkeeper" or "Environmental Petitioners") submit this written response to petitions by the California Farm Bureau Federation, Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm

Bureau, Santa Cruz County Farm Bureau, Ocean Mist Farms and RC Farms, Jenson Family Farms, William Elliott, Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers (collectively "Agricultural Petitioners") for review of Order No. R3-2012-0011 ("Waiver"), SWRCB/OCC FILES A-2209(b)-(e).[1] These petitions are wholly without merit, and the State Board should reject them.

I. INTRODUCTION

The surface and ground waters of the Central Coast have been heavily polluted by agricultural discharge and runoff. This pollution is causing tremendous harm to public health and the environment. The Regional Board, State Board, and the U.S. EPA have all determined that designated beneficial uses of many of these waters are impaired by sediment, nutrients, pesticides, turbidity, toxicity, pathogens, temperature, and other pollutants from agriculture.

The Central Coast Regional Water Quality Control Board attempted to address these water quality concerns in its 2004 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. However, it became clear from water quality data collected by the Agricultural Petitioners themselves that the 2004 Waiver failed to make progress toward improving water quality and abating agricultural pollution. Regional Board staff acknowledged in 2008 that "severe water quality problems continue." A.R. 45 at 607 (Letter from Regional Board Staff to Agricultural Advisory Panel, Dec. 12, 2008).

Due to the continuing water quality problems, the Regional Board worked over a period of years to develop a new conditional waiver. That process included the formation of an Advisory Panel with stakeholders, iterative drafts of a new waiver prepared and proposed by

[1] When appropriate, the date 2012 will be included as needed to distinguish this Waiver from the earlier 2004 Waiver.

Regional Board staff, multiple hearings and workshops by the Board, extensive comments from the public scoping sessions, and multiple proposals from various groups, some of whom submitted several different proposals over time. Each subsequent draft of the waiver was revised to accommodate concerns and objections expressed by the agricultural community.

After four years of extensive, even unprecedented, public process, the Regional Board unanimously adopted the 2012 Waiver (A.R. 374) on March 15, 2012. The agricultural community has filed petitions for review with the State Board, presenting a kitchen sink of arguments about the Waiver's merits. Ultimately these petitions amount to a mere disagreement with the Regional Board's policy choice. The various arguments about the sections of the Waiver and the process the Regional Board followed have no legal merit.

Environmental Petitioners therefore urge that the State Board reject the Agricultural Petitions.

II. BACKGROUND

The California Water Code authorizes State and Regional Water Boards to conditionally waive waste discharge requirements ("WDRs") if doing so both complies with applicable water quality plans and standards and is determined to be in the public interest. Cal. Water Code § 13269(a). Over the years, the regional boards have issued waivers for more than 40 categories of discharges. Although waivers must be conditional, historically they contained few meaningful conditions. For example, waivers enacted before 2000 typically did not require any water quality monitoring, a feature of WDRs that allows regional boards to assess whether dischargers are meeting water quality standards. Senate Bill 923, signed into law on October 11, 2003, was intended to strengthen the waiver process and bring dischargers utilizing a waiver into better compliance with the water quality provisions of the Porter-Cologne Act. 2003 Cal. Legs. Serv.

Ch. 801 (S.B. 923). It amended section 13269 of the Water Code to require, among other things, a Regional Board determination that waivers are consistent with applicable water quality plans and in the public interest, publicly available water quality monitoring, and reconsideration and renewal every five years.

On July 9, 2004, the Central Coast Regional Board first adopted the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands in Order No. R3-2004-0117. A.R. 005 (2004 Waiver). In adopting this Waiver, the Regional Board stated that the Waiver "includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the state" and "contains more specific and more stringent conditions for protection of water quality compared to existing regulatory programs." Id. at 62. The 2004 Waiver required growers to develop and implement a Farm Plan. Regional Board staff advised at the time that "at the end of the first [five-year] waiver cycle, the program [would] be evaluated and revised as necessary as part of the waiver review process." A.R. 003 at 38 (Initial Study and Negative Declaration, July 8, 2004). For example, the 2004 Waiver stated that in time "increased reporting and monitoring may be required in order to ensure that water quality is improving." A.R. 005 at 62 (2004 Waiver).

In December 2008, Regional Board Executive Officer Roger Briggs invited various stakeholders to participate on a panel to assist in development of a new waiver. A.R. 045 (Letter from Regional Board Staff to Agricultural Advisory Panel, Dec. 12, 2008). This Agricultural Advisory Panel ("Panel") was comprised of twelve representatives of the agricultural industry and growers, four representatives of environmental organizations, two Regional Board staff, two agricultural academics, and two agencies. In particular, staff stated that "new requirements" were "necessary to directly address and resolve the major water quality issues associated with

irrigated agriculture." Id. at 606. Staff explained that while some regulated entities had improved agricultural operations to benefit water quality since 2004, "[o]ther growers are not making progress, and severe water quality problems continue." Id. at 607.

Despite five meetings between December 2008 and April 2009, the Panel's work was not done before the 2004 waiver was set to expire, so the 2004 waiver was extended.[2] A.R. 057 (2004 Waiver Renewal, July 10, 2009). The Panel process continued, holding numerous meetings with Regional Board staff, in facilitated meetings, and in stakeholder-only meetings. Even many more additional meetings, however, Panel members were unable to reach consensus. As a result, the Panel dissolved at the conclusion of its September 22, 2009 meeting. See A.R. 046 at 830. With the failure of the Panel, the Regional Board staff stated its intent and timeline for creation of a staff proposal, invited input, and solicited alternative proposals by April 1, 2010.

Based on input from stakeholders, including all Petitioners, the Regional Board staff released a new draft waiver and preliminary report for public comment on February 1, 2010. A.R. 092 (Draft Waiver, Feb. 1, 2010); A.R. 089 (Preliminary Draft Report, Feb. 1, 2010). This draft waiver contained key components necessary for compliance with Water Code section 13269, including compliance with water quality standards established in the regional water quality control plan ("Basin Plan"), explicit timelines for compliance, and individual discharge monitoring requirements.

[2] During the lengthy and extensive public process, the 2004 Waiver was kept in place despite the Regional Board's unambiguous conclusion that it did not adequately protect water quality. By a vote of the Regional Board, the 2004 Waiver was extended, first, until July 10, 2010, and then again until March 31, 2011. It was administratively extended by the Executive Officer for a third time on March 29, 2011, and for a fourth time on September 30, 2011. During each of these extension periods, outreach by staff and input from stakeholders, particularly agricultural interests, continued.

Staff also provided a preliminary report that demonstrated that the 2004 Waiver was inconsistent with water quality objectives for the region, did not comply with Water Code section 13269, and was not in the public interest. A.R. 089. For example, six years after adoption, there was "no direct evidence that water quality [was] improving due to the 2004 Conditional Waiver." Id. at 1128-29 (Preliminary Draft Report, Feb. 1, 2010). The report noted that many water segments throughout the region are listed as impaired under Clean Water Act section 303(d), nearly all beneficial uses are impacted by agricultural pollution, and these impairments remain "well documented, severe, and widespread" despite the fact that a number of dischargers had enrolled in the 2004 Waiver program. Id. at 1126. For this reason, Regional Board staff concluded, "[i]mmediate and effective action is necessary to improve water quality protection and resolve the widespread and serious impacts on people and aquatic life." Id. Accordingly, staff determined that the 2004 Waiver "[lacked] clarity and focus," did not provide for adequate "compliance and verification monitoring," and allowed "agricultural discharges [to] continue to severely impact water quality in most receiving waters." Id. at 1141.

In response to the February 2010 draft waiver, the Regional Board members received extensive public comment. Three alternative proposals were submitted before the April 1 deadline, two from the agricultural interests ("the Ag Alternative(s)"), including from Agricultural Petitioners, and one by environmental interests.[3] The Board also received many comments by the deadline, and continued to accept comments thereafter. A.R. 99 (Index of comments received from February 1, 2010 through July 8, 2010, consisting of 279 letters).

[3] Proposals were submitted by California Farm Bureau Federation (A.R. 96 and 120), OSR Enterprises, Inc. (A.R. 97 and 121), and, as a group, the Environmental Defense Center, Monterey Coastkeeper, Ocean Conservancy, Santa Barbara Channelkeeper, and the Santa Barbara Chapter of Surfrider Foundation (A.R. 98).

The Regional Board analyzed these and other submissions in subsequent staff reports and held two follow-up public workshops, on May 12, 2010 and July 8, 2010, during which it accepted additional public comment and allowed key stakeholders, including various agricultural industry representatives (and Agricultural Petitioners), to make formal presentations. A.R. 117–48 (Public Workshop documents, May 12, 2010); A.R. 152–67 (Public Workshop documents, July 8, 2010). Throughout that summer and fall, the Regional Board staff met with many stakeholders, including the Agricultural Petitioners. A.R. 325 at 7698-99 (Regional Board Agricultural Order Renewal Stakeholder Outreach Meetings and Events). For example, on August 16, they met with the California Farm Bureau Federation, Grower-Shipper Association, and other ag industry representatives. Id. at 7699. On August 17, they met with the Environmental Petitioners. Id. On August 19, they met with the San Luis Obispo Farm Bureau and local agricultural representatives. Id.

On September 2, 2010, staff updated the Regional Board on the development of the waiver (A.R. 181 (Staff Report, Sept. 2, 2010)), and answered questions from the Board about whether the Agricultural Petitioners were providing input. For example, Board Chair Jeffrey Young asked, "Has the Farm Bureau provided any specific input?" and "And you specifically sent this to the Farm Bureau?" A.R. 185 at 3691-92 (Hearing transcript, Sept. 2, 2010). Staff confirmed that yes, it had been sent to the Farm Bureau, and that the Farm Bureau had provided unspecific comments. Id.

During the same time frame, the Regional Board staff began work on the environmental review documents pursuant to the California Environmental Quality Act ("CEQA"). They held a scoping meeting on August 16, 2010, and accepted written comments thereafter on the scope. A.R. 389–92 (CEQA Scoping Meeting documents, Aug. 16, 2010); A.R. 398 (comment letters).

On November 19, 2010, the Regional Board staff prepared another draft order that responded to many of the comments received. A.R. 191 (Draft waiver, Nov. 19, 2010). They also published a report on water quality conditions in the Central Coast region. A.R. 197 (Staff Report on Water Quality Conditions, Nov. 19, 2010). As a result of the comments received, the November draft had many changes from the February draft, including longer time frames for compliance, providing more options for monitoring and tailoring monitoring requirements more closely to farms posing greatest risks, and clarifying that certain things, including tile drains, were being left out. A.R. 190 at 3756 (Staff Report, Nov. 19, 2010).

At the same time, staff published a Draft Subsequent Environmental Impact Report ("Draft SEIR"). A.R. 198 (Draft SEIR). Applying CEQA Guidelines section 15162, staff determined that a subsequent report was appropriate in the circumstances, since the Board was considering a revision and clarification of a project that had already been the subject of a CEQA analysis. Id. at 4102. Both the "Ag Alternatives" from the California Farm Bureau and OSR Enterprises were discussed in the draft SEIR. Id. at 4123-27. Staff determined that both were similar in impact to continuing the 2004 Waiver, and therefore did not need additional consideration since the 2004 Waiver was considered fully in the Negative Declaration. Id. To better inform the public, the Draft SEIR included a table of changes between the 2004 Waiver and the proposed new waiver. Id. at 4104 (Table 1). The purpose was described in the SEIR as "to renew the 2004 Agricultural Order with revised conditions." Id. at 4099.

Comments were invited on the November 2010 draft SEIR until January 2, 2011. The Regional Board received 116 written comments on the new draft waiver, and 12 comments on the draft SEIR. The Agricultural Petitioners, including the Farm Bureaus, Grower-Shipper Association, Ocean Mist and RC Farms, and Jenson Family Farms, provided detailed comments,

which the Regional Board considered thoroughly. A.R. 236 at 5548-601 (Final SEIR, response to comments). During that time, staff continued meeting with stakeholders, including Agricultural Petitioners. A.R. 228 at 4889 (Staff Report, Mar. 17, 2011, showing meetings with agricultural petitioners on December 6, 2010, and December 15, 2010).[4] During those meetings, the California Farm Bureau Federation ("Farm Bureau") presented a new Ag Alternative to the Regional Board staff in a letter dated December 3, 2010. A.R. 213 at 4736.

By a notice dated March 1, 2011, the Regional Board Staff made available a third draft waiver, a new staff report, and the Final SEIR. A.R. 225 (Notice of Mar. 17, 2011 Hearing and availability of documents). The staff report indicated that although the Farm Bureau's alternative had been considered, it was not legally sufficient. A.R. 228 at 4852-53 (Staff Report, Mar. 17, 2011) ("Staff found that this Farm Bureau Proposal represents does [sic] not comply with basic statutory requirements and does not include requirements that will adequately protect water quality given the severity and magnitude of pollutant loading and water quality problems."). Specifically, staff was concerned that the monitoring and reporting were not sufficient to measure the efficacy of on-farm practices, that the monitoring data would be confidential, and that the alternative as a whole was unenforceable. Id. However, some aspects of the Ag Alternative were incorporated into the revised draft waiver. Id.

The Regional Board encouraged still more public comment at the Panel Hearing on March 17, 2011. The Farm Bureau presented a revised version of the Ag Alternative, but it still contained the same fatal flaws. A.R. 242 at 5842-60. For example, the revised Ag Alternative still allowed aggregated, rather than individual reporting, which staff had previously determined violated the Water Code's requirement for assessing the efficacy of on-farm practices. Id. at

[4] A public workshop was also held on February 3, 2011. A.R. 214–223 (Public Workshop documents).

5847. The Board allowed further testimony at the continuation of the hearing on May 4, 2011 (A.R. 225), and accepted additional comments and documents into the record. A.R. 277–81 (Public comments from agricultural representatives).

Among these additional documents was yet another proposal by the agricultural interests. Id. (presenting the Ag Alternative as a redline against the staff draft). Staff prepared an addendum to the staff report regarding these new documents (A.R. 283), and comments on those new agricultural documents and addendum were invited until August 1, 2011. The Staff Report addendum explained at length why the new Ag Alternative contained the same legal flaws as the earlier versions, including unenforceability, lack of individual monitoring, and not requiring compliance with water quality standards. A.R. 283 at 6362-63. Again, however, staff did recommend adopting some of the changes suggested by the agricultural community, including limiting the Executive Officer's authority over the tiering and changes to the tiering criteria. Id. at 6381; see also id. at 6381-83 for other changes agreed with by staff, many of which provided more flexibility in compliance.

On August 10, 2011, staff prepared an additional report that included an addendum to the Final SEIR and responded to the accepted changes from the agricultural community. A.R. 291 (Staff Report with Addendum to Final SEIR). The Addendum to the Final SEIR noted the changes in the draft waiver and explained that while the draft accepted revisions to the tiering criteria for farms, the changes would result in a similar number of dischargers in Tier 3, and thus the impacts were the same and no new analysis was required. A.R. 291 at 6933-34.

On February 1, 2012, the Regional Board held yet another public workshop at the request of the Agricultural Petitioners. A.R. 304 (Chair's response to letter from agricultural interests). At that hearing, the agricultural interests provided lengthy testimony, including a PowerPoint

presentation. A.R. 311 (Stakeholder presentation by agriculture). The environmental groups similarly provided comments. A.R. 312–14 (Presentations by environmental groups).

The California Legislature also held a hearing on the topic on February 24, 2012, at which growers expressed some remaining concerns about the waiver and with water quality regulation. Regulatory Impacts on Agriculture: Informational Hearing before the Senate Comm. on Agriculture (Feb. 24, 2012). After the hearing, Monterey Coastkeeper's representative, Steven Shimek, drafted language incorporating the ideas presented by the agricultural representatives at that Committee hearing. Declaration of Steven Shimek in Response to Petitions ("Shimek Decl."). He shared that language with Dr. Marc Los Huertos and Ross Clark. Shimek Decl., Exh. A. He also made an appointment for March 7, 2012, with Regional Board Executive Officer Roger Briggs and program staff Lisa McCann and Angela Schroeter to discuss ideas to resolve some of the growers' remaining concerns. Shimek Decl. At some point soon after these events, representatives of the agricultural community, including some of the Agricultural Petitioners, received the language. The agricultural community acknowledged in an email on March 13, 2012, that there had been "considerable discussion" among the "Ag group" of Mr. Shimek's proposed resolution. Id., Exh. B. (Email from Rick Tomlinson of the Strawberry Commission to Mr. Shimek "Re: ag waiver" dated Mar. 13, 2012).

The Regional Board hearing to adopt the new waiver finally began on March 14, 2012. A.R. 351 (Hearing transcript, Mar. 14, 2012). That first day, the agricultural community presented new textual changes to the Board that had not been circulated to other stakeholders or the public. Because the new information was language, not evidence, the Regional Board allowed it to be presented, and many of the proposed changes were incorporated into the final Waiver, even though environmental stakeholders and the public did not have any meaningful

opportunity to review or respond to them before the hearing began. During deliberations, the Regional Board unanimously rejected the Ag Alternative, based in part on the fact that it did not comply with the Water Code. A.R. 351–52 (Hearing transcript, Mar. 14–15, 2012).

During the second day of the hearing, Regional Board Member Johnston proposed Condition 11, which reflected the ideas and language proposed by Mr. Shimek. A.R. 352 at 8220-25 (Hearing transcript, Mar. 15, 2012). This condition offers growers an opportunity to develop alternative water quality management practices, with the possible result of moving to a lower, less stringent regulatory tier. A.R. 374 at 8477 (2012 Waiver, Condition 11). This language, which benefits the agricultural community, was adopted unanimously. At the end of two days of testimony, presentations, and questions, the Regional Board unanimously adopted Waiver Order No. R3-2012-0011 (along with specific monitoring criteria for each of the three tiers of enrolled dischargers in Orders Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03). A.R. 374-77.

In issuing the 2012 Waiver, the Regional Board made numerous findings regarding the impact of agricultural discharges on surface waters, groundwater (including drinking water), human health, and aquatic habitat (including wetland and riparian areas). A.R. 374 at 8510-30 (2012 Waiver, Attachment A, Additional Findings 33-116). To combat these impacts, the Waiver requires compliance with water quality standards, includes conditions intended to eliminate, reduce, and prevent pollution of waters of the State, provides options and schedules that give flexibility to dischargers as they come into compliance, and focuses on the highest priority water quality issues and the most severely impaired waters. Id. at 8510 (2012 Waiver, Attachment A, Additional Finding 30). In particular, the Regional Board found that the Waiver

was in the public interest because it contained "more specific and more stringent conditions for protection of water quality compared to the 2004 Agricultural Order." Id.

Since the Regional Board adopted the 2012 Waiver, agricultural and environmental petitioners have appealed the Waiver to the State Board pursuant to Water Code section 13320(a). The agricultural community filed five petitions challenging the 2012 Waiver and the concordant CEQA process. The State Board invited responses to the petitions.

III. STANDARD OF REVIEW

The State Board may only set aside a Regional Board's actions if it finds those actions to be "inappropriate or improper." Cal. Water Code § 13320. In considering whether an action of a regional board is appropriate and proper, the State Board considers whether the regional board's action complied with the relevant regulatory framework: federal law, state law, and the region's basin plan. See In re Petition of County of Los Angeles and Los Angeles County Flood Control District, Order WQ 2009-0008 at 9 (Cal. St. Water Res. Bd. Aug. 4, 2009); In re Petition of County of Los Angeles and Los Angeles County Flood Control District, Summary Order WQ 2009-0008 (Cal. St. Water Res. Bd. Aug. 4, 2009) (indicating that the decision has precedential effect) (upholding a regional board decision as compliant with regulatory framework and stating an intent to rely on regional board's factual findings). Here, the State Board should reject the Agricultural Petitions because the Regional Board's decision is consistent with the regulatory framework.

IV. ARGUMENT

The State Board should reject the Agricultural Petitioners' challenges to the 2012 Waiver and properly promotes water quality improvements in a region severely impacted by agricultural discharge pollution. The Waiver represents the culmination of the Regional Board's four-year

extensive public process to engage stakeholders in ameliorating the problems associated with discharges from irrigated lands. The State Board reviews and upholds regional board actions it finds to be "proper and appropriate." Cal. Water Code § 13320. The Regional Board acted properly and appropriately in issuing the 2012 Waiver after an extensive public process because the Waiver is consistent with the Basin Plan and squarely within the public interest.

Petitioners have presented every conceivable argument to attack the process and substance of the 2012 Waiver. Boiled down, these arguments rely on an unsupportable claim that the Regional Board did not undertake a sufficient public process or adequately adopt Agricultural Petitioners' views. The facts and timeline of events demonstrate that the Regional Board implemented a comprehensive and lengthy public process, contrary to Agricultural Petitioners' claims. But the Regional Board followed the law, and the Agricultural Petitions should be rejected.

A. The 2012 Waiver is a Proper and Appropriate Application of the Regional Board's Mandate.

1. The Monitoring and Reporting Requirements in the 2012 Waiver are Mandated by the Water Code.

At the core of the 2012 Waiver are monitoring, reporting, and verification requirements that are critical to ensure compliance with the Water Code and implementation of the Waiver. Agricultural Petitioners' claim that the monitoring and reporting requirements exceed the Regional Board's authority is among their most specious contentions.

When issuing a conditional waiver, a regional board "shall include" conditions requiring the performance of individual, group, or watershed-based monitoring. Cal. Water Code § 13269(a)(2). Monitoring requirements "shall be designed to support the development and implementation of the waiver program, including, . . . verifying the adequacy and effectiveness

of the waiver's conditions." Id. The 2012 Waiver's monitoring requirements are consistent with, and indeed required by, section 13269. A.R 374 at 8506 (2012 Waiver, Attachment A, Additional Finding 14). The 2012 Waiver's monitoring requirements are designed to replace the minimal and ineffective requirements in place since 2004. A.R. 228 at 4850 (Staff Report, Mar. 2011). The 2004 Waiver only required general watershed-level monitoring, which is inappropriate for determining the contribution of individual dischargers and monitoring changes though time. Id. The new requirements in the 2012 Waiver are essential because "[d]etermining the relative contribution of pollution from individual dischargers is the necessary next step to resolve the severe water quality problems." Id.

Responding to those continuing problems, the Regional Board suggested that staff include additional, targeted monitoring requirements for discharges that posed the greatest risk to water quality. Id. at 4862. Following this directive, staff added "more monitoring and more reporting so discharger data and information is more accessible to the greater public and holds individual dischargers more accountable for reducing pollution loading from individual farm operations." Id. at 4861. This is consistent with the Water Code's mandate that monitoring and reporting "verify[] the adequacy and effectiveness" of the Waiver, and that the reporting be made public. Cal. Water Code § 13269(a)(2).

The need for these monitoring and reporting requirements is well supported. Staff acknowledged that there is a significant public health threat, including the risk of cancer, posed by nitrates and other pollution in agricultural discharges that impact drinking water. A.R. 197 at 4052 (Appendix G: Water Quality, Nov. 2010) (finding that nitrate in public wells exceeds state drinking water standards "more frequently" than any other group of toxins); A.R. 374 at 8512 (2012 Waiver) (noting that nitrates cause cancer); see also id. at 8514 (finding that agricultural

activities pose a severe threat to groundwater quality, particularly from nitrates). Staff therefore recommended basic groundwater sampling and reporting for domestic drinking wells and for a farm's primary irrigation well. A.R. 228 at 4876 (Staff Report, Mar. 2011) (recommending groundwater sampling and reporting). To ensure that the list of tracked toxins is comprehensive, staff also recommended monitoring and reporting of pesticides other than chlorpyrifos and diazinon, the two pesticides known to be "a primary cause of toxicity in the Central Coast region." A.R. 228 at 4817 (Staff Report, Mar. 2011). By requiring dischargers to monitor and report other pesticides, dischargers, the Regional Board, and the public will be able to evaluate yet-to-be documented risks to water quality and public health. Id. at 4871-72. Accordingly, the decision to require monitoring and reporting was well supported in the record, and required by law.

2. The Waiver's Tiering System is Properly Related to Water Quality.

Contrary to the Agricultural Petitioners' claims, the Waiver's tiering system reflects a farm's threat to water quality, does not give the Executive Officer excessive control, and complies with the Water Code.

The Regional Board's decision to adopt the Waiver's three-tier system is supported by substantial evidence: the criteria are not arbitrary. The Regional Board thoroughly evaluated no less than ten distinct tier options, a variety of regulatory tools, and a detailed study evaluating impacts to water quality from farming. A.R. 194 at 3893 (Staff document – Options Considered); A.R. 374 *passim* (2012 Waiver, Appendix A). In considering which options to adopt, the Regional Board sought to protect water quality and to minimize complexity – two concerns also expressed by the agricultural community. A.R. 194 at 3893; A.R. 374 at 8479 (2012 Waiver); see, e.g., Jensen Pet. at 17 (complaining that the tiering system overlooks the risk

from Tier 1 farmers); Ocean Mist Pet. at 24 (bemoaning the complexity of the tiering system).[5] The three-tier system considers a farm's threat to water quality, based on farm size, proximity to impaired water bodies, use of particularly harmful chemicals, and crop type, and the need for a system that is easily implemented by regulators and farmers alike.[6] A.R. 194 at 3895. It sets an appropriate balance between regulatory burden and risk to human health and the environment.

3. The Waiver is Consistent with the Central Coast Basin Plan, and the Growers will have time to come into compliance.

Agricultural Petitioners assert two arguments regarding the Basin plan. First, that the 2012 Waiver is inconsistent with the Regional Board's Basin Plan, and second, that the 2012 Waiver requires impossible immediate compliance with the Basin Plan. Both arguments fail.

First, regarding consistency with the Basin Plan, they assert that the Waiver "supersedes" the Basin Plan's erosion prevention requirements. Farm Bureau Pet. at 59. The Basin Plan requires that "[e]rosion from nonpoint pollution sources shall be minimized through implementation of BMP's [Best Management Practices]." Basin Plan, Chapter 5.V.G. Petitioners point to Condition 39, which requires dischargers to "maintain riparian areas for effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support to minimize the discharge of waste." A.R. 374 at 8483 (2012 Waiver). Condition 39 is consistent with and

[5] Ironically, the Agricultural Petitioners also argue that complexity should not be a consideration in determining which criteria to use. See Jensen Pet. at 22 ¶¶ 12-15.

[6] Complicating the Regional Board's decision was likely the agricultural community's lack of consensus on what the ranking system should be — as evidenced by the conflicting concerns expressed by different petitioners. Compare Ocean Mist Pet. at 24 (expressing concern that the tier system is too complex), with Jensen Pet. at 22 (arguing that complexity should not be a barrier); and compare Jensen Pet. at 17 (expressing concern that the criteria overlook the risk of Tier 1 farms), with Ocean Mist Pet. at 24 (expressing concern that system attempts to force "virtually all" farms into the "most severely regulated tiers").

augments the Basin Plan. Condition 39 neither supersedes it nor prevents dischargers from choosing a specific manner of compliance. Dischargers must follow the commands of both the Basin Plan, which requires erosion control generally, and the Waiver, which requires maintenance of riparian areas. These mandates are complimentary.

Also regarding a supposed inconsistency, petitioners assert that Condition 80, which requires riparian buffers, violates the Basin Plan's buffer and filter strip requirements. Farm Bureau Pet. 59. Petitioners are correct that filter strips of at least thirty feet are required for construction activities. Basin Plan, Chapter 5.V.G. But they fail to mention the previous sentence in the Basin Plan, which requires that "[a] filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies." Id. Vegetated buffer strips, because of their efficacy, are one of the most common management practices required in a wide variety of regulatory documents from building codes to water codes. The 2012 Waiver, including Condition 80 and the Tier 3 MRP, Part 7, implements the Basin Plan by requiring either a minimum buffer of 30 feet or the functional equivalent between irrigated agriculture and State waters. Accordingly, these buffers are part of the basin plan, and therefore are consistent with it.

Second, Agricultural Petitioners argue that it is improper for the 2012 Waiver to require immediate compliance with the Basin Plan. However, compliance with the regional water quality plan is a necessary condition of any valid waiver. Cal. Water Code § 13269 (WDRs "may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines … that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest.").

Moreover, the 2012 Waiver has generous timetables for compliance rather than immediacy. The 2012 Waiver includes a table (Table 4) that sets the date for achieving the milestone of "[w]ater quality standards met in waters of the State or of the United States" as October 1, 2016. A.R. 374 at 8501 (2012 Waiver).

Contrary to Agricultural Petitioners' assertions, the waiver establishes a long timeline for compliance. "This Order includes specific dates to achieve compliance with this Order and milestones that will [reduce pollution in the short term] and achieve water quality standards in surface water and groundwater in the longer term (e.g., decades)." Id. at 8504, Additional Finding 2. The Agricultural Petitioners base their argument on Conditions 22 and 23 (Growers Pet. at 38), but ignore Condition 12, which provides growers with flexibility on the time for compliance: dischargers "shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality standards." Id. at 8478. Conditions 22 and 23 must be read in the context of the entire Waiver, including all timetables, milestone dates, and other conditions.

All dischargers must comply with the requirements of the Basin Plan, whether through WDRs or conditional waivers. Further, Agricultural Petitioners' interpretation of the 2012 Waiver as requiring immediate compliance with all water quality standards directly contravenes the Waiver's text, and should be disregarded.

4. The 2012 Waiver Does Not Attempt to Dictate On-Farm Practices.

Contrary to petitioners' claims, the Regional Board did not "dictate the manner of compliance." See Farm Bureau Pet. at 56; Grower-Shipper Pet. at 41. Instead, the Regional Board required specific outcomes, and provided options and flexibility for compliance.

While Section 13360(a) of the Water Code limits a regional board's authority to mandate a specific "design, location, type of construction, or particular manner" of compliance, it grants regional boards the right to prescribe the boundaries of what is lawful. Cal. Water Code § 13360(a); see also Tahoe-Sierra Pres. Council v. State Water Res. Control Bd., 210 Cal. App. 3d 1421, 1438 (1989) ("Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard. That is all that it does."). A court therefore would uphold a regional board's waiver where, as here, the regulated entities have options for compliance.

Contrary to petitioners' claims, Waiver provisions 31, 33, 37, 39, 40, 78, 80, and 81 and the Tier 3 monitoring and reporting requirements for retention ponds (Tier 3 MRP Part 5.7-8) are lawful under section 13360 of the Water Code. See Farm Bureau Pet. at 57-58 (arguing against provisions 37, 39, 78, and 80); Grower-Shipper Pet. at 41-41 (arguing against provisions 39, 40, 80, and 81); Ocean Mist Pet. at 25 (claiming that the Regional Board "overstepp[ed] its authority" in its regulation of retention ponds). For example, provision 31 requires a limited subset of growers — those that apply chemicals such as fertilizers through an irrigation system — to install backflow prevention devices that are approved by one of several federal or state agencies. A.R. 374 at 8482-83 (2012 Waiver). The provision does not dictate *which* backflow prevention device a grower must use. Rather, it merely requires that the device be reputable, which is a reasonable request given the Regional Board's purpose of protecting water quality, and well within the Regional Board's authority under Section 13360 of the Water Code.

Provisions 37, 39, 40, 80, and 81 also do not dictate the manner of compliance. See A.R. 374 at 8483-84, 8493-94 (2012 Waiver) (provision 37: requiring that dischargers "minimize the presence of bare soil"; provision 39: requiring that dischargers maintain riparian areas; provision 40: requiring some dischargers to implement "appropriate and practicable measures" to avoid erosion; provision 80 and 81: requiring dischargers next to streams to develop a buffer plan). In "minimize[ing] bare soil," "maintain[ing] riparian areas," "avoid[ing] erosion," and "develop[ing]" a buffer plan, growers have considerable autonomy and responsibility in determining how to fulfill the requirements. These provisions do not, for example, dictate the types of vegetation that must be maintained or even require that vegetation necessarily be present. Rather, the provisions offer mere suggestions at most. See City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region, 135 Cal. App. 4th 1377, 1390 (2006) (noting that where permittees can design compliance programs that implement best management practices and approved by the Regional Board, there is no Section 13360 violation). And even if technology and circumstances limit growers' options, such a result is irrelevant to whether the provision is lawful under Section 13360 of the Water Code. See Tahoe-Sierra, 210 Cal. App. 3d at 1438 (emphasizing that a lack of alternatives arising from "a constraint imposed by present technology and the laws of nature" is not a violation of Section 13360).

Provision 33 and Tier 3 MRP Part 5.7-8 are well within the Regional Board's authority. Provision 33 merely requires that those dischargers using containment structures "manage, construct, or maintain [the] structures to avoid percolation of waste to groundwater." A.R. 374 at 8483. Dischargers have considerable latitude in fulfilling this requirement. Provision 33 does not, for example, require that retention ponds have a specific slope and depth. More fundamental, contrary to petitioners' fears, it does not prevent the reuse of irrigation water. See

Ocean Mist Pet. at 25. Similarly, Tier 3 MRP Part 5.7-8 grants farmers considerable flexibility in monitoring "tailwater discharges" and "surface water containment features." A.R. 377 at 8613. The Waiver expressly avoids specifying the number or location of monitoring points, in order to provide "maximum flexibility for growers to determine how many sites are necessary and exact locations given site-specific conditions." Id. at n.8.

Provision 78's nitrogen ratio also is well within the Regional Board's authority to limit the amount of nitrogen likely to be discharged into the state's waters. Pacific Water Conditioning Assn., Inc. v. City Council, 73 Cal. App. 3d 546, 554 (1977) (holding that the agency had the authority to limit the "chemical content" of sewage discharge). The nitrogen ratio compares the amount of nitrogen a grower applies to a crop to the amount of nitrogen the crop can absorb. Thus, the ratio estimates how much nitrogen is likely to contaminate the water supply. If, for example, a farmer applies a large amount of nitrogen-based fertilizer relative to the amount a crop can absorb, more nitrogen is likely to be discharged from the farmer's property, placing the state's water supply at risk. Again, limitations imposed by technology and circumstances are irrelevant to the Regional Board's authority under Section 13360 of the Water Code. See Tahoe-Sierra, 210 Cal. App. 3d at 1438.

Finally, as explained above, obtaining a conditional waiver is an *option*. Rather than complying with the requirements of a conditional waiver, agricultural dischargers have an alternative — obtaining a WDR. All of the 2012 Waiver's provisions are lawful under Section 13360 of the Water Code.

5. The 2012 Waiver Does Not Target Tile Drains.

The Agricultural Petitioners further claim that the Waiver inappropriately targets tile drains. Ocean Mist Pet. at 22. In reality, however, the Waiver expressly focuses on "non-tile

drain discharges." A.R. 374 at 8504 (2012 Waiver, Attachment A, Finding 2) (noting that "[t]he focus of this Order is non-tile drain discharges"). To the limited extent the Waiver addresses tile drains, it merely requires that farm plans include descriptions of discharges from tile drains. Id. at 8485. Thus, far from regulating the tile drains themselves, the Waiver implements monitoring requirements consistent with Regional Board's mandate to protect water quality.

The 2012 Waiver describes some monitoring of discharges from tile drains, but it does not regulate the drains themselves, nor does it require changes in tile drain practices. Specifically, the Waiver just asks that individual Farm Plans "describe tile drain discharges and the management measures Dischargers have implemented or will implement to minimize impacts to water quality." Id. (2012 Waiver, Provision 44(f)). Additionally, the Monitoring and Reporting Plans for all tiers require evaluation of "water quality impacts from agricultural discharges including tile drain discharges." A.R. 375 at 8559, A.R. 376 at 8577, A.R. 377 at 8600 (Part 1(A)(3) of Tiers 1, 2, 3 MRPs.

Requirements to monitor discharges from tile drains do not put water re-use programs "in jeopardy" as claimed by the agricultural petitioners. See Ocean Mist Pet. at 23. Instead, the Board explicitly states that it will address tile drain discharge at a later date. See A.R. 374 at 8555 (2012 Waiver, Attachment A) (noting that the Board "anticipates evaluating longer timeframes necessary to address tile-drain discharges, for inclusion in a subsequent Agricultural Order"). Thus, petitioners' arguments regarding tile drains should be dismissed.

6. The Waiver Does Not Constitute a Taking.

Condition 80, Tier 3 Monitoring and Reporting Program ("MRP") Part 7, requires Tier 3 dischargers to implement a 30-foot riparian vegetative buffer, or the functional equivalent, between agricultural land and water bodies. A.R. 377 (Tier 3 Monitoring and Reporting

Program). Agricultural Petitioners argue that this constitutes a governmental taking. Growers' Pet. at 42-43. Not so.

Condition 80 cannot be a taking because, as with the rest of the Waiver, the growers do not have to opt in to the waiver program. Dischargers who wish to avoid Condition 80 can apply for a WDR. Moreover, 30-foot buffers are already required by the Basin Plan. See A.R. 377 at 8617 (Tier 3 MRP Part 7, quoting Basin Plan). Finally, Tier 3 dischargers that do choose to opt in are not even required to maintain 30-foot buffers; they can use other water quality protection measures with board approval. A.R. 377 at 8618 (Tier 3 MRP Part 7(A)(2)(c), allowing a "functional equivalent"). The 2012 Waiver, and in particular Condition 80, does not constitute a regulatory taking. It imposes no mandatory requirements on dischargers that cannot be avoided by obtaining a WDR or selecting other compliance mechanisms.

Even if the 30-foot buffer requirement were mandatory, it would not constitute a regulatory taking. Except for dischargers farming on parcels entirely within 30 feet of the bank of a waterway (who could of course use functionally equivalent measures), Part 7 would not constitute a per se total taking. Dischargers are not being deprived of "all economically beneficial or productive use of land." Lucas v. S. Car. Coastal Council, 505 U.S. 1003, 1015 (1992). Given the value of the farmland in question, a regulation requiring a small strip of land to be used as a water quality buffer does not create a total taking. See Palazzolo v. Rhode Island, 533 U.S. 606, 631-632 (2001). Dischargers' legal interest in the use of their property for agriculture that creates pollutant discharges to waters of the State is shaped by the Water Code and is conditioned upon obtaining a WDR or compliance with the terms and conditions of a waiver. Cal. Water Code §§ 13260, 13264, 13269; see Lucas, 505 U.S. at 1016 n.7 (considering influence of state law on denominator question in total taking analysis); see also Keystone

Bituminous Coal Assn. v. De Benedictis, 480 U.S. 470, 497-502 (1987) (regulation restricting subsurface extraction of coal in certain areas to prevent subsidence not a taking).

Neither is the Waiver a taking under the analysis of Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124 (1978). The Penn Central regulatory taking test considers the economic impact of the regulation, the extent to which the regulation interferes with "distinct investment-backed expectations," and the character of the government action. Id.; see also Echevarrieta v. City of Rancho Palos Verdes, 86 Cal. App. 4th 472, 480 (2001). Each factor weighs against a court finding a taking here.

First, the economic impact of these protective buffer strips would be minimal, amounting to a total of 223 acres, or roughly 0.002 to 0.004% of agricultural lands in the region. A.R. 291 at 6935 (Staff Report Aug. 10, 2011). The regulation has significant public benefits, including the interception of pollutants such as pesticides, nutrients, and sediment, shading receiving waters, and stabilizing banks. A.R. 401 at 5538 (Final SEIR at 15). Traditional land-use regulations, including, for example, building setbacks, are within the State's police power, "and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property." Echevarrieta v. City of Rancho Palos Verdes, 86 Cal. App. 4th 472, 481 (2001); see also Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Comm'n, 11 Cal. App. 3d 557, 572 (1970). In light of the Regional Board's findings of the necessity of a strengthened conditional waiver to improve the quality of waters within its jurisdiction, the vegetative buffer regulation is well within the State's police power delegated to the Regional Board.

Any distinct investment-backed expectations with respect to dischargers' land must account for the requirement to either obtain a WDR or comply with the conditions of a waiver.

Those expectations include the knowledge that the 2004 Waiver expired and that its terms were wholly inadequate for protecting water quality. The less restrictive conditions of the 2004 Waiver did not create any sort of entitlement. Dischargers have no right to have a waiver of a WDR be formulated a particular way. Whether before or after the 2004 Waiver, Agricultural Petitioners could never have had the expectation that every square meter of their property could be used for growing if doing so would put them out of compliance with the Water Code or Basin Plan.

7. The Regional Board conducted a sufficient analysis of the economic impacts.

Agricultural Petitioners argue that the Regional Board did not properly analyze impacts such as the loss of agricultural lands, the cost of compliance, and other economic impacts. Farm Bureau Pet. at 46-47. Contrary to petitioners' claims, the Regional Board's 62-page cost of compliance report thoroughly evaluates the economic impacts of the 2012 Waiver — including the modifications to the Waiver and the cost of compliance over time to both growers and consumers alike. See A.R. 234, *passim* (Appendix F: Cost Considerations, Mar. 2011) (noting that the goal of the report was "to present the full range of costs associated with" the Waiver and "to address concerns" raised during the public process).

Agricultural Petitioners' claim that the Regional Board failed to address the effect of increased production costs on consumers ignores pages of the cost of compliance report in which the Regional Board evaluates these very issues over the next 20 years. A.R. 234 at 5421-27 (Appendix F: Cost Considerations, Mar. 2011); see Farm Bureau Pet. at 56 (claiming that the Regional Board did not consider the economic impacts "over time" and also did not consider the impact on "consumers").

Specifically, the Regional Board used a case study of strawberries to evaluate the economic impact of the Waiver. Id. As with "most other" crops in the area, the demand for strawberries is relatively price inelastic. A.R. 234 at 5424 (Appendix F: Cost Considerations, March 2011); see also id. at 5424 (comparing the price elasticity of several crops in the region). Thus, even if growers must increase the price of their products as a result of the Waiver, demand for their products (i.e., consumption) would likely remain about the same. Consumers would share any increased costs of production associated with the 2012 Waiver. Id. at 5425. Taking the analysis one step further, the Regional Board also considered the economic impact of the Waiver on the broader regional economy, including jobs, over a twenty-year period. Id. at 5425-27 (noting, for example, that labor income impacts and changes to jobs would "play out over the 20-year planning horizon of the General Plan"). The Regional Board thoroughly evaluated the economic impact of the 2012 Waiver. Accordingly, the State Board should reject petitioners' claims to the contrary.

Further, even though not required to do so by CEQA,[7] the Regional Board developed "worst-case scenarios" to evaluate economic impacts and included them in the SEIR. For example, the Final SEIR addendum confirms that impacts would be insignificant: even if all Tier 3 growers choose to install a riparian buffer, only 0.002% to 0.004% of irrigated agricultural land (82 to 233 acres out of 840,000 agricultural acres in the region) would be taken out of

[7] CEQA does not require a regional board to directly evaluate economic impacts arising from a project. A regional board need only analyze the adverse significant physical changes that "may be *caused by* social or economic impacts." Gray v. County of Madera, 167 Cal. App. 4th 1099, 1121 (2008) (emphasis added) (concluding that the an agency was not required to analyze economic impacts when the plaintiffs failed to produce any evidence of any adverse environmental changes that would arise from the alleged "loss in the property value"). In any event, economic impacts were considered, and substantial evidence supports the finds that they were speculative or insignificant.

production.[8] A.R. 291 at 6935. It also prepared and considered a 62-page appendix regarding costs to the agricultural community (A.R. 234) and considered three reports and the regulatory tax incentives for preserving agricultural land (e.g., the California Land Conservation Act, Government Code §§ 52100 et seq.). A.R. 367 at 5534-42.

Finally, to minimize the already-negligible economic impact, the Regional Board suggested a number of mitigation options and financing possibilities (e.g., planting berry bushes or trees, which would provide both a buffer and economic returns). A.R. 236 at 5537 (Final SEIR). To rebut the concern that riparian land would be sold and developed, the SEIR correctly notes that developers would be unable to develop such streamside land anyway. Id. at 5540 (Final SEIR). Agricultural petitioners are not only incorrect regarding CEQA requirements but also ignore an entire report and pages of the Regional Board's analysis.

B. The Regional Board Complied With Required Procedures in Promulgating the Waiver.[9]

1. Contrary to Agricultural Petitioners' Baseless Allegations, No Unlawful or Improper Ex Parte Contacts Occurred.

Agricultural Petitioners' allegations that improper ex parte contacts occurred during the adoption of the 2012 Waiver are without merit. No improper contacts occurred. Further, the Agricultural Petitioners' arguments are based on distortions of applicable law. Regardless,

[8] Under the 2012 Waiver's three-tier system, only Tier 3 growers are required to consider installing a system such as a riparian buffer.

[9] When the State Board took up the petitioners' challenge to the 2012 Waiver, it mooted the petitioners' claim that the Notice of Determination was not filed in a timely manner. Thus, petitioners' claim that they were somehow aggrieved by the delay is entirely unfounded. When challenging the action of a regional board, an aggrieved person must petition the State Board within 30 days of the regional board's action. Cal. Water Code § 13320; Cal. Code Regs. tit. 14 § 2050(a). The only relief that the Agricultural Petitioners could claim would be that their petitions should be heard. Here, the State Board has taken up the petitions. They already are being heard, so their claim of failure of notice is moot.

Agricultural Petitioners support the substance of the waiver condition at issue, so no remedy is warranted; if one were, the condition is severable.

Here, Mr. Shimek had an idea for another option for the waiver that he thought might make the waiver more palatable for the agricultural interests. He shared that draft language with both staff and members of the agricultural community. Staff brought the idea to the attention of at least one member of the board. Eventually, Board Member Johnston proposed that a modified version of Mr. Shimek's draft be included in the waiver. It ultimately became Condition 11, which allows growers to "form third party groups to develop and implement alternative water quality management practices (i.e., group projects) or cooperative monitoring and reporting programs." A.R. 374 at 8477 (2012 Waiver, Condition 11).

All contacts between the Regional Board's staff and Mr. Shimek were entirely proper. The meeting between staff and Mr. Shimek was lawful under the California Administrative Procedure Act and the Water Board's procedural rules, and included no ex parte contact with any member of the Regional Board. To allege otherwise distorts the Government Code and the open process established by the Regional Board that Agricultural Petitioners themselves participated in during the lengthy development of the Waiver. It further ignores the fact that representatives of agricultural interests communicated with Regional Board staff in the same manner as other members of the public. The California Administrative Procedure Act permits non-prosecutorial agency staff to communicate with members of the public and allows staff to advise agency decision makers based on the information they gather. Cal. Gov't Code §§ 11430.10, 11430.30.

The California Administrative Procedure Act prohibits direct or indirect communication by any interested person only "*to the presiding officer*" of an adjudicative hearing. Cal. Gov't Code § 11430.10(a) (emphasis added); see Cal. Code Regs., tit. 23, § 648. The State Board's

Chief Counsel has defined "ex parte communication" as "a communication *to a board member* from any person about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate." State Water Board Chief Counsel Memorandum – Ex Parte Questions and Answers 1 (Sept. 17, 2008) (emphasis added). No communication, direct, indirect, or otherwise, about the draft compromise occurred between Mr. Shimek and any member of the Regional Board. Further, as explained in the flow chart provided by the State Board's Chief Counsel, private communications between agency staff and the board members are proper so long as they do not convey evidence. Id. at 16. When staff conveyed their markup of Mr. Shimek's language to any Board member, no new evidence was shared, just ideas for new options and related operative language.

Agricultural Petitioners' suggestion that they had no opportunity to comment on Condition 11 is belied by the record. In an email to Mr. Shimek on March 13, 2012, Rick Tomlinson, Director of Government Affairs for the California Strawberry Commission, stated that there had been "considerable discussion" of Mr. Shimek's proposal among the "Ag group." Shimek Decl., Exh. B. If Agricultural Petitioners were concerned that staff might incorporate Mr. Shimek's proposal into new language for the Waiver, they could have raised their objections either to staff or directly to the Regional Board at the March 14-15, 2012 meeting.

Further, Condition 11 was a logical outgrowth of the draft waiver and the comments received before and at the March 14-15, 2012 public hearing. A.R. 352 at 8219-231 (Hearing Transcript, Mar. 15, 2012). The adopted language combined ideas from agricultural interests, environmental interests, and the Regional Board staff.

Even if the Agricultural Petitioners were correct, which they are not, the remedy would be to merely strike Condition 11 from the 2012 Waiver and allow the remainder to stand.[10] But Agricultural Petitioners make no challenge to the substance of Condition 11. Ocean Mist Pet. at 32 ("Petitioners do not object to the substance of this new language . . . . Petitioners are not challenging the substance of the new paragraph 11."). And for good reason: Condition 11 allows, but does not require, dischargers to coordinate water quality improvement efforts. Growers who participate in cooperative programs can be relieved of otherwise-required individual requirements. A.R. 374 at 8477 (2012 Waiver, Condition 11). Because participation in cooperative monitoring and reporting programs under Condition 11 is optional, the State Board may sever the condition without affecting the structure or legality of the remainder of the Waiver. Condition 11 originated as a compromise concession to dischargers. If Agricultural Petitioners now oppose the condition, the Environmental Petitioners have no objection to removing it from the 2012 Waiver.

The record is clear: there was no improper ex parte contact. The incorporation of Condition 11 into the 2012 Waiver caused Agricultural Petitioners no harm.

[10] Agricultural Petitioners cite Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (DABC), 40 Cal.4th 1 (2006), for the idea that that an ex parte contact necessarily requires vacation of an entire decision. The case simply is not applicable to this proceeding. In DABC, an agency prosecutor sent a report of a formal hearing in front of an administrative law judge to the agency's chief counsel; the agency then set aside the administrative law judge's proposed decision and sided with the prosecutor. Id. at 5. Thus, the decision maker's entire decision was tainted by improper access to one of the adversary's unrebutted and privately made argument. DABC is inapposite to the situation here, which did not have adversaries. No separation of functions problem exists. See Cal. Gov't Code § 11430.30(c)(2); see also id. § 11352 (exemption from rulemaking requirements). Here, the contacts were not prohibited and parties had the language before the hearing began, so it was not ex parte, and even if it were, it only affected a small portion of the ultimate decision (Condition 11).

2. The Regional Board Considered and Properly Rejected the Legally-Deficient Ag Alternative.

The agricultural community offered several proposals for a new waiver. The Regional Board staff met with the proponents of each version, and prepared analyses for the Regional Board. Staff determined that the Ag Alternative did not comport with the requirements of the Water Code. See, e.g., A.R. 283 at 6362-63 (Staff Report Sept. 2011). That determination was correct, and it was proper for the Board to rely on it in rejecting the alternative.

Between April 2010 and March 2012, the agricultural community (including Agricultural Petitioners) submitted at least five proposals, additional and subsequent to the original proposal it had submitted in April 2010. First, on December 3, 2010, it submitted a "Draft Central Coast Agriculture's Alternative Proposal for the Regulation of Discharges from Irrigated Agricultural Lands" (the "Ag Alternative"). The Agricultural Petitioners subsequently submitted revised alternative language on March 17, 2011, May 4, 2011, February 14, 2012, and March 14, 2012. Each of these submissions was intended as a less burdensome alternative to the staff proposal, which itself was being continually weakened with each iteration. Each time, the Agricultural Petitioners only made their alternative available to the public during a presentation at the Regional Board meeting where it was to be considered. This prevented the public from being able to meaningfully review and consider it in advance of the meeting or to effectively respond to it. The Regional Board held additional public workshops and staff continued thereafter to meet individually with various stakeholders, including counsel for the Agricultural Petitioners. See A.R. 325 (listing formal meetings and presentation and noting "numerous informal meetings and phone calls" with interested parties).

The Ag Alternative consists of a number of proposals, many of which were legally deficient. For example, the Ag Alternative would have required compliance with farm water

quality plans but not the Basin Plan, even though the Water Code requires compliance with the regional water quality plan. Cal. Water Code § 13269(a)(1) (A waiver may only be adopted if it is "consistent with any applicable state or regional water quality control plan and is in the public interest.") Also, the Ag Alternative allowed monitoring and reporting by dischargers as groups, not as individuals. This would have prevented any assessment of the efficacy of practices on individual farms, despite the Water Code's requirement that monitoring be designed to "verify[] the adequacy and effectiveness of the waiver's conditions." Id. § 13269(a)(2). Additionally, many of the terms were voluntary, and allowed reporting to a third party group, rather than to the Regional Board. These terms violated the Water Code's mandate that the conditions in waivers be enforceable. Id. § 13269 (e) ("The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.").

Agricultural Petitioners vigorously defended their proposal before the Board. See, e.g., A.R. 287 at 6579. Yet after months of consideration, the Regional Board found that the proposal lacked key components required by law. A.R. 352 at 8209 (Hearing Transcript, Mar. 15, 2012).[11]

3. Agricultural Petitioners' Due Process Claim Fails.

The multi-year process by which the Regional Board adopted the Waiver was more than sufficient, as was the Board's consideration of Agricultural Petitioners' multiple alternatives. Agricultural Petitioners had numerous opportunities to present their ideas, both to the Regional Board at formal hearings and informally to Regional Board Staff, and participate they did. See,

[11] One of the Agricultural Petitioners alleges, without citation to statute, that the Regional Board violated the Brown Act in issuing the Waiver. Ocean Mist Pet. at 32. The Brown Act applies only to "local agencies" (e.g., legislative bodies and agencies for cities, counties, and school districts), and thus not to the State Water Board or its regional subdivisions. Cal. Gov't Code §§ 54951-52.

e.g., A.R. 325 (Stakeholder Outreach from Nov. 17, 2009 to Feb. 14, 2012). The Ag Alternative was thoroughly discussed with staff multiple times (A.R. 325, listing meetings with staff), proposed at workshops (see, e.g., A.R. 264; Ag presentation at May 4, 2012 workshop); and again in front of the Regional Board at the March 14-15, 2012 hearings. See, e.g., A.R. 351 at 8101-03 (Hearing transcript, Mar. 14, 2012). Moreover, it is clear that the Regional Board kept the Ag Alternative in mind throughout their deliberations. See, e.g., A.R. 352 at 8220-28 (Hearing transcript, Mar. 15, 2012) (comments of Members Johnston, Young, Jordan, Hunter, and Executive Officer Briggs).

In total, the Regional Board spent nearly four years engaging the public and the Agricultural Petitioners in the development of the Waiver. This included discussions with stakeholders, eight full days of public hearings and workshops between May 2010 and March 2012, hundreds of written and in-person comments and scores of stakeholder group presentations to the Regional Board, extensive outreach from the Board staff to grower organizations, and repeated offers by staff to meet with anyone. Indeed, the Regional Board and staff have commented that the 2012 Waiver was given the most extensive and thorough public process in the Board's history.

C. The Regional Board complied with CEQA.

Contrary to the Agricultural Petitioners' laundry list of complaints, the Regional Board adhered to CEQA requirements when it: (1) properly incorporated the 2004 Negative Declaration and accurately described the 2012 Waiver; (2) gave the Ag Alternative the consideration it was due; and (3) appropriately issued an addendum.

1. The Regional Board properly incorporated the 2004 Negative Declaration and accurately described the project.

In contradiction of petitioners' claim, the Regional Board did not need to restart the CEQA process by issuing a wholly new EIR. Rather, the Regional Board properly exercised its discretion to incorporate the 2004 Negative Declaration, because the 2012 Waiver is an incremental change to the 2004 Waiver, which had already received CEQA analysis. Where there is just a change in the project, a new EIR is not required. In Benton v. Board of Supervisors of Napa County, the county properly prepared a subsequent EIR to evaluate the differences in impacts from a change in the location of a winery, where a negative declaration had already been adopted for building the winery. 226 Cal. App. 3d 1467 (1991). The court deferred to the agency's decision to consider *only* "whether there was a difference between the environmental impacts of the two wineries" rather than "whether there should be a winery at all." Benton, 226 Cal. App. 3d at 1475, 1477.[12] Here, the Regional Board properly limited its review to the differences between the 2004 Waiver and the 2012 Waiver.

Agricultural Petitioners also complain that the project description is "inadequate." Farm Bureau Pet. at 25. They claim first that the changes between the 2004 Waiver and the 2012 Waiver are so great that they justify a whole new CEQA document (Farm Bureau Pet. at 27-29), but do not explain what would have been considered that was left out. They cite no caselaw for their proposition that the Board's action was invalid. To the contrary, the Public Resources Code, CEQA Guidelines, and caselaw all support the decision to prepare a subsequent

[12] None of the other cases cited by petitioners (Farm Bureau Pet. at 21-23) are on point. For example, Friends of "B" St. v. City of Hayward, 106 Cal. App. 3d 988, 1003 (1980) concludes that a negative declaration was not supported by the evidence; No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 75 (1974) holds that a city must prepare an EIR prior to approval of a project; County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185 (1977) holds that an EIR should have considered cumulative impacts. None of these deal with an analogous situation to the instant case.

environmental document for a change or expansion in a project. See, e.g., Cal. Code Regs. tit. 14, § 15162; Pub. Resources Code, § 21166; Benton, 226 Cal. App. 3d at 1477-78. Given the absence of any clear deficiency in the analysis, the Regional Board's decision to rely on a Subsequent EIR and the Negative Declaration for the 2004 Waiver should not be disturbed.

Agricultural Petitioners next complain that the project description changed from the draft to the final. But the decision to incorporate the analysis from the 2004 Negative Declaration into a subsequent EIR considering the incremental changes was proper and should stand. The project description in the certified EIR is accurate and properly reflects the scope of the 2012 Waiver, as required by CEQA. First, as required, the project description focuses on the differences between the 2004 and 2012 Waivers, noting, for example, that the tiering system better ties the increased burden to those dischargers with a greater "threat to water quality." A.R. 236 at 5529-30 (Final SEIR). To focus the public's attention, it also reiterates the purpose and objectives of the conditional waiver program: to comply with the Porter-Cologne Water Quality Control Act and its associated plans and policies by updating the 2004 Waiver. A.R. 236 at 5526-27 (Final SEIR); A.R. 003 at 26 (2004 Negative Declaration) (noting that the 2004 Waiver program's objectives are "to manage discharges from irrigated lands to ensure that such discharges do not cause or contribute to conditions of pollution or nuisance as defined in Section 13050 of the California Water Code" or to any regional, state, or federal mandated "numeric or narrative water quality standard"). The mere change in formatting from bullets to narrative does not defeat that the draft and final SEIRs are describing essentially the same project: renewing and revising the 2004 Waiver.[13]

[13] Agricultural Petitioners' citation to County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185 (1977) is inapposite. There, the court believed that the agency had attempted to mislead the

2. The Regional Board properly rejected the Ag Alternative.

The Agricultural Petitioners protest that the alternative they favored was rejected. But while they may have preferred their alternative, it would not have complied with the law, as explained above. CEQA does not require an agency to consider an alternative that fails to fulfill a project's purpose and objectives; it also does not require an agency to consider proposals that are not "feasible." "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Cal. Code Regs. tit. 14, § 15364; Jones v. Regents of University of California, 183 Cal. App. 4th 818, 826 (2010) ("An EIR need not consider every conceivable alternative to a project or alternatives that are infeasible."). Because the Regional Board staff repeatedly concluded that the Ag Alternative did not comport with the law, it neither met the purpose nor was feasible and was therefore properly rejected.

3. The Regional Board was Correct to Issue an Addendum to the Final SEIR.

The Agricultural Petitioners ignore the conditions of Section 21166 of CEQA when they claim that the Regional Board erred by issuing an addendum rather than a separate EIR. Section 21166 of CEQA compels agencies to carefully consider whether issuing a subsequent EIR is necessary. Pub. Resources Code § 21166 (allowing agencies to issue a subsequent EIR *only* when certain conditions are met); Cal. Code Regs. tit. 14 § 15164(a).

Here, the Regional Board properly issued an addendum because the new information presented in the addendum clarified and made minor modifications to the 2012 Waiver, and none of the changes affected the impact on the environment. For example, at the request of the agricultural community, the addendum places the power to alter tiering criteria with the Water

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public. Inyo, 71 Cal. App. 3d at 193-94. But there is no evidence of malfeasance here. The Regional Board's description and analysis is transparent.

Board rather than the Executive Officer. A.R. 291 at 6937. While this change was made to appease the agricultural community, it will not have a large effect on the environment compared to the current on-the-ground conditions. Id. Other changes to the tiering criteria will, if anything, reduce the amount of land subject to Tier 3 requirements. Id. Contrary to the Farm Bureau's claims (Farm Bureau Pet. at 31-32), clarifying language and minor modifications that diminish impacts do not give rise to a need for new environmental documents. See Pub. Resources Code § 21166. Where appropriate, the Regional Board explained why the change will not alter the Waiver's impact on the environment. See, e.g., A.R. 291 at 6934-35 (describing the change in how tiering is applied and supplementing the description with a map); see also id. at 6910 (noting that the modifications "do not change the conclusions of the environmental impact analysis" in the final SEIR and resolution); id. at 6935 (referring to Appendix H of the Draft Agricultural Waiver for additional background information).

Since the Regional Board was correct to conclude that the modifications did not increase the adverse environmental impact of the Waiver, the Regional Board was not required to do anything more than issue the addendum to the Final SEIR, as it did. See Cal. Code Regs. tit. 14 § 15164(c). Accordingly, the Regional Board's action was proper.

V. CONCLUSION

For all the reasons stated above, Environmental Petitioners urge the State Board to deny the Petitions by the California Farm Bureau Federation, Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, Santa Cruz County Farm Bureau, Ocean Mist Farms and RC Farms, and Jenson Family Farms, William Elliott, Grower-Shipper Association of Central California, Grower-Shipper Association of Santa

Barbara and San Luis Obispo Counties, and Western Growers. Environmental Petitioners further urge the State Board to dissolve the existing stay order.

Dated: October 31, 2012

Respectfully Submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By:

Marta R. Darby, Samuel D. Eisenberg, Julia K. Forgie
Deborah A. Sivas
Leah J. Russin
Alicia Thesing
Counsel for Environmental Petitioners
MONTEREY COASTKEEPER, SAN LUIS OBISPO COASTKEEPER, AND SANTA BARBARA CHANNELKEEPER

Deborah A. Sivas, State Bar No. 135446
Leah Russin, State Bar No. 225336
Alicia Thesing, State Bar No. 211751
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
E-mail: dsivas@law.stanford.edu

Attorneys for Petitioners
MONTEREY COASTKEEPER,
SANTA BARBARA CHANNELKEEPER,
SAN LUIS OBISPO COASTKEEPER

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Adoption of Order No. R3-2012-0011, by the Central Coast Regional Water Quality Control Board for the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands	**SWRCB/OCC FILES A-2209(a)-(e)** **DECLARATION OF STEVE SHIMEK IN RESPONSE TO PETITIONS REGARDING CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD ORDER NO. R3-2012-0011**

I, Steve Shimek, declare as follows:

1. I am the Monterey Coastkeeper and the Chief Executive of the Otter Project. In that capacity, and as a concerned resident of the Salinas Valley, I have participated for several years in public processes related to the development and ultimate adoption of the Central Coast Regional Water Quality Control Board ("Regional Board") Order No. R3-2012-0011 ("2012 Ag Waiver"). This declaration is offered in support of the response of Monterey Coastkeeper, San Luis Obispo Coastkeeper, and Santa Barbara Channelkeeper to the various petitions regarding

the 2012 Ag Waiver adopted by the Regional Board on March 15, 2012. The matters set forth herein are stated on my personal knowledge and if called upon to testify, I could and would testify competently as to them.

2. Beginning in 2008 and continuing through final adoption of the 2012 Ag Waiver, the Regional Board invited broad input from a wide range of stakeholders through a variety of outreach processes and fora, including an advisory panel, individual meetings with various stakeholders, interested party workshops, public meetings and hearings, and official comment periods. After receiving substantial community input, Regional Board staff prepared a new draft waiver to replace the expiring conditional waiver and presented it at a public meeting of the Board on February 1, 2010. Throughout the next two years, staff continued to solicit input and continued to revise its draft waiver to accommodate and address concerns raised by the agricultural industry. Revised versions of the draft waiver were presented at Board meetings on November 19, 2010, March 17, 2011, May 4, 2011, and September 1, 2011. With each new version, the draft waiver became, in my judgment, less environmentally protective.

3. Despite these numerous revisions to reduce the requirements on growers, some members of the agricultural industry still remained unhappy with the draft waiver. On February 24, 2012, I attended a California Senate Agriculture Committee hearing in Salinas, California, with Senator Anthony Cannella presiding. The topic of the hearing was "Regulatory Impacts on Agriculture" and one of the agenda items was the 2012 Ag Waiver, which was scheduled for adoption by the Regional Board on March 15, 2012. At that Committee hearing, Mr. Dirk Giannini and Mr. Norm Groot gave extended presentations about their concerns with the proposed waiver and with water quality regulation. In their presentations, I understood them to make the following points:

- There was a deep distrust of Central Coast Regional Board staff;
- There was no language in the draft waiver that made it possible for a grower to move to a lower, less regulated tier;
- There was no provision for group efforts (such as the Los Huertos concept);
- There was no incentive for longer-term water quality investments such as tailwater ponds or engineered wetlands, nor was there a provision for allowing extra compliance time to install such investments; and
- There was a fear that individual farm water quality reporting would make growers vulnerable to a third-party lawsuit.

4. Soon thereafter, I began work on a set of new ideas intended to address the specific concerns expressed by growers at the February 24 committee hearing. To be clear, these ideas were not intended to provide more environmental protection or more stringent regulation, even though I believed that more environmentally protective conditions were appropriate and necessary. Rather, each was intended only to provide a potential solution to the problems or concerns raised by growers at the February 24 Committee hearing about then-current version of the draft waiver. Specifically, my ideas included:

- Creation of an independent but balanced committee to review group proposals, thereby taking the burden away from Regional Board staff;
- An express acknowledgement in the waiver that growers can move to a lower, less burdensome tier;
- An express provision in the waiver encouraging group proposals and specifically calling out the Los Huertos and Clark concepts;
- An extended project-specific compliance timeline for group proposals; and
- An express provision allowing for project efficacy monitoring for group projects instead of edge of the field monitoring for individual growers.

5. On Friday, March 2 I emailed Dr. Marc Los Huertos and Mr. Ross Clark an early draft of my ideas. Dr. Los Huertos and Mr. Clark had previously expressed concern to me about the waiver and the Central Coast Water Board staff's ability and willingness to accept group proposals that could improve water quality. I solicited their feedback on my ideas. A copy of my email to them is attached here to as Exhibit A.

6. Consistent with the open-door process that Regional Board staff had established with both agricultural and environmental stakeholders over the last several years, on March 7, 2012, I met with Regional Board Executive Officer Roger Briggs and program staff Lisa McCann and Angela Schroeter in their San Luis Obispo office to present the ideas identified in paragraph 4 above. This meeting was conducted in similar fashion to my prior meetings with staff, including an explanation of why I was there and a brief discussion of my ideas. To the best of my recollection, the meeting lasted less than an hour.

7. Later in the day on March 7, 2012, a full week before the next scheduled Regional Board hearing on the 2012 Ag Waiver, I participated in a telephone call with Mr. Rick Tomlinson of the California Strawberry Commission. It was clear to me that Mr. Tomlinson had reviewed my proposed ideas. We discussed the concepts and many specifics, and I answered many questions. Mr. Tomlinson said he would think about and discuss my ideas with others and get back to me.

8. On March 13, 2012, I received an email from Mr. Tomlinson stating that he had discussed my ideas with many other people. A true and correct copy of that email is attached hereto as Exhibit B.

9. On March 14, 2012, I gave a presentation at the Regional Board hearing on the 2012 Ag Waiver representing the collective views of Monterey Coastkeeper, San Luis Obispo Coastkeeper, Santa Barbara Channelkeeper, and the Environmental Defense Center. Our group position was in support of the original version of the waiver presented by staff on February 1, 2010. The coalition on whose behalf I was speaking did not entirely support the compromise ideas I communicated to Mr. Briggs and Mr. Tomlinson on March 7. For that reason, I did not present them at the public meeting.

10. In their presentation at the same hearing, representatives of the agricultural industry offered literally dozens of new and specific substantive textual changes to the language of the September 1, 2011 version of the waiver. There was no practical opportunity for me or anyone else to respond to these dozens of language changes during the March 14 hearing, and to the best of my knowledge, none of the environmental stakeholders had been given advance notice of these proposed changes before the hearing, unlike the agricultural industry's advance notice of the ideas I presented to Mr. Briggs and discussed at length with Mr. Tomlinson on March 7. Nevertheless, after the close of public comment hearing, Regional Board staff incorporated many of the agricultural industry's proposed changes into the 2012 Ag Waiver that was ultimately adopted by the Board on March 15, 2012.

11. At no time before the Regional Board's March 15 vote to adopt the 2012 Ag Waiver did I communicate my March 7 ideas or any language to any member of the Regional Board.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 30, 2012 at Monterey, California.

Steve Shimek

EXHIBIT A

From: Steve Shimek
To: Marc Los Huertos; rclark@mlml.calstate.edu
Subject: DRAFT idea
Date: Friday, March 02, 2012 3:42:00 PM
Importance: High

Marc and Ross: Please, this draft is not to be shared. And I want to make it clear, I'm not certain I can get buy-in from my side.

DRAFT DRAFT DRAFT of an idea.

I will be proposing this idea on MONDAY. Any input you can provide over the weekend will be considered. I'll be at the office much of the day Saturday and Sunday. And, you can call my cell (poor cell reception at my house).

Condition 11.

Groups may form around watersheds or other commonalities to propose creative water quality projects and solutions. These groups may be granted down-classifications (i.e. Tier 3 to Tier 2) and project-specific timelines, benchmarks, monitoring requirements. The purpose of this provision is to encourage innovation, site-specific solutions, and to remove any barriers to long-term investment.

Projects will be evaluated for:

- Scale. Solutions must be scaled to address impairment
- Chance of success. Projects must demonstrate a reasonable chance of eliminating toxicity within the permit term (5 years) and reducing discharge of salts and nutrients to surface and groundwaters.
- Commitment to solving the problem. Proposals must address what new actions will be taken if the project does not meet goals and how the project will be sustained through time.
- Benchmarks and accountability. Proposals must set benchmarks and describe monitoring and measuring methods. Monitoring points may change away from the edge-of-field but must demonstrate the efficacy of the project.

Project proposals will be evaluated by a committee comprised of: Three researchers or academics skilled in agricultural practices and/or water quality, one farm advisor (NRCS or RCD), one grower representative, and one environmental representative. The RWQCB Executive Officer must give final approval of any project after receiving project evaluation results from the committee.

Steve Shimek
The Otter Project, Chief Executive
Monterey Coastkeeper, Program Manager
475 Washington Street, Suite A
Monterey, CA 93940

831/646-8837 x114
831/241-8984 (cell)

EXHIBIT B

From: Rick Tomlinson
To: Steve Shimek
Subject: Re: ag waiver
Date: Tuesday, March 13, 2012 11:47:37 PM

Hi Steve

I wanted to let you know that there was considerable discussion about your proposal. Several farm groups reached out to environmental stakeholders to try and resolve some of the language issues we discussed. While many of your colleagues expressed support for either the staff proposal or the new proposal, they also expressed interest in the Ag proposal.

The Ag group also felt that seven days was just not enough time to get input, especially since the Ag proposal had been publicly available for nearly four months, and Dr. Los Huertos report available for the past two months. We felt that after that extensive public comment and consensus efforts on the ag proposal, that it would be inappropriate to push forward the proposal you made available without the opportunity for any public input.

Thanks
Rick Tomlinson
California Strawberry Commission
(916) 445-3335