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8 Attorneys for Petitioners
9 CALIFORNIA FARM BUREAU FEDERATION;
10 MONTEREY COUNTY FARM BUREAU;
11 SAN BENITO COUNTY FARM BUREAU;
12 SAN LUIS OBISPO COUNTY FARM BUREAU;
13 SAN MATEO COUNTY FARM BUREAU;
14 SANTA BARBARA COUNTY FARM BUREAU;
15 SANTA CLARA COUNTY FARM BUREAU;
16 SANTA CRUZ COUNTY FARM BUREAU

11 **BEFORE THE**
12 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 IN THE MATTER OF PETITION FOR
16 REVIEW OF CALIFORNIA FARM BUREAU
17 FEDERATION; MONTEREY COUNTY FARM
18 BUREAU; SAN BENITO COUNTY FARM
19 BUREAU; SAN LUIS OBISPO COUNTY
20 FARM BUREAU; SAN MATEO COUNTY
21 FARM BUREAU; SANTA BARBARA
22 COUNTY FARM BUREAU; SANTA CLARA
23 COUNTY FARM BUREAU; SANTA CRUZ
24 COUNTY FARM BUREAU

21 v.

22 CALIFORNIA REGIONAL WATER QUALITY
23 CONTROL BOARD, CENTRAL COAST
24 REGION

SWRCB/OCC File: _____
**PETITION FOR REVIEW, OR
ALTERNATIVELY, REQUEST FOR
OWN MOTION REVIEW OF THE
CENTRAL COAST REGIONAL WATER
QUALITY CONTROL BOARD'S
ORDER NO. R3-2012-0011, R3-2012-0011-
01, R3-2012-0011-02, AND R3-2012-0011-03,
RESOLUTION NO. R3-2012-0012 AND
FILING OF THE NOTICE OF
DETERMINATION FOR THE
CONDITIONAL WAIVER OF WASTE
DISCHARGE REQUIREMENTS FOR
DISCHARGES FROM IRRIGATED
LANDS; PRELIMINARY POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION [Water Code § 13320]**

25
26 In accordance with Water Code section 13320, California Farm Bureau Federation ("Farm
27 Bureau"), Monterey County Farm Bureau; San Benito County Farm Bureau; San Luis Obispo County
28 Farm Bureau; San Mateo County Farm Bureau; Santa Barbara County Farm Bureau; Santa Clara

1 County Farm Bureau; and Santa Cruz County Farm Bureau (collectively “Petitioners”) hereby petition
2 the State Water Resources Control Board (“State Board”) to review the actions and inactions by the Central
3 Coast Regional Water Quality Board (“Regional Board”) in issuing Order No. R3-2012-0011,
4 adopting a Conditional Waiver Of Waste Discharge Requirements For Discharges From Irrigated
5 Lands, Monitoring and Reporting Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-
6 2012-0011-03, and Certification, pursuant to the California Environmental Quality Act (“CEQA”), of the
7 Final Subsequent Environmental Impact Report (“SEIR” or “Final SEIR”), CEQA Findings, and Statement
8 of Overriding Considerations for the Adoption of Renewal of a Waiver of Waste Discharge Requirements
9 for Discharges of Waste From Irrigated Lands in the Central Coast Region, Resolution Number R3-2012-
10 0012 (all documents collectively referred to as “Conditional Waiver” or “2012 Conditional Waiver”).

11 A summary of the basis for Petitioners’ Petition for Review and a preliminary statement of Points
12 and Authorities are set forth in this Petition for Review in accordance with California Code of Regulations,
13 title 23, section 2050(a). Petitioners reserve and request the right to file supplemental points and authorities
14 in support of the Petition for Review once the administrative record becomes available. Petitioners also
15 reserve the right to submit additional arguments and evidence responsive to the Regional Board’s or other
16 interested parties’ responses to the Petition for Review, to be filed in accordance with California Code of
17 Regulations, title 23, section 2050.5.

18 The Petitioners are organizations whose members are directly affected by the 2012 Conditional
19 Waiver. As explained below, Petitioners’ members are individuals engaged in the agricultural industry
20 within the Central Coast Region of the Regional Water Quality Control Board.

21 Petitioners, through its members, participated in proceedings before the Regional Board expressing
22 concerns in opposition of the Conditional Waiver of Waste Discharge Requirements for Discharges
23 From Irrigated Lands as well as submitted numerous comment letters. Petitioners submit this Petition
24 for Review in compliance with Water Code sections 13320(a) and 13330(c). Given that the adopted
25 Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands Program
26 directly harms Petitioners and its members, Petitioners are proper parties before the State Water Board.

27 **I. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 Petitioners submit this Petition for Review in compliance with Water Code sections 13320(a)

1 and 13330(c). Section 13320(a) provides that an aggrieved person may petition the State Board to
2 review any action or inaction of a Regional Board under Water Code section 13260 et seq., including
3 actions or inactions relating to waiver of waste discharge requirements. Section 13330(c) states that
4 “the time for filing an action or proceeding subject to Section 21167 of the Public Resources Code for
5 a person who seeks review of the regional board’s decision or order under Section 13320, ..., shall
6 commence upon the state board’s completion of that review” Based on this provision of the Water
7 Code, Petitioners are required to submit a challenge to the Regional Board’s actions with respect to
8 CEQA to the State Board for review prior to filing a writ of mandate pursuant to Public Resources
9 Code section 21167. Further, Petitioners are authorized to represent their respective members, some
10 or all of which are subject to regulation under the Conditional Waiver and will in the future be subject
11 to any future iteration of this regulatory program. Petitioners fully participated in the CEQA review
12 process, including attending meetings with the Regional Board regarding the scope, breadth, and
13 content of the environmental analysis and possible alternatives, submitting numerous letters outlining
14 concerns with lack of compliance with CEQA and the economic analysis, and providing oral
15 comments at all workshops and Board hearings. Throughout the process, Petitioners challenged the
16 Regional Board’s failure to comply with CEQA by, among other things, failing to prepare a new
17 Initial Study, improper reliance on the 2004 Negative Declaration, improper identification of the
18 “project,” flawed analysis of environmental impacts to agricultural resources, inadequate and flawed
19 economic review, and subsequent failure to draft and re-circulate a proper environmental impact
20 report given the substantial revisions to the Project prior to certification and use for subsequent
21 regulatory action.

22 In addition to participating fully in the CEQA review process, Petitioners fully participated in
23 all public comment and review opportunities on the development of the 2012 Conditional Waiver,
24 including attending meetings with the Regional Board regarding alternative proposals developed and
25 submitted by agriculture, submitting numerous letters outlining legal and practical concerns with the
26 regulatory scope of staff’s draft orders, and providing oral comments at all workshops and Board
27 hearings. Throughout the process, Petitioners challenged the Regional Board’s failure to comply with
28 the Porter-Cologne Water Quality Control Act, the Water Quality Control Plan for the Central Coast

1 Basin (June 8, 2011), and the Policy for Implementation and Enforcement of the Nonpoint Source
2 Pollution Control Program (May 20, 2004, (“Nonpoint Source Policy” or “NPS Policy”), by, among
3 other things, using an improper standard for the basis of the entire Conditional Waiver, failing to
4 properly analyze the economic impacts of the 2012 Conditional Waiver, improperly requiring
5 immediate compliance with water quality standards, dictating management practices, unlawfully
6 requiring individual surface water monitoring requirements, failing to provide an adequate nexus for
7 the monitoring and reporting provisions, failing to properly evaluate the Ag Alternative Proposals
8 under the Water Code and NPS Policy, and arbitrarily structuring the tiering provisions without a
9 water quality nexus.

10 **II. NAME, ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS OF**
11 **PETITIONER:**

12 All materials and documents generated in connection with this Petition for Review should be
13 provided to Petitioners at the following address:

14 California Farm Bureau Federation
15 Kari E. Fisher
16 2300 River Plaza Drive
17 Sacramento, CA 95833
18 Phone: (916) 561-5665
19 Fax: (916) 561-5691
20 E-mail: kfisher@cfbf.com; photz@cfbf.com

21 **III. THE PETITIONER PARTIES:**

22 **A. California Farm Bureau Federation**

23 The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit,
24 voluntary membership California corporation whose purpose is to protect and promote agricultural interests
25 throughout the State of California and to find solutions to the problems of the farm, the farm home and the
26 rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm
27 Bureaus currently representing over 30,000 farm families and more than 74,000 agricultural, associate and
28 collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and
ranchers engaged in production agriculture to provide a reliable supply of food and fiber through
responsible stewardship of California’s resources.

1 Farm Bureau supports responsible farming and proper use and application of pest control
2 products, and respects the health and welfare of those throughout the State. Farm Bureau actively
3 participates in state and federal legislative and regulatory advocacy relating to water quality, water use
4 efficiency, and pesticide regulation, registration, labeling, and use on behalf of Farm Bureau members.

5 Farm Bureau's membership includes a substantial number of farmers and ranchers who grow
6 food and fiber within the Regional Board's jurisdiction. As required by the Porter-Cologne Water
7 Quality Control Act, many Farm Bureau members are currently regulated under the Regional Board's
8 Conditional Wavier of Waste Discharge Requirements and are directly impacted by the new
9 conditions and requirements contained within the Conditional Waiver. Furthermore, Farm Bureau
10 members throughout California depend upon a healthy and vibrant ecology and economy; both of which
11 will be harmed by the Conditional Waiver.

12 **B. Monterey County Farm Bureau**

13 Monterey County Farm Bureau is the private, nonprofit association of farmers and ranchers
14 throughout Monterey County, located on the Central Coast. Founded in 1917, Monterey County Farm
15 Bureau serves as a collective voice for farmers and ranchers and provides information, benefits and
16 services. Monterey County Farm Bureau collaborates with other agricultural organizations to fulfill
17 its purpose of working for the solutions to the problems of the farm, the farm home, the environment,
18 and the rural community. Monterey County Farm Bureau is one of 53 county Farm Bureaus currently
19 representing a combined membership of 710 family members in Monterey County.

20 **C. San Benito County Farm Bureau**

21 San Benito County Farm Bureau is a non-governmental, non-profit, voluntary membership
22 California corporation whose mission is to preserve and promote successful agriculture in San Benito
23 County through education, leadership and service. San Benita County Farm Bureau is one of 53 county
24 Farm Bureaus currently representing a combined membership of 379 family members in San Benito
25 County.

26 **D. San Luis Obispo County Farm Bureau**

27 San Luis Obispo County Farm Bureau is a non-governmental, non-profit, voluntary membership
28 corporation whose purpose is to protect and promote agricultural interests throughout San Luis Obispo

1 County and to find solutions to the problems of the farm, the farm home and the rural community. San Luis
2 Obispo County Farm Bureau is one of 53 county Farm Bureaus currently representing a combined
3 membership of 1,445 family members in San Luis Obispo County.

4 **E. San Mateo County Farm Bureau**

5 San Mateo County Farm Bureau is a non-governmental, non-profit, voluntary membership
6 California corporation. San Mateo County Farm Bureau is one of 53 county Farm Bureaus currently
7 representing a combined membership of 845 family members in San Mateo County.

8 **F. Santa Barbara County Farm Bureau**

9 Santa Barbara County Farm Bureau is a non-governmental, non-profit, voluntary membership
10 corporation who strives to meet the needs of its 1,230 dues paying members by working with elected
11 officials, government agencies, educators, the public and the media. Santa Barbara County Farm Bureau is
12 one of 53 county Farm Bureaus currently representing a combined membership of 1,230 family members in
13 Santa Barbara County.

14 **G. Santa Clara County Farm Bureau**

15 Santa Clara County Farm Bureau is a non-profit organization dedicated to promoting and
16 preserving farming and ranching in the Santa Clara Valley. Santa Clara County Farm Bureau's key
17 programs are political involvement, education and member development. One of its largest programs,
18 the Ag Water Quality Program, was recently given the highest environmental award in the state, the
19 Governor's Environmental Leadership Award. Santa Clara County Farm Bureau is one of 53 county
20 Farm Bureaus currently representing a combined membership of 1,513 family members in Santa Clara
21 County.

22 **H. Santa Cruz County Farm Bureau**

23 Santa Cruz County Farm Bureau is a vital part of its community, providing an important voice for
24 the Santa Cruz County and Pajaro Valley agriculture industry. Santa Cruz County Farm Bureau is
25 continually involved in local land use and transportation issues as well as opportunities to provide
26 educational support through scholarships and school programs. Santa Cruz County Farm Bureau helps
27 insure that the agriculture industry here remains viable, and continues to generate financial security for the
28 entire community. Its Mission Statement is to work for the solution of the problems of the farm, the farm

1 home and the rural community, by use of the recognized advantages of organized action, to the end that
2 those engaged in the various branches of agriculture may have opportunity for happiness and prosperity in
3 their chosen work. Santa Cruz County Farm Bureau is one of 53 county Farm Bureaus currently
4 representing a combined membership of 884 family members in Santa Cruz County

5 **IV. SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS**
6 **REQUESTED TO REVIEW:**

7 Petitioners seek review of the actions of the Regional Board in connection with the adoption of the
8 Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands
9 (“Conditional Waiver Order”) Order Number R3-2012-0011, in its entirety, Monitoring and Reporting
10 Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03,¹ and certification,
11 pursuant to the California Environmental Quality Act (“CEQA”), of the Final Subsequent Environmental
12 Impact Report (“SEIR” or “Final SEIR”), CEQA Findings, and Statement of Overriding Considerations for
13 the Adoption of Renewal of a Waiver of Waste Discharge Requirements for Discharges of Waste From
14 Irrigated Lands in the Central Coast Region Resolution Number R3-2012-0012, as discussed below. In
15 adopting the Conditional Waiver, Monitoring and Reporting Programs (“MRPs”), CEQA Findings,
16 overriding considerations, and certifying the SEIR, the Regional Board acted in a manner contrary to law,
17 and acted contrary to the public policy of the State of California. A true and correct copy of the Conditional
18 Waiver Order (attached to this Petition as Attachment 1), MRPs (attached to this Petition as Attachment 2),
19 Final SEIR (attached to this Petition as Attachment 3), and certification of the SEIR (attached to this
20 Petition as Attachment 4) are attached to this Petition.

21 More specifically, the Petitioners request that the State Board review the Regional Board’s
22 failure to proceed in a manner required by law with respect to complying with the substantive and
23 procedural requirements under the Porter-Cologne Water Quality Control Act and CEQA, failure to
24 adopt a program consistent with the Basin Plan and the Nonpoint Source Policy, and participation in
25 ex parte communications and actions that prevented full public participation, prejudicially harmed
26 Petitioners, and biased the final approval made by the Board. The specific determinations with respect

27 ¹ The Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands Order Number R3-
28 2012-0011 and Monitoring and Reporting Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03
are collectively referred to as “2012 Conditional Waiver” or “Conditional Waiver” herewith.

1 to CEQA that the Petitioners request the State Board review include, but are not limited to, the
2 following: the Final SEIR's failure to include an adequate project description; the Final SEIR's
3 improper reliance on the 2004 Negative Declaration; the Final SEIR's failure to adequately address
4 social, economic, and cumulative impacts; the Final SEIR's failure to analyze impacts; the Final
5 SEIR's failure to support conclusions with substantial evidence; the Final SEIR's improper shift of the
6 burden of proof from the lead agency to the public; the Final SEIR's failure to analyze the Project's
7 impacts; the Regional Board's failure to re-circulate the Final SEIR; and, the Regional Board's failure
8 to include an adequate economic analysis in compliance with Water Code section 13141.

9 **V. THE DATE ON WHICH THE REGIONAL BOARD ACTED:**

10 The Regional Board adopted Order Numbers R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02,
11 and R3-2012-0011-03, and Resolution No. R3-2012-0012² on March 15, 2012. Accordingly, this
12 Petition is timely filed pursuant to title 23, California Code of Regulations, section 2050. Unless
13 otherwise provided, the Petitioners contend that all actions and inactions of the Regional Board challenged
14 herein are not supported by adequate findings or evidence in the record and/or are inconsistent with
15 applicable law.

16 **VI. STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR**
17 **IMPROPER:**

18 As explained in more detail in the Statement of Points and Authorities herein, the Regional
19 Board's adoption of the 2012 Conditional Waiver and MRPs, as well as the certification and
20 subsequent use of the SEIR constitutes a prejudicial abuse of discretion in that the Regional Board
21 failed to proceed in a manner required by law and its decision is not supported by substantial evidence.

22 In enacting the Porter-Cologne Act, the Legislature laid out specific goals and objectives for
23 the State's waters. Regional Boards must conform to all such statutory mandates, including the
24 Legislature's objective:

25 The Legislature further finds and declares that activities and factors which may affect the
26 quality of the waters of the state shall be regulated to *attain the highest water quality*
which is reasonable, considering all demands being made and to be made on those

27 _____
28 ² The Regional Board certified the SEIR on March 15, 2012; however, the Regional Board did not complete a Notice of
Determination for the SEIR until April 3, 2012. (See Notice of Determination, attached to this Petition as Attachment 7.)

1 waters and the total values involved, beneficial and detrimental, economic and social,
2 tangible and intangible.

3 (Wat. Code, § 13000, emphasis added.) Here, the Regional Board arbitrarily and capriciously applied
4 its authority when crafting the 2012 Conditional Waiver as the Conditional Waiver is not reasonable
5 and does not properly consider all economic, social, tangible, and intangible values involved. Further,
6 the Conditional Waiver’s conclusions and findings do not comply with the Basin Plan or the Nonpoint
7 Source Policy

8 CEQA requires that an agency analyze the potential environmental impacts of its proposed
9 actions in an environmental impact report (except in certain limited circumstances). (See, e.g., Pub.
10 Resources Code, § 21100.) CEQA is designed to inform decision makers and the public about
11 potential, significant environmental effects of a project. (Cal. Code Regs., tit. 14, § 15002(a)(1),
12 (“CEQA Guidelines”).) “Its purpose is to inform the public and its responsible officials of the
13 environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only
14 the environment, but also informed self-government.’” (*Citizens of Goleta Valley v. Board of*
15 *Supervisors* (1990) 52 Cal.3d 553, 564.)

16 While the courts review an EIR using an “abuse of discretion” standard, ... ‘clearly inadequate
17 or unsupported study is entitled to no judicial deference.’” (*Berkeley Keep Jets Over the Bay v. Board*
18 *of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1355 (quoting *Laurel Heights Improvement Assn. v.*
19 *Regents of University of California* (1988) 47 Cal.3d 376, 391, 409, n. 12).) “A prejudicial abuse of
20 discretion occurs ‘if the failure to include relevant information precludes informed decision-making
21 and informed public participating, thereby thwarting the statutory goals of the EIR process.’” (*Id.* at
22 1355.)

23 In general, the Regional Board failed to properly follow and comply with CEQA in that the
24 analysis in the SEIR is superficial, relies on an inapplicable Negative Declaration prepared for a
25 separate project which occurred 8 years prior, does not evaluate the Project as adopted, and
26 inadequately analyzes the environmental impacts associated with the Project. Because the Regional
27 Board failed to properly comply with CEQA, the Regional Board’s actions to certify the SEIR and file
28 a Notice of Determination constitute a prejudicial abuse of discretion. Moreover, Petitioners request

1 review of the Regional Board's actions with respect to certification of the SEIR, the filing of Notice of
2 Determination that followed therewith, and the Regional Board's reliance on said environmental
3 review to adopt the 2012 Conditional Waiver.

4 **VII. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

5 The Petitioners and their members are aggrieved by the conditions and limitations contained in
6 the Conditional Waiver, which are more stringent or onerous than required by or provided for under
7 current law and establish a parallel set of requirements with which Petitioners and their members must
8 comply. These requirements will threaten the economic survival of many agricultural lands owned or
9 operated by Petitioners and their members in the region. The Petitioners' members will or may be
10 required to spend limited private resources to comply with inappropriate or unlawful Conditional
11 Waiver conditions. Alternatively, the Petitioners' members may not longer be able to maintain
12 economically viable agricultural operations. In that case, the Petitioners' members include registered
13 will be harmed because their services will no longer be required. Given that the resources of private
14 landowners are limited Petitioners are aggrieved when forced to comply with requirements that are
15 arbitrary, unnecessary, unlawful and not required by law.

16 Petitioners are also aggrieved by the Regional Board's failure to properly analyze the
17 economic impacts associated with this action and failure to properly review and analyze all
18 environmental impacts associated with the Conditional Waiver.

19 **VIII. SPECIFIC ACTION BY THE STATE BOARD WHICH THE PETITIONER**
20 **REQUESTS:**

21 **A.** Based on the foregoing, the Petitioners request that the State Board modify Order Numbers
22 R3-2012-0011, R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03 with direction for revisions, as
23 follows:

- 24 (i) Rescind Order No. R3-2012-0011 in its entirety, including the Regional Board's
25 incorporation of the Mitigation Monitoring and Reporting Programs into the
26 Conditional Waiver due to process violations. (See process violations within Petition
27 submitted on or about April 16, 2012 by Theresa A. Dunham, incorporated by reference
28 herewith);

- 1 (ii) Rescind Order No. R3-2012-0011 in its entirety, including the Regional Board's
2 incorporation of the Mitigation Monitoring and Reporting Programs into the
3 Conditional Waiver due to improper reliance on an legally inadequate and flawed CEQA
4 environmental review;
- 5 (iii) In the alternative to subsections (i) or (ii), Modify Order No. R3-2012-0011 with direction
6 for revisions. (See specific revisions to Order No. R3-2012-0011 in its entirety made within
7 Petition submitted on or about April 16, 2012 by Theresa A. Dunham, incorporated by
8 reference herewith);
- 9 (iv) Rescind Resolution No. R3-2012-0012 in its entirety; and
- 10 (v) Issue an immediate stay of Order No. R3-2012-0011. (See Request for Immediate Stay
11 submitted on or about April 16, 2012 by Theresa A. Dunham, incorporated by reference
12 herewith incorporated by reference herewith).

13 **IX. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES**
14 **RAISED IN THE PETITION:**

15 A Statement of Points and Authorities in support of this petition is set forth in Section 4 above.
16 The Petitioners reserve the right to supplement this statement. Petitioners request the opportunity to
17 file supplemental Points and Authorities in support of this Petition for Review once the administrative
18 record becomes available. Petitioners further request and reserve the right to submit additional
19 argument and evidence in reply to the Regional Board's or other interested parties' response to this
20 Petition filed in accordance with title 23, section 2050.5(a) of the California Code of Regulations.

21 **X. STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL**
22 **BOARD:**

23 In accordance with title 23, section 2050(a)(8) of the California Code of Regulations, the
24 Petitioners mailed a true and correct copy of this petition by First Class mail on April 16, 2012, to the
25 Regional Board at the following address:

26 Roger W. Briggs, Executive Officer
27 Central Coast Regional Water Quality Control Board
28 895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

1 **STATEMENT OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 At its March 15, 2012 hearing, the Regional Board took action to adopt Order No. R3-2012-
4 0011, a Conditional Waiver Of Waste Discharge Requirements For Discharges From Irrigated Lands,
5 Monitoring and Reporting Programs Order Numbers R3-2012-0011-01, R3-2012-0011-02, and R3-2012-
6 0011-03, and certified the Final SEIR, Findings, and Statement of Overriding Considerations, pursuant
7 to the California Environmental Quality Act (“CEQA”), Resolution Number R3-2012-0012 (all documents
8 collectively referred to as “Conditional Waiver” or “2012 Conditional Waiver”).

9 The 2012 Conditional Waiver includes significant and prescriptive requirements that gravely
10 impact growers and the agricultural industry in the Central Coast. Although growers and the
11 agricultural community are supportive of maintaining quality waters throughout the region, the 2012
12 Conditional Waiver not only contains unlawful requirements not supported by law or substantial
13 evidence, but put Central Coast growers at a severe disadvantage in a very competitive marketplace.

14 As the state agency tasked to ensure the *reasonable* regulation of the state’s water quality
15 given all the demands made upon the water, and the state agency tasked with reviewing a Regional
16 Board’s action that is contrary to the law, it is imperative that the State Board decide the issues set
17 forth in this Petition. More specifically, Petitioners challenge whether the Regional Board acted
18 appropriately and reasonably when it adopted the 2012 Conditional Waiver and MRPs, certified the
19 inadequate Final SEIR, and filed the Notice of Determination associated with the Final SEIR. The
20 Regional Board’s actions cause Petitioners to be prejudiced and aggrieved now and in the future with
21 a conditional waiver that violates the Porter-Cologne Water Quality Control Act, the Basin Plan, and
22 the Nonpoint Source Policy, was adopted through a biased and procedurally flawed process, contains
23 conditions and limitations which are more stringent or onerous than required by or provided for under
24 current law, and is based upon an inadequate SEIR that fails to analyze the Project as adopted, fails to
25 assess the environmental impacts of the Project, and relies on a Negative Declaration prepared for a
26 different project.

27 Accordingly, Petitioners respectfully request that the State Board vacate the adoption of the
28

1 2012 Conditional Waiver and MRPs, remedy the 2012 Conditional Waiver to incorporate third-party
2 groups and cure specified defects,³ and order the Regional Board to vacate its certification of the Final
3 SEIR, Findings, and Statement of Overriding Considerations.

4 **II. ARGUMENT⁴**

5 **A. PROCEDURAL AND PROCESS FLAWS HAVE SUBSTANTIALLY PREJUDICED** 6 **AGRICULTURAL STAKEHOLDERS**

7 **1. Petitioners' Due Process Rights Have Been Hampered By Regional Board Delays**

8 Water Code section 13320 provides members of the public the opportunity to seek review of an
9 action taken by the Regional Board:

10 Within 30 days of any action or failure to act by a regional board under subdivision (c)
11 of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5
12 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370),
13 Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with
14 Section 13500), an aggrieved person may petition the state board to review that action or
15 failure to act.

16 (Wat. Code, § 13320(a).) The statute only allows 30 days for the filing of a petition. (*Ibid.*)
17 Unfortunately, delays in the release of necessary and essential documents from the adoption of the
18 2012 Conditional Waiver have disadvantaged Petitioners' ability to fully review the adopted 2012
19 Conditional Waiver and determine all associated defects and impacts. The Regional Board adopted
20 the 2012 Conditional Waiver on March 15, 2012. (See Order No. R3-2012-0011, attached as
21 Attachment 1.) The final Order, Additional Findings, and associated MRPs were not released until
22 March 27, 2012, twelve days after the hearing. (See March 27, 2012 Email from Regional Board
23 announcing release of final order, attached as Attachment 5.) A fact sheet summarizing the
24 requirements for each tier was not released until April 6, 2012. (See April 6, 2012 Email from
25 Regional Board announcing release of a Frequently Asked Questions Information Document and Fact
26 Sheet and associated Fact Sheet, attached as Attachment 6.) The Notice of Determination was not

26 ³ Petitioners incorporate by reference those points raised in the Petition submitted on or about April 16, 2012 by Theresa
27 A. Dunham regarding specific defects to be cured.

28 ⁴ Petitioners incorporate by reference those arguments submitted on or about April 16, 2012 by Theresa A. Dunham and
William Thomas regarding the illegality of individual surface water monitoring requirements, nutrient management plans,
confidentiality issues with farm plans, nitrogen balance ratios, and regulation of tile drains.

1 released until April 3, 2012. (See Notice of Determination, attached as Attachment 7.) The
2 Resolution certifying the Final SEIR, Findings, and Statement of Overriding Considerations was not
3 provided to Petitioners until April 10, 2010. (See April 10, 2012 Email from Jessica Newman to Kari
4 Fisher, attached as Attachment 8.) The transcript from March 15, 2012 was finalized on April 3, 2012
5 (see April 2, 2012 Email from Atkinson-Baker Transcripts to Stacy Denny, attached as Attachment 9);
6 the transcript from March 14, 2012 was finalized and released to the public on April 13, 2012. Given
7 the delays in obtaining necessary and essential documents in order to review the action taken by the
8 Regional Board, Petitioners have been prejudiced.

9 **2. Process Flaws Immediately Prior To Board Adoption Have Substantially Prejudiced**
10 **Agricultural Stakeholders⁵**

11 During the course of the hearing on March 15, 2012, last minute changes, improperly couched
12 as revisions and new conditions drafted by the Board members themselves, were introduced and
13 subsequently incorporated into the 2012 Conditional Waiver. (See March 15, 2012 Transcript, pp. 102-
14 116.) A Public Records Act Request revealed that these new conditions were finalized *prior* to the
15 close of the public comment portion of the hearing but *never released to the public* (See March 14,
16 2012 Draft Transcript, p. 369, ¶ 11-12, [“Michael, we are done with public comment. It’s closed.”];
17 Public Records Act Request, March 13, 2012 at 12:02 p.m. Email between Mike Johnston and Roger
18 Briggs stating revisions were finalized, attached as Attachment 10), and were predetermined to be a
19 part of the final order prior to review by Board members. (Public Records Act Request, March 13,
20 2012 at 12:02 p.m. Email between Mike Johnston and Roger Briggs, [“Mike, here it is. Changes and
21 new language in red. There’s one bullet that has yellow highlight on it. I couldn’t get rid of it. It doesn’t
22 mean anything - *we’ll fix it later after the meeting when this is part of the Order.*”], emphasis added,
23 attached as Attachment 10.) Further, documents within the Public Records Act Request show that the
24 exact language presented by Board member Johnston was actually drafted by Steve Shimeck, a member
25 of the public, and presented to the Board staff prior to the hearing. (See Public Records Act Request,
26 Lisa McCann phone notes regarding a conversation with Steve Shimeck on March 8, 2012 about a

27 _____
28 ⁵ Petitioners herein incorporate by reference the arguments regarding process defects contained in the Petition submitted
on or about April 16, 2012 by Theresa A. Dunham.

1 meeting with CalEPA and California Strawberry Commission, attached as Attachment 10; see also
2 Petition submitted on or about April 16, 2012 by Theresa A. Dunham regarding same.) By using
3 language drafted by a member of the public cloaked as language developed by Board members, the
4 final version of the 2012 Conditional Waiver was devoid of fairness, transparency, and equity. This
5 lack of transparency and equity was further highlighted given that this final language was finalized
6 prior to the beginning of the two day Board hearing but not presented to the Board and the public until
7 *minutes prior* to the final vote on the Project, a full day *after* the close of public comments. Such action
8 was highly prejudicial to agricultural stakeholders. Given that these actions included improper ex parte
9 communications between a member of the Board and the public, the adoption of the 2012 Conditional
10 Waiver is null.

11 **B. THE 2012 CONDITIONAL WAIVER FAILS TO COMPLY WITH THE**
12 **REQUIREMENTS OF CEQA**

13 The California Environmental Quality Act (“CEQA”), Pub. Resources Code, §§ 21000 et seq.,
14 was enacted to address concerns about environmental quality in the State of California. CEQA
15 establishes processes and procedures to ensure that California agencies complete an environmental
16 analysis and consider and disclose to the public the environmental impacts of a proposed project.
17 (Pub. Resources Code, §§ 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq.) CEQA’s statutory
18 framework clearly sets forth a series of analytical steps intended to promote the fundamental goals and
19 purposes of environmental review—information, public participation, mitigation, and governmental
20 agency accountability. (Cal. Code Regs., tit. 14, § 15002; see also Pub. Resources Code, §§ 21001,
21 21001.1, 21002, 21003, 21006, 21064.) CEQA’s intent and purpose foster informed public
22 participation and decision-making. (*Laurel Heights Improvement Assn. v. Regents of University of*
23 *California* (1988) 47 Cal.3d 376, 404 (“*Laurel Heights I*”).) As the lead agency for the Project, the
24 regulation of discharges from irrigated lands via a conditional waiver of waste discharge requirements,
25 the Regional Board must comply with CEQA’s overall objectives, which are to: 1) inform the
26 decision-makers and public about the potential significant environmental effects of a proposed project;
27 2) identify ways that environmental damage may be mitigated; 3) prevent significant, avoidable
28 damage to the environment by requiring changes in projects, through the use of alternative or

1 mitigation measures when feasible; and 4) disclose to the public why an agency approved a project if
2 significant effects are involved. (Pub. Resources Code, § 21080.5(a).) As described herein, the
3 Regional Board has failed to comply with the provisions of CEQA.

4 Petitioners seek a determination from the State Board that the Regional Board’s approval of
5 the Project⁶ is invalid and void and that the Final Supplemental Environmental Impact Report (“SEIR”
6 or “Final SEIR”) prepared for the Project fails to satisfy the requirements of CEQA, and the CEQA
7 Guidelines, Title 14, California Code of Regulations, section 15000 et seq.⁷ As demonstrated below,
8 the Regional Board’s Final SEIR is fatally flawed and legally inadequate. The SEIR relies on an
9 inadequate project description in that the scope of the project is not supported by substantial evidence
10 in the administrative record. Further, the SEIR relies exclusively on the 2004 Initial Study and
11 Negative Declaration prepared for a wholly different project.

12 One of the primary purposes of CEQA is to provide decision-makers and the public
13 information about the proposed project. A cursory view of the SEIR reveals that it fails miserably as
14 an informational document.

15 **1. Standard Of Review Under The California Environmental Quality Act**

16 In reviewing the SEIR for the Project, a determination must be made whether the Regional
17 Board prejudicially abused its discretion either by failing to proceed in the manner required by law or
18 by reaching a decision that is not supported by substantial evidence. (Pub. Resources Code, § 21168;
19 *Laurel Heights I, supra*, 47 Cal.3d at 392.) A court will find the agency prejudicially abused its
20 discretion where either 1) the agency failed to proceed in a manner required by law, or 2) its
21 determination or decision is not supported by substantial evidence. (*Laurel Heights I, supra*, 47
22 Cal.3d at 392, fn. 5; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48
23 Cal.App.4th 182, 192; Pub. Resources Code, § 21168.5.)

24 “Certification of an EIR which is legally deficient because it fails to adequately address an
25

26 ⁶ The term “project” refers to the 2012 Conditional Waiver and associated MRPs in its entirety.

27 ⁷ All future references to Guidelines are to the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) developed by
28 the Governor’s Office of Planning and Research and adopted by California’s Natural Resources Agency. (Pub. Resources
Code, § 21083.) “[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or
erroneous under CEQA. [Citation.]” (*Laurel Heights I, supra*, (1988) 47 Cal.3d 376, 391, fn. 2).)

1 issue constitutes a prejudicial abuse of discretion” (*Citizens to Preserve the Ojai v. County of*
2 *Ventura* (1985) 176 Cal.App.3d 421, 428.) A prejudicial abuse of discretion also occurs if the EIR
3 omits relevant information and thus precludes informed decision-making. (*Kings County Farm*
4 *Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

5 If an agency fails to proceed in the manner required by law, the inquiry ends and the decision
6 must be set aside. The court does not apply the “substantial evidence” standard of review if the
7 agency fails to act in accordance with the law or with CEQA. (*Schoen v. Department of Forestry &*
8 *Fire Protection* (1997) 58 Cal.App.4th 556, 565.) “Conclusions of law . . . are reviewed
9 independently.” (*International Brotherhood of Electrical Workers v. Aubry* (1996) 42 Cal.App.4th
10 861, 868.)

11 Recently, the California Supreme Court sustained a CEQA challenge and in doing so
12 addressed the abuse of discretion standard of review. In *Vineyard Area Citizens for Responsible*
13 *Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the Supreme Court set forth the
14 standard of review as follows:

15 . . . an agency may abuse its discretion under CEQA either by failing to proceed in the
16 manner CEQA provides or by reaching factual conclusions unsupported by substantial
17 evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly:
18 While we determine de novo whether the agency has employed the correct procedures,
19 “scrupulously enforc[ing] all legislatively mandated CEQA requirements” (*Citizens of*
20 *Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564), we accord greater
21 deference to the agency’s substantive factual conclusions. In reviewing for substantial
22 evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the
23 ground that an opposite conclusion would have been equally or more reasonable,” for,
24 on factual questions, our task “is not to weigh conflicting evidence and determine who
25 has the better argument.” (*Laurel Heights I, supra*, 47 Cal.3d at 393.)

26 In evaluating an EIR for CEQA compliance, then, a reviewing court must adjust its
27 scrutiny to the nature of the alleged defect, depending on whether the claim is
28 predominantly one of improper procedure or a dispute over the facts. For example,
where an agency failed to require an applicant to provide certain information mandated
by CEQA and to include that information in its environmental analysis, we held the
agency “failed to proceed in the manner prescribed by CEQA.” (*Sierra Club v. State*
Bd. of Forestry (1994) 7 Cal.4th 1215, 1236; see also *Santiago County Water Dist. v.*
Count of Orange, supra, 118 Cal.App.3d at p. 829 [EIR legally inadequate because of
lack of water supply and facilities analysis].) In contrast, in a factual dispute over
“whether adverse effects have been mitigated or could be better mitigated” (*Laurel*
Heights I, supra, 47 Cal.3d at p. 393), the agency’s conclusion would be reviewed only
for substantial evidence. Thus, in *Laurel Heights I*, we rejected as a matter of law the
agency’s contention that the EIR did not need to evaluate the impacts of the project’s

1 foreseeable future uses because there had not yet been a formal decision on those uses
2 (*id.* at pp. 393-399), but upheld as supported by substantial evidence the agency’s
3 finding that the project impacts described in the EIR were adequately mitigated (*id.* at
4 pp. 407-408). (See also *California Oak, supra*, 133 Cal.App.4th at p. 1244 [absent
uncertain purchase of additional water, as to which the EIR’s discussion is legally
inadequate, “substantial evidence of sufficient water supplies does not exist”].)

5 (*Id.* at 435.) The Supreme Court’s analysis in *Vineyard Area Citizens* is not new law. Under *East*
6 *Peninsula Education Council Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210
7 Cal.App.3d 155, 165, challenges to agency actions based on alleged non-compliance with CEQA are
8 reviewed by the court depending upon whether the challenge is to procedures used or to substantive
9 decisions made. If the challenge involves procedures, it is a question of law requiring an independent
10 determination by the reviewing court. (See also, *Laurel Heights I, supra*, 47 Cal.3d at pp. 394-396.)

11 The present case presents both types of CEQA challenges, the type requiring the substantial
12 evidence standard, as well as the type in which a court is called upon to determine *de novo* whether the
13 agency employed the correct procedures.

14 **2. The Final SEIR Is Fundamentally Flawed And Cannot Be Relied Upon For The**
15 **2012 Conditional Waiver**

16 **a. The Final SEIR’s Reliance on the 2004 Negative Declaration is Improper**

17 An attempt to review the environmental impacts of the 2012 Conditional Waiver was included
18 within the Final SEIR. Unfortunately, a full CEQA review and environmental analysis has been
19 avoided due to the SEIR’s improper reliance on the Negative Declaration prepared for the 2004
20 Agricultural Order.⁸ (Resolution No. R3-2012-0012, p. 1, ¶ 2; p. 2, ¶ 7; Final SEIR, pp. 1, 2, 8.)
21 Specifically, the SEIR states that possible impacts to agricultural lands “were previously evaluated in
22 the Negative Declaration for the 2004 Agricultural Order and were found at that time not to be
23 significant.” (Final SEIR, p. 8.) The SEIR relies upon this analysis to conclude that the 2012
24 Conditional Waiver will also not have any significant impacts to agriculture. (See Final SEIR, pp. 9,
25 11, 15, 17.) For numerous reasons, such conclusions are improper. The 2004 Agricultural Order is a
26 separate project from the 2012 Conditional Waiver. In addition, the conditions, restrictions, and

27 ⁸ In 2004, the Regional Board adopted Order No. R3-2004-0117, Conditional Waiver of Waste Discharger Requirements
28 for Discharges from Irrigated Lands (“2004 Agricultural Order”) along with a Negative Declaration under CEQA. (See
Final SEIR, p. 1, attached as Attachment 3.)

1 regulations within the 2012 Conditional Waiver are different from, more extensive than, and entirely
2 brand new from those contained in the 2004 Agricultural Order. Mere reference to and reliance upon
3 an environmental analysis conducted at least eight years previous is not only inappropriate, it is also
4 flawed and violates CEQA. (See *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991)
5 233 Cal.App.3d 577, [reliance on a negative declaration prepared for a previous more limited airport
6 taxiway project was a prejudicial abuse of discretion as the previous project was “a substantially
7 different project.”].)

8 A previous Negative Declaration can only be relied upon if the *project is the same* and the
9 *impacts are the same*. Neither factor applies here. (Cal. Code. Regs., tit. 14, § 15063(c), “Determine,
10 pursuant to a program EIR, tiering, or another appropriate process, which of a project’s effects were
11 adequately examined by an earlier EIR or negative declaration.”) As explained *infra*, the 2012
12 Conditional Waiver is a separate project from the 2004 Agricultural Order. Further, given the
13 fundamental differences between the two projects, including, but not limited to, the basic tiering
14 structure, the associated monitoring and reporting requirements, incorporation of riparian buffers,
15 groundwater monitoring, individual on farm surface water monitoring, well monitoring, irrigation and
16 nutrient management plans, annual compliance form, and nitrogen balance ratios, the 2012
17 Conditional Waiver’s project impacts and effects could not have been analyzed *or even considered*
18 under the 2004 Agricultural Order’s Negative Declaration. (See Order No. R3-2012-0011,
19 [maintenance of riparian areas, riparian cover, or containment structures to avoid percolation (*Id.* at p.
20 20, ¶ 32, 37, 39); groundwater monitoring and reporting (*Id.* at p. 23, ¶ 51); Annual Compliance Form
21 (*Id.* at p. 28, ¶ 67); photo monitoring (*Id.* at p. 28, ¶ 69), total nitrogen reporting (*Id.* at pp. 28-29, ¶
22 70); individual surface water monitoring (*Id.* at p. 29, ¶ 72-73); Irrigation and Nutrient Management
23 Plan (*Id.* at p. 29, ¶ 75); Nitrogen Balance ratio milestones (*Id.* at p. 30, ¶ 78); Water Quality Buffer
24 Plans (*Id.* at pp. 31-32, ¶ 80-81); riparian buffers/filter strips (*Id.* at p. 31, ¶ 80)].) Thus any reliance
25 on the 2004 Negative Declaration for determination of significant effects under the 2012 Conditional
26 Waiver is improper and defeats the basic intent of CEQA.

27 Although both waivers are conditional waivers of waste discharge limited to 5 year periods of
28 time and regulate discharges from irrigated lands, the two waivers are extremely different in scope,

1 regulatory focus, requirements, breadth, enforcement, intent, types and contents of monitoring, types
2 of discharges to be regulated, reporting requirements, as well as other differences. As such, the two
3 waivers are separate and independent “projects” under CEQA. (See *Communities For A Better*
4 *Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 326, [where
5 reliance on previous negative declaration was improper because the Diesel Project could not “be
6 characterized as merely the modification of a previously analyzed project to operate refinery boilers or
7 the continued operation of the boilers without significant expansion of use. Rather, the Diesel Project
8 proposed adding a new refining process to the facility, requiring the installation of new equipment as
9 well as the modification and significantly increased operation of other equipment.”].)

10 Since the 2012 Conditional Waiver is not merely a modification of the 2004 Agricultural Order
11 but is a new waiver program which adds new processes, conditions, requirements, and a serious
12 expansion from the current manner of regulation, reliance on the 2004 Negative Declaration to fully
13 determine and analyze the new environmental impacts of the 2012 Conditional Waiver is
14 inappropriate and improper.

15 **b. The Use of a SEIR Tiered off of the 2004 Negative Declaration and Initial**
16 **Study is Improper**

17 On March 1, 2011, the Regional Board issued a Final SEIR for the 2012 Conditional Waiver.
18 (See Final SEIR generally; see also Resolution No. R3-2012-0012 Certifying the Final SEIR, p. 2.)
19 The Final SEIR consists of the Draft SEIR, the Response to Comments to the Draft SEIR, and
20 documents referenced and incorporated into the Final SEIR. (Resolution No. R3-2012-0012, p. 2.)
21 An Addendum to the Final SEIR was released on August 10, 2011, but as described herein, the
22 Addendum is improper.

23 Within the opening pages of the Final SEIR, the following summary is provided:

24 In July 2004, the Board adopted an Initial Study and Negative Declaration prior to
25 adoption of the 2004 Agricultural Order. CEQA and the CEQA Guidelines state that
26 when a Negative Declaration has been adopted for a project, no subsequent
27 environmental impact report (SEIR) shall be prepared for the project unless the lead
28 agency determines that, among other reasons, changes are being proposed in the project
that could involve an increase in the severity of environmental effects identified in the
Negative Declaration. (Cal. Code Regs., tit 14, § 15162(a)(1).)

1 (Final SEIR, p. 1.) Although this is a correct statement of law, it is inapplicable here. Section
2 15162(a)(1) only applies when the current project is the exact same as the previous project for which
3 an EIR or Negative Declaration has been prepared. Given that the projects here, the 2004 Agricultural
4 Order and the 2012 Conditional Waiver, are two separate and independent projects, reliance on section
5 15162(a)(1) is improper. (See Section B.8 Improper Determination of a Project Under CEQA, *supra*.)
6 Further, the fact that both projects are conditional waivers for agricultural orders does not mean they
7 can be classified as the same project. Additionally, the fact that the same governmental approval
8 process, a conditional waiver of waste discharge requirements, has been utilized is irrelevant to the
9 determination of what is the “project” and its environmental impacts. (Cal. Code Regs., tit. 14, §
10 15378 (c); *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1172, “[t]he term
11 “project” refers to the underlying activity and not the governmental approval process.’ [Citation.]”
12 (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 59 Cal.App.3d 959, 969, 131
13 Cal.Rptr. 172, emphasis added by the *Natural Resources* court.)

14 Since the 2012 Conditional Waiver is a separate CEQA project from the 2004 Agricultural
15 Order, section 15162(a)(1) cannot be relied upon because any environmental review prepared for the
16 2004 Project is inapplicable. (See section B.4, The 2012 Conditional Waiver Is A Separate Project
17 From the 2004 Conditional Waiver Under CEQA, *infra*.) Thus, a new EIR should be developed for
18 the 2012 Conditional Waiver. (*Communities For A Better Environment v. South Coast Air Quality*
19 *Management Dist., supra*, 48 Cal.4th 310, 319-20, [“If no EIR has been prepared for a nonexempt
20 project, but substantial evidence in the record supports a fair argument that the project may result in
21 significant adverse impacts, the proper remedy is to order preparation of an EIR. (*No Oil, Inc. v. City*
22 *of Los Angeles, supra*, 13 Cal.3d at pp. 75, 88, 118 Cal.Rptr. 34, 529 P.2d 66; *Brentwood Assn. for No*
23 *Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505, 184 Cal.Rptr. 664.)”].)
24 Without preparing a proper and adequate environmental document, the public has been precluded
25 from gaining a full understanding of the environmental impacts and consequences of the 2012
26 Conditional Waiver as well as gaining assurance that all consequences have in fact been analyzed to
27 the fullest extent required by law. (See *Vineyard Area Citizens for Responsible Growth, Inc., supra*,
28 (2007) 40 Cal.4th at pp. 449–450, [“The preparation and circulation of an EIR is more than a set of

1 technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that
2 government officials who decide to build or approve a project do so with a full understanding of the
3 environmental consequences and, *equally important, that the public is assured those consequences*
4 *have been taken into account.* [Citation.] For the EIR to serve these goals it must present information
5 in such a manner that the foreseeable impacts of pursuing the project can actually be understood and
6 weighed, and the public must be given an adequate opportunity to comment on that presentation
7 before the decision to go forward is made.”], emphasis added.)

8 First, to force preparation of an EIR, you need only make a “fair argument” that there may be a
9 significant environmental impact, even though a contrary conclusion may be possible. (Cal. Code
10 Regs., tit. 14, § 15064(f)(1), *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.)⁹ In
11 marginal cases, an EIR must be prepared if there is a “serious public controversy” or a “disagreement
12 between experts.” (Cal. Code Regs., tit. 14, §§ 15064(f)(1), (2).) CEQA sets a “low threshold” for
13 preparation of an EIR. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84, [“The existence of
14 serious public controversy in itself indicates that preparation of an EIR is desirable.”]) Second,
15 “relevant personal observations,” such as those provided in written and oral testimony, are evidence.
16 (See Letter from David Costa, Costa Family Farms (Jan. 3, 2011), attached as Attachment 13; Letter
17 from David Costa, Costa Family Farms (March 26, 2010) regarding economics, available at
18 <[http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)
19 [transcript.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)>; Letter from Benny Jefferson, Martin Jefferson and Sons (Dec. 23, 2010), regarding
20 riparian areas, buffers, conflicts with Leafy Greens and food safety, and enforcement, available at
21 <[http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.p](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)
22 [df](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)>; *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172
23 Cal.App.3d 151, 173.) Third, “CEQA places the burden of environmental investigation on
24 government rather than the public,” and if “the local agency has failed to study an area of possible
25 environmental impact, a fair argument may be based on the limited facts in the record.” (*Sundstrom v.*

26 _____
27 ⁹ Courts have held that a Negative Declaration is inappropriate “if it can be fairly argued” that the project will cause
28 significant environmental impacts. The “fairly argued” standard of review is much more stringent than the “substantial
evidence” standard used to review the adequacy of an EIR, and it places a greater burden of proof on the project proponent.
(*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

1 *County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Finally, to aid in the determination of
2 “significant,” CEQA provides guidance. (See Pub. Resources Code, § 21083; Cal. Code Regs., tit. 14,
3 § 15065; CEQA Guidelines Appendix G.)

4 The four prongs above are easily met here. The record is replete of evidence showing a “fair
5 argument” that there may be significant environmental impacts. (See Letter from California Farm
6 Bureau Federation (Jan. 3, 2011), available at < http://www.waterboards.ca.gov/centralcoast/water_
7 [issues/programs/ag_waivers/docs/ag_order2/2.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/2.pdf).; Letter from David Costa, Costa Family Farms
8 (Jan. 3, 2011), attached as Attachment 13; Letter from David Costa, Costa Family Farms (March 26,
9 2010) regarding economics, available at <http://www.waterboards.ca.gov/centralcoast/board_info
10 [/agendas/2012/march/Item_4/item4_3_14_transcript.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)>; Letter from Benny Jefferson, Martin
11 Jefferson and Sons (Dec. 23, 2010), regarding riparian areas, buffers, conflicts with Leafy Greens and
12 food safety, and enforcement, available at <http://www.waterboards.ca.gov/centralcoast/water_issues
13 [/programs/ag_waivers/docs/ag_order2/11.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)>.) Second, a serious public controversy exists between
14 the regulations adopted by the Regional Board and the ideas and proposals submitted by agricultural
15 stakeholders. (See Agriculture’s Alternative Proposal (Dec. 3, 2011), available at <<http://www.water>
16 [boards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/2.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/2.pdf)>; Preliminary Ag
17 Proposal (April 1, 2010), available at < http://www.waterboards.ca.gov/centralcoast/water_issues
18 [/programs/ag_waivers/docs/ag_order/Alt1.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/Alt1.pdf)). The sheer number of public workshops, meetings,
19 Board hearings, written comment letters submitted, and oral comments expressed further highlight the
20 controversial nature of this Project. (See Regional Board Staff Power Point Presentation (March 14,
21 2012), slides 9-10; Staff Report for Regular Meeting of February 1, 2012 (Jan. 9, 2012) pp. 3, 4, 5, 8-
22 10.) Third, the burden to prove or disprove a significant environmental impact lies with the lead
23 agency and not the public. (See Section B.9 Improper Shift of Burden of Proof, *infra*.) Finally, the
24 SEIR fails to properly analyze impacts to the *actual Project* approved by the Board, as it was
25 developed after preparation of the Final SEIR. (See Section B.8 Failure to Properly Analyze the
26 Adopted Project Under CEQA, *infra*.)

27 By improperly relying on antiquated environmental analyses prepared for *another project* and
28 not conducting an independent environmental review of the *actual Project*, the 2012 Conditional

1 Waiver has yet to receive legally adequate environmental review pursuant to CEQA. Since the Project
2 has already been approved notwithstanding the failure to comply with CEQA, the fundamental prongs
3 of CEQA have been ignored. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134,
4 1145, [“Basic to environmental review is that it occur early enough in the planning stages of a project
5 to enable environmental concerns to influence the project’s program and design, yet late enough to
6 provide meaningful information for environmental assessment. [Citation.]’ (*Kings County Farm
7 Bureau v. City of Hanford, supra*, 221 Cal.App.3d at p. 738, 270 Cal.Rptr. 650; see also CEQA
8 Guidelines, §§ 15004, subd. (b), 15168, subd. (b)(4).”].)

9 **3. The Final SEIR Is A Legally Inadequate Informational Document¹⁰**

10 **a. The Final SEIR Contains a Legally Inadequate Project Description**

11 “[A]n accurate, stable and finite project description is the *sine qua non* of an informative and
12 legally sufficient EIR.” CEQA requires an EIR to have an accurate and stable project description.
13 (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) Under CEQA, a “project”
14 means “the whole of an action, which has a potential for resulting in either a direct physical change in
15 the environment, or a reasonably foreseeable indirect physical change in the environment.” (Cal.
16 Code Regs., tit. 14, § 15378(a).) “Among other things, a project description must include a clear
17 statement of ‘the objectives sought by the proposed project,’ which will help the lead agency ‘develop
18 a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing
19 findings or a statement of overriding considerations, if necessary.” (*San Joaquin Raptor Rescue
20 Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654-655 quoting Cal. Code Regs., tit. 14, §
21 15124(b).) The description must also include “[a] general description of the project’s technical,
22 economic, and environmental characteristics, considering the principal engineering proposals if any
23 and supporting public service facilities.” (Cal. Code Regs., tit. 14, § 15124(c).) As part of the project
24 description, an EIR is to also contain:

25 A statement of objectives sought by the proposed project. A clearly written statement of
26

27 _____
28 ¹⁰ Assuming, for arguendo, a new EIR is not required, the SEIR contains numerous fatal flaws as described in the following sections herein.

1 objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR
2 and will aid the decision-makers in preparing findings or a statement of overriding considerations, if
3 necessary. The statement of objectives should include the underlying purpose of the project.

4 The identification of the project objectives and scope is crucial to the proper consideration and
5 analysis of the project. (Cal. Code Regs., tit. 14, § 15124(b); *In re Bay-Delta Programmatic*
6 *Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163, overturned on
7 other grounds.) As stated in the seminal “project description” interpretation of *County of Inyo v. City*
8 *of Los Angeles, supra*, 71 Cal.App.3d at pp. 192-193:

9 A curtailed or distorted project description may stultify the objective of the reporting
10 process. Only through an accurate view of the project may affected outsiders and public
11 decision-makers balance the proposals benefit against its environmental cost, consider
12 mitigation measures, assess the advantages of terminating the proposal (i.e., the “no
13 project” alternative) and weigh other alternatives in the balance.

14 The adequacy of an EIR’s project description is closely linked to the adequacy of the impact
15 analyses. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.3d
16 713, 722-723.) More specifically, the project description provides the analytical foundation for the
17 entire EIR. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577,
18 592, [“An accurate project description is necessary for an intelligent evaluation of the potential
19 environmental effects of a proposed activity.” (*McQueen v. Board of Directors, supra*, 202 Cal.App.3d
20 at p. 1143.) A narrow view of a project could result in the fallacy of division, that is, overlooking its
21 cumulative impact by separately focusing on isolated parts of the whole. (*Id.* at p. 1144.)”].)

22 It is therefore essential that the EIR has an accurate, well-conceived, stable, and finite project
23 description. Thus, if the description is inadequate because it fails to discuss an aspect of the project or
24 incorrectly frames the scope of the project, the environmental analysis will probably reflect the same
25 mistake. (*Ibid.*) As demonstrated below, by framing the Project’s purpose as a renewal of the 2004
26 Agricultural Order with some revised conditions (Final SEIR, p. 3), the Project is distorted, thus
27 truncating both the assessment of impacts and consideration of meaningful alternatives.
28

1 **4. The 2012 Conditional Waiver Is A Separate Project From The 2004 Conditional**
2 **Waiver Under CEQA**

3 **a. The 2012 Conditional Wavier Deviates Significantly From the 2004**
4 **Conditional Waiver Constituting a New Project**

5 As defined in CEQA, a “project means the whole of an action, which has a potential for
6 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
7 physical change in the environment.” (Cal. Code Regs., tit. 14, § 15378(a).) “The term ‘project’
8 refers to the activity which is being approved.” (Cal. Code Regs., tit. 14, § 15378(c).) The
9 “description of the project” for the 2012 Conditional Waiver has undergone substantial changes
10 between the release of the Draft SEIR and the Final SEIR. (Compare Final SEIR, pp. 5-7 to Draft
11 SEIR, pp. 3-4.)

12 As stated by the Regional Board, the 2012 Conditional Waiver’s purpose “of this project is to
13 renew the 2004 Agricultural Order with revised conditions. The 2012 Agricultural Order (Order No.
14 R3-2012-0011) renews a conditional waiver of waste discharges of waste from irrigated agricultural
15 lands in a manner protective of water quality and consistent with the Porter-Cologne Water Quality
16 Control Act (Wat. Code Div. 7) and associated plans and policies. The Agency determined that it is
17 unlikely that this project will have a significant effect on the environment.” (Notice of Determination,
18 April 3, 2012, attached as Attachment 7; see also Final SEIR, pp. 3-4.)

19 Notwithstanding the classification of the 2012 Conditional Waiver as a mere “renewal,” the
20 Final SEIR’s project description states:

21 The draft 2011 Agricultural Order would establish a *new tiering structure* that would
22 group farm operations, or dischargers, into three tiers, each tier distinguished by four
23 criteria that indicate threat to water quality: size of farm operation, proximity to an
24 impaired watercourse, use of chemicals of concern, and type of crops grown. Dischargers with the highest threat have the greatest amount of discharge control requirements, monitoring and reporting. Conversely, dischargers with the lowest threat have the least amount of discharger control requirements, individual monitoring and reporting.

25 The draft 2011 Agricultural Order requires *more specific and measurable tracking and*
26 *evaluation of effectiveness of practices* and *more comprehensive water quality*
27 *monitoring* (e.g., individual discharges and groundwater) than the 2004 Agricultural
28 Order to assure compliance with Water Code section 13269 and consistency with the State Water Board’s Nonpoint Source Policy. The draft 2011 Agricultural Order itself and more *descriptions of the requirements and changes from the current 2004*

1 *Agricultural Order*, incorporated herein by reference, can be found in the Draft Staff
2 Report recommending the Draft Agricultural Order.

3 (Final SEIR, pp. 6-7, emphasis added.)¹¹

4 The “description of the project” for the 2004 Conditional Waiver is defined in the 2004 Initial
5 Study and Negative Declaration as:

6 The Regional Board proposes to adopt a conditional waiver of WDRs for discharges
7 from irrigated lands, including tailwater, subsurface drainage, and stormwater runoff,
8 and to waive the requirement to submit reports of waste discharge. Irrigated lands
9 include nurseries and soil-floored greenhouses as well as lands planted to row crops,
10 vineyards, tree crops, and field crops. This waiver would be in effect for five years
11 beginning July 8, 2004.

12 The conditions of the proposed waiver would require all owners and operators of
13 irrigated lands in the Central Coast Region to: 1) enroll with the Regional Board by
14 submitting a Notice of Intent, 2) complete fifteen hours of water quality education, 3)
15 develop a farm water quality management plan that addresses, at a minimum, erosion
16 control, irrigation management, nutrient management and pesticide management, 4)

17

¹¹ For comparison purposes, the Draft SEIR defines the project as:

18 The proposed draft 2011 Agricultural Order groups farm operations, or dischargers, into three tiers, each tier
19 distinguished by four criteria that indicate threat to water quality: size of farm operation, proximity to an impaired
20 watercourse, use of chemicals of concern, and type of crops grown. Dischargers with the highest threat have the
21 greatest amount of discharge control requirements, monitoring and reporting. Conversely, dischargers with the
22 lowest threat have the least amount of discharger control requirements, individual monitoring and reporting. For
23 example, the proposed draft 2011 Agricultural Order proposes the following implementation and reporting
24 requirements:

- 25 • Implement pesticide management practices to reduce toxicity in discharges so receiving waterbodies
26 meet water quality standards;
- 27 • Implement nutrient management practices to eliminate or minimize nutrient and salt in discharges to
28 surface water so receiving waterbodies meet water quality standards;
- Implement nutrient management practices to minimize fertilizer and nitrate loading to groundwater to
 meet nitrate loading targets ;
- Install and properly maintain back flow prevention devices for wells or pumps that apply fertilizers,
 pesticides, fumigants or other chemicals through an irrigation system;
- Implement erosion control and sediment management practices to reduce sediment in discharges so
 receiving water bodies meet water quality standards;
- Protect and manage existing aquatic habitat to prevent discharge of waste to waters of the State and
 protect the beneficial uses of these waters;
- Implement stormwater runoff and quality management practices.
- Develop, implement, and annually-update Farm Water Quality Management Plans.
- Submit an Annual Compliance Document (for higher threat dischargers) that includes individual
 discharge monitoring results, nitrate loading risk evaluation and, if nitrate loading risk is high, irrigation
 and nutrient management plan, verification of irrigation and nutrient management plan effectiveness.
- Submit a water quality buffer plan (for higher threat dischargers), if operations contain or are adjacent to
 a waterbody identified on the Clean Water Act Section 303(d) List of Impaired Waterbodies as impaired
 for temperature or turbidity.

 Water Board staff developed this order to address the documented severe and widespread water quality problems
in the Central Coast Region, predominately unsafe levels of nitrate in ground water used for drinking water and
toxicity impairing communities of aquatic organisms. (Draft SEIR, pp. 3-4.)

1 implement management practices in accordance with the farm plan, and 5) conduct
2 individual monitoring or participate in a cooperative monitoring program.

3 (2004 Initial Study and Negative Declaration, attached to the Final SEIR, p. 4.) A quick read of the
4 two project descriptions above illustrate two separate and wholly distinct programs for the regulation
5 of discharges from irrigated lands. Although the 2004 Agricultural Order and the 2012 Conditional
6 Waiver each describe a conditional waiver of waste discharges for irrigated lands, the similarities end
7 there. The 2012 Conditional Waiver includes new regulatory concepts, increases the scope of
8 regulatory coverage, has been expanded to cover all irrigated lands growing commercial crops,
9 requires new monitoring and reporting requirements, and encompasses regulation of all discharges to
10 surface waters and groundwater, including tile drains and storm water. Stated in the alternative, the
11 2004 Agricultural Order did not have a three tier system (Order No. R3-2012-0011, pp. 16-17); did not
12 require maintenance of riparian areas, riparian cover, or containment structures to avoid percolation
13 (*Id.* at p. 20, ¶ 32, 37, 39); did not require groundwater monitoring and reporting (*Id.* at p. 23, ¶ 51);
14 did not require submittal of an Annual Compliance Form (*Id.* at p. 28, ¶ 67); did not require photo
15 monitoring (*Id.* at p. 28, ¶ 69), did not require total nitrogen reporting (*Id.* at pp. 28-29, ¶ 70); did not
16 require individual surface water monitoring (*Id.* at p. 29, ¶ 72-73); did not require an Irrigation and
17 Nutrient Management Plan (*Id.* at p. 29, ¶ 75); did not require meeting Nitrogen Balance ratio
18 milestones (*Id.* at p. 30, ¶ 78); did not require Water Quality Buffer Plans (*Id.* at pp. 31-32, ¶ 80-81);
19 and did not require riparian buffers/filter strips (*Id.* at p. 31, ¶ 80). The 2004 Agricultural Order and
20 its environmental documents did not contemplate any of the extensive requirements now prescribed in
21 the 2012 Conditional Waiver. Given the distinct nature of each conditional waiver, the 2004 Order
22 and the 2012 Conditional Waiver are separate projects under CEQA and require independent
23 environmental review. Thus, reliance on the 2004 Negative Declaration is improper and the SEIR
24 contravenes the requirements of CEQA.

25 **b. The 2012 Conditional Waiver is a Discretionary Activity Under CEQA**

26 The Final SEIR incorrectly concludes that the 2012 Conditional Waiver is merely a renewal of
27 the 2004 Agricultural Order “with clarifications and new conditions” and thus, does not constitute a
28 separate “project” to trigger CEQA. (Final SEIR, p. 8.) To the contrary, under CEQA “[t]he term

1 'project' refers to the *activity* which is being approved and which may be subject to several
2 *discretionary approvals* by governmental agencies." (Cal. Code Regs., tit. 14, § 15378(c), emphasis
3 added.)

4 The 2012 Conditional Waiver is a "discretionary" project apart and separate from the 2004
5 Agricultural Order. A project is discretionary if it requires judgment or deliberation by the public
6 agency or body in approving or disproving it. (Cal. Code Regs., tit. 14, § 15357.) The requirements
7 within the 2012 Conditional Waiver were entirely left to the discretion of the members of the Board.
8 (See *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 271-72, [project
9 was "discretionary within the meaning of CEQA because they involved 'relatively personal decisions
10 addressed to the sound judgment and enlightened choice of the administrator. These decisions may
11 have great environmental significance relative to one physical site, negligible significance in another.
12 Inevitably they evoke a strong admixture of discretion.'"].) Although Regional Board staff prepared a
13 draft order and provided recommendations to the Regional Board, the ultimate determination of the
14 Conditional Waiver's scope and contents was left to the Board. (See March 15, 2012 Hearing
15 Transcript, p. 93, ["And the Board is now at the point where it can begin to deliberate." "We're at the
16 point where it's in the Board's hands."].) In addition to being a discretionary action, the 2012
17 Conditional Waiver was an "activity" consisting of regulatory requirements statutorily limited to a five
18 year period. (Wat. Code, § 13269(a)(2).) Upon approving the 2012 Conditional Waiver, the Regional
19 Board committed itself to a definite course of action separate and apart from the terms of the 2004
20 Order. (Cal. Code Regs., tit. 14, § 15352.) Upon review, the 2012 Conditional Waiver constitutes a
21 discretionary activity wholly independent from the previous regulatory program overseeing the
22 discharges from irrigated lands, and thus, is a project under CEQA. By classifying the 2012
23 Conditional Waiver as simply a renewal of the 2004 Agricultural Order, the Regional Board attempts
24 to circumvent CEQA's requirements.

25 **5. The Regional Board Has Not Complied With The Timelines To File A Notice Of**
26 **Determination**

27 In order to foster informed decisionmaking, CEQA requires submittal of a brief notice when an
28 agency decides to carry out a project subject to CEQA. (Cal. Code Regs., tit. 14, § 15373.)

1 “Whenever a local agency approves or determines to carry out a project that is subject to this division,
2 the local agency shall file notice of the approval or the determination within five working days after
3 the approval or determination becomes final, with the county clerk of each county in which the project
4 will be located.” (Pub. Resources Code, § 21152; see also Cal. Code Regs., tit. 14, § 15094(a).) “If
5 the lead agency is state agency, the lead agency shall file the notice of determination with the Office of
6 Planning and Research within five working days after approval of the project by the lead agency.”
7 (Cal. Code Regs., tit. 14, § 15094(b).)

8 The Regional Board approved the 2012 Conditional Waiver and certified the Final SEIR on
9 March 15, 2012. The Notice of Determination was not released to the public until April 3, 2012, more
10 than 14 working days after project approval. (See Notice of Determination (April 3, 2012), attached
11 as Attachment 7; see also Email From Frances McChesney to Kari Fisher showing delay in release of
12 NOD (March 30, 2012), attached as Attachment 11.) As of April 13, 2012, the Notice of
13 Determination had yet to be confirmed as received by the Office of Planning and Research. (See
14 Email From Jessica Newman to Wendy Wang (April 10, 2012), attached as Attachment 12.) By
15 failing to file notice of the determination within five days, the Regional Board’s inaction or delay in
16 acting interferes with the intent of CEQA and an interested stakeholder’s right to judicial review.
17 (Pub. Resources Code, §§ 21108, 21167; Cal. Code Regs., tit. 14, §§ 15075, 15094.)

18 **6. The Addendum To The Final SEIR Is An Improper Document**

19 On August 10, 2011, the Regional Board released an “Addendum to the Subsequent
20 Environmental Impact Report” that consisted of less than one and a half pages of text and graphics
21 imbedded within the associated Staff Report. (See Staff Report for Regular Meeting of September 1,
22 2011, (August 10, 2011), p. 25-26.) As prescribed by CEQA, the use of an addendum is allowed only
23 when certain circumstances have been met. “The lead or responsible agency shall prepare an
24 addendum to a *previously certified* EIR if some changes or additions are necessary but none of the
25 conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.”
26 (Cal. Code Regs., tit. 14, § 15164(a), emphasis added.)

27 Upon release of the Addendum, the Final SEIR was not a “previously certified” EIR. (See
28

1 Resolution No. R3-2012-0012 certifying the Final SEIR.) The Final SEIR was not certified until
2 March 15, 2012, a full seven months after the release of the Addendum and a full year after the March
3 1, 2011 release of the Final SEIR. Pursuant to CEQA, changes in circumstances, changes in the
4 project scope, and any new information that arose after the release of the March 1, 2011 Final SEIR
5 should have been included in a revised and recirculated Final SEIR or supplement to an EIR.¹² (See
6 Cal. Code Regs., tit. 14, §§ 15162, 15163, 15164.) Thus, the preparation, release, and reliance upon
7 the August 10, 2011 Addendum is improper and the document must be deemed null and void.
8 Additionally, the Final SEIR must be vacated since it relied upon and incorporated the improper
9 Addendum.

10 **7. Reliance On New Information Triggers Revision And Recirculation Of The SEIR**

11 In addition to significantly altering the scope of the waiver, significant new information has
12 been gathered and relied upon since the completion of the 2004 Agricultural Order and completion of
13 the Final SEIR. Given that this significant information has influenced and/or caused substantial
14 changes to the 2012 Conditional Waiver, which should constitute a new project under CEQA, the
15 SEIR cannot rely upon the environmental analysis that was completed in 2004. (See *Burbank-
16 Glendale-Pasadena Airport Authority, supra*, 233 Cal.App.3d 577.) Notwithstanding the fact that
17 reliance on a previous project that is distinct from the project at hand is improper, substantial changes
18 to the “project” after environmental analysis constitute “significant new information” that requires
19 additional environmental analysis. (Cal. Code Regs., tit. 14, § 15088.5(a).)¹³

20 The Final SEIR relies upon substantial new information not originally included in the Draft
21 SEIR or Final SEIR. For example, the July 6, 2011 version of Attachment A to the Draft Order
22

23 ¹² A “subsequent EIR” and a “supplemental EIR” shall undergo the same kind of notice and public review as is given to a
24 draft EIR under Section 15087. (Cal. Code Regs., tit. 14, §§ 15162, 15163.)

25 ¹³ CEQA Guidelines section 15088.5(a) states that “significant new information” includes:

- 26 (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- 27 (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- 28 (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

1 includes, for the first time, additional toxic and/or bioaccumulating substances required to be
2 monitored under the project. (See Attachment A (July 6, 2011) p. 17, ¶ 68; Order No. R3-2012-0011,
3 pp. 56-57, ¶ 68.) According to the document, the inclusion of these new monitoring requirements
4 arose out of data obtained *after* the release of the Final SEIR.

5 Many currently applied pesticides have not been tested for, and staff is only recently
6 aware of data showing several relatively new fungicides (azoxystrobin, pyraclostrobin
and boscalid) in fish tissue and sediment of lagoons in the Central Coast Region.

7 (*Ibid.*) The Final SEIR is silent on the inclusion of additional monitoring requirements. Additionally,
8 the Technical Memorandum: Cost Considerations Concerning Conditional Waiver of Waste Discharge
9 Requirements for Discharges from Irrigated Lands is also silent on the costs associated with additional
10 monitoring requirements. And finally, the “Addendum” is also silent.

11 In addition to substantial new information, the Final SEIR fails to analyze substantial changes
12 made to the Project. (See Section B.8 The Final SEIR Fails to Properly Analyze the Adopted Project
13 Under CEQA, *infra.*)

14 The implicit question when deciding whether to revise and recirculate an EIR is if the new
15 information is “significant.” (*Western Placer Citizens for an Agr. and Rural Environment v. County*
16 *of Placer* (2006) 144 Cal.App.4th 890, 901; Cal. Code Regs., tit. 14, §§ 15088.5(a), 15164.) As
17 discussed above and *infra*, the 2012 Conditional Waiver was a new Project that was never analyzed
18 within the Final SEIR. CEQA provides guidance to situations triggering recirculation. (Cal. Code
19 Regs., tit. 14, § 15088.5.) Of particular relevance, “recirculation is not required where the new
20 information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an
21 adequate EIR.” (*Id.* at § 15088.5(b).) The addition of a new staff preferred project alternative is not a
22 “mere” clarification or insignificant modification. Rather, the creation of such a new project
23 alternative after finalization of the Final SEIR triggers recirculation.

24 The inclusion of and reliance upon new information and substantial changes prevents approval
25 of the Final SEIR and triggers recirculation in order to allow the public the opportunity to review this
26 significant new information. (Pub. Resources Code, § 21092.1; Cal. Code Regs., tit. 14, § 15088.5.)
27 The information relied upon in the Addendum to the Staff Report and the July 8, 2011 Revised Draft
28 Order was released subsequent to the commencement of public review but prior to final EIR

1 certification. This addition of “significant new information” triggers the issuance of a new notice and
2 recirculation of the revised EIR to allow additional public commentary and consultation. (*Ibid.*) The
3 EIR must be appropriately revised to reflect the new information and then subjected to the same
4 “critical evaluation that occurs in the draft stage” so that the public and the regulated community is not
5 denied “an opportunity to test, assess, and evaluate the data and make an informed judgment as to the
6 validity of the conclusions drawn therefrom. (*Sutter Sensible Planning, Inc. v. Board of Supervisors*
7 (1981) 122 Cal. App. 3d 813, 822.)

8 **8. The Final SEIR Fails To Properly Analyze The Adopted Project Under CEQA¹⁴**

9 As indicated previously, the Regional Board issued the Draft SEIR on November 19, 2010 and
10 the Final SEIR in March 2011.¹⁵ On August 10, 2011, the Regional Board issued an Addendum to the
11 Subsequent Environmental Impact Report along with recommended changes to the Draft Agricultural
12 Order and Monitoring and Reporting Program for each tier. (See Staff Report For Regular Meeting Of
13 September 1, 2011 (Aug. 10, 2011), p. 1.) Although couched as “recommended changes to the Draft
14 Agricultural Order and Monitoring and Reporting Program,” the revisions were not merely minor
15 changes to the Draft Order, but rather constituted staff’s new preferred project alternative containing
16 elements that were never considered previously.¹⁶ Although the Addendum to the SEIR was released
17 in conjunction with the substantially revised staff Agricultural Order, the Addendum did not evaluate
18 this new preferred project alternative. (*Id.* at pp. 1, 25.) Rather, the Addendum’s analysis was limited
19 to the following:

20 Since the preparation of the Final SEIR, a panel of the Central Coast Water Board held a
21 multi-day hearing to consider the adoption of a waiver of waste discharge requirements

22 ¹⁴ Proper environmental review for the 2012 Conditional Waiver, in all of its draft iterations, was never conducted given
23 that it was a separate project under CEQA, and thus, reliance on the 2004 Negative Declaration was improper.
Notwithstanding this fact, the August 10, 2011 dramatic revisions to the 2012 Conditional Waiver triggered subsequent
environmental review.

24 ¹⁵ As noted *supra*, the Final SEIR was issued in March 2011. The Regional Board subsequently revised the Draft Order
25 twice on July 8, 2011 and on August 10, 2011, after the Final SEIR was released. These revisions, hereinafter collectively
26 referenced as the August 10, 2011 staff Draft Order, were substantial changes that dramatically differed from any previous
version of the draft order. Thus, the August 10, 2011 version constitutes a new staff preferred project that was not
evaluated under CEQA as the Final SEIR was released prior to its development and the one and a half page Addendum to
the SEIR was silent on this new “iteration.”

27 ¹⁶ The release of the Addendum to the SEIR and revisions to the Draft Agricultural Order on August 10, 2011 occurred
28 *after* the close of written comments (the comment period closed on August 1, 2011.) Thus, the public was prevented from
submitting written comments on the Addendum to the SEIR or changes to the Order.

1 for discharges of waste from irrigated lands. In response to oral and written comments to
2 the Water Board, staff proposed revisions to the Draft Agricultural Order. Some changes
3 and additions to the Final SEIR are necessary to reflect revisions to the Draft
4 Agricultural Order. A new SEIR is not required because the revisions to the Draft
5 Agricultural Order have either already been evaluated in the Final SEIR or the 2004
6 Negative Declaration, or the revisions do not constitute substantial changes that involve
7 new significant environmental effects or a substantial increase in the severity of
8 previously identified significant effects (Cal. Code Regs. tit. 14, §§ 15164, 15162).

9 (*Ibid.*) Contrary to the Regional Board’s assertion, the August 10, 2011 Staff Draft Order, which,
10 once adopted, became the 2012 Conditional Waiver, includes regulatory provisions that differ
11 significantly from those identified and contained in the 2010 Staff Draft Order that was analyzed in
12 the SEIR. These revisions were not properly analyzed under CEQA as they were not in existence
13 during *any* of the stages of environmental review because the Draft SEIR and Final SEIR analyzed the
14 alternatives *in existence at that time*. Below is a partial list of new requirements that were presented in
15 the August 10, 2011 Staff Draft Order alternative without regard to CEQA compliance.

- 16 • A new tiering criteria;
- 17 • Change in the definition of “farm or ranch”;
- 18 • Change in the definition of “operation”;
- 19 • Regulation at the individual farm/ranch level instead of operation level;
- 20 • Restriction of total irrigated acreage for Tier 1 from 1,000 acres to less than or equal to
21 50 acres;
- 22 • Restriction of total irrigated acreage for Tier 2 from 1,000 acres to 50-500 acres;
- 23 • Change in total irrigated acreage for Tier 3 from greater than 1,000 acres to greater than
24 500 acres;
- 25 • Inclusion of tile drains requirements including monitoring;
- 26 • New requirements for prevention of aquifer cross-contamination for groundwater wells;
- 27 • Addition of monitoring requirements in place of previous sampling requirements, thus
28 changing the associated legal requirements;
- Inclusion of new information such as pesticide, herbicide, and fungicide data;
- Changes to the Monitoring and Reporting Requirements for Tier 1;
- Changes to the Monitoring and Reporting Requirements for Tier 2; and
- Changes to the Monitoring and Reporting Requirements for Tier 3.

Notwithstanding these additions, the Regional Board continues to maintain that the methods of
compliance for the 2012 Conditional Waiver “are no different” from the 2004 Agricultural Order.

1 (Final SEIR, p. 10.) This statement is false. In order to comply with the 2012 Conditional Waiver,
2 “Dischargers must comply with the terms and conditions of this Order to meet the provisions
3 contained in Water Code Division 7 and regulations and plans and policies adopted there under.”
4 (Order No. R3-2012-0011, p. 13, ¶ 1.) Further, Dischargers who are subject to this Order shall
5 implement management practices, as necessary, to improve and protect water quality and to achieve
6 compliance with applicable water quality standards.” (Order No. R3-2012-0011, p. 15, ¶ 12.) The
7 2004 Agricultural Order did not have a tiering criteria dependent upon acreage and crops grown
8 (Order No. R3-2012-0011, pp. 16-17); it did not require maintenance of riparian areas, riparian cover,
9 or containment structures to avoid percolation (*Id.* at p. 20, ¶ 32, 37, 39); it did not require
10 groundwater monitoring and reporting (*Id.* at p. 23, ¶ 51); it did not require submittal of an Annual
11 Compliance Form (*Id.* at p. 28, ¶ 67); it did not require photo monitoring (*Id.* at p. 28, ¶ 69), it did not
12 require total nitrogen reporting (*Id.* at pp. 28-29, ¶ 70); it did not require individual surface water
13 monitoring (*Id.* at p. 29, ¶ 72-73); it did not require the development and implementation of an
14 Irrigation and Nutrient Management Plan (*Id.* at p. 29, ¶ 75); it did not contain Nitrogen Balance ratio
15 milestones (*Id.* at p. 30, ¶ 78); it did not require Water Quality Buffer Plans (*Id.* at pp. 31-32, ¶ 80-81);
16 and it did not require riparian buffers/filter strips (*Id.* at p. 31, ¶ 80). Given the sheer number of
17 additional requirements within the 2012 Conditional Waiver and accompanying MRPs, and that
18 neither the 2012 Conditional Waiver nor accompanying MRPs are permissive in nature, a discharger is
19 *not in compliance* if only doing what is required under the now expired 2004 Agricultural Order.
20 Knowing that the manner of compliance for the 2012 Conditional Waiver is grossly different from that
21 of the 2004 Agricultural Order, attempting to classify the 2012 Conditional Waiver as the same
22 “project” as was adopted in 2004 improperly attempts to circumvent environmental review under
23 CEQA.

24 CEQA prohibits a lead agency from avoiding a CEQA analysis by belatedly developing a staff
25 preferred “program” that arbitrarily mixes certain elements from previously proposed alternatives
26 along with new requirements without an analysis of the environmental effect of those combined
27 elements. (See generally *Communities for a Better Environment. v. California Resources Agency*,
28 *supra*, 103 Cal.App.4th 98, 114; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1319.)

1 Such an approach circumvents the intent and purpose of CEQA and violates the due process and
2 public notice rights of landowners and agricultural operations subject to the proposed program.
3 (*Chaparral Greens v. City of Chula Vista, supra*, 50 Cal.App.4th 1134, 1145, [“CEQA requires an
4 EIR to reflect a good faith effort at full disclosure. (*Kings County Farm Bureau v. City of Hanford,*
5 *supra*, 221 Cal.App.3d 692, 712, 270 Cal.Rptr. 650, citing CEQA Guidelines, § 15151.)”].) Thus, the
6 Regional Board’s action to develop a brand new alternative *after* completion of the CEQA process is
7 unlawful. All alternatives must be fully analyzed in the EIR pursuant to CEQA for them to be viable
8 options available to the Regional Board for adoption. CEQA is very clear in its purpose and
9 requirements:

10 “CEQA generally provides that, before a public agency carries out or approves any
11 discretionary project - i.e., any activity that requires the exercise of agency judgment or
12 deliberation and foreseeably may cause physical damage to the environment - the agency
13 **must first assess the project’s potential environmental effects.**” (*Stockton Citizens for*
Sensible Planning v. City of Stockton (2010) 48 Cal.4th 481, 498 (citations omitted),
emphasis added; Pub. Resources Code, § 21061.)

14 “‘The EIR is the heart of CEQA,’ and the integrity of the process is dependent on the
15 adequacy of the EIR.” (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont*
16 *(2010) 190 Cal. App.4th 316, 327 (citation omitted).*) “‘The EIR is the primary means of
17 achieving the Legislature’s considered declaration that it is the policy of this state to
18 ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality
of the state.’” “The EIR ... is the mechanism prescribed by CEQA to force informed
decision making and to expose the decision making process to public scrutiny.”
(*Planning & Cons. League v. Dept. of Water Res. (2000) 83 Cal.App.4th 892, 910,*
emphasis added.)

19 “‘The fundamental purpose of an EIR is ‘to provide public agencies and the public in
20 general with detailed information about the effect which a proposed project is likely to
21 have on the environment.’” (*Center for Bio. Diversity v. County of San Bernardino*
22 *(2010) 185 Cal.App.4th 866, 882 (citation omitted).*) “For the EIR to serve these goals it
23 must present information in such a manner that the foreseeable impacts of pursuing the
24 project can actually be understood and weighed, **and the public must be given an**
adequate opportunity to comment on that presentation before the decision to go
forward is made.” (*Comm. for a Better Env. v. City of Richmond* (2010) 184
Cal.App.4th 70, 82 (citation omitted), emphasis added.)

25 Although an EIR need not consider all potential alternatives to the project and instead need only to
26 consider a reasonable range of alternatives, *the alternative preferred and recommended by the agency*
27 *must be considered and examined within the EIR.* (See Cal. Code Regs., tit. 14, § 15226.6(a).)
28 Further, the EIR must contain sufficient information about *each alternative* to permit an evaluation of

1 the relative merits of the alternatives and the project. Here, the Draft SEIR analyzed the November
2 17, 2010 staff preferred Ag Order and briefly identified a handful of other alternatives. The Final
3 SEIR was released just prior to the March 17, 2011 Board meeting and contained only those
4 alternatives identified in the Draft SEIR. Only after the completion of both the Draft SEIR and Final
5 SEIR and the close of public comments was a new alternative, the August 10, 2011 Revised Draft
6 Order, released.

7 The “project” analyzed under the March 1, 2011 Final SEIR consisted of the following tiering
8 criteria:¹⁷

9 14. Tier 1 – Applies to all Dischargers **who meet** all of the criteria described in (1a),
10 (1b), and (1c), or who are certified in a sustainable agriculture program identified in (1d)
11 that requires and verifies effective implementation of management practices that protect
12 water quality:

13 1a. Discharger does not use chlorpyrifos or diazinon, which are documented to
14 cause toxicity in surface waters in the Central Coast Region;

15 1b. **Operation** is located more than 1000 feet from a surface waterbody listed
16 for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of
17 Impaired Waterbodies (Table 1);

18 1c. If the Discharger grows crop types with high potential to discharge nitrogen
19 to groundwater (as defined in Attachment A), **then the operation** total irrigated
20 acreage is **less than 1000 acres**, and is *not* within 1000 feet of a public water
21 system well that exceeds the maximum contaminant level (MCL) for nitrate,
22 nitrite, or nitrate + nitrite;

23 1d. Sustainability in Practice (SIP, certified by the Central Coast Vineyard
24 Team) or other certified programs approved by the Executive Officer.

25 15. Tier 2 – Applies to all Dischargers **who do not meet** the Tier 1 or Tier 3 criteria. In
26 general, Tier 2 Dischargers **meet** at least one of the characteristics described in (2a),
27 (2b), or (2c):

28 2a. Discharger applies chlorpyrifos or diazinon, which are documented to cause
toxicity in surface waters in the Central Coast Region;

2b. **Operation** is located within 1000 feet of a surface waterbody listed for
toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired
Waterbodies (see Table 1);

2c. Discharger grows crop types with high potential to discharge nitrogen to
groundwater (as defined in Attachment A), and **the operation** total irrigated
acreage is **less than 1000 acres**, and the operation is *within* 1000 feet of a public

¹⁷ The following substantial changes provided here within are illustrative of *only a few* of the numerous changes made to the Project *after* the release of the Final SEIR.

1 water system well that exceeds the maximum contaminant level (MCL) for
2 nitrate, nitrite, or nitrate + nitrite;

3 16. Tier 3 – Applies to all Dischargers **who meet** one the following sets of criteria (*3a*)
4 or (*3b*):

5 3a. Discharger grows crop types with high potential to discharge nitrogen to
6 groundwater (as defined in Attachment A), and **operation** total irrigated acreage
7 is **greater than or equal to 1000 acres**;

8 3b. Discharger applies chlorpyrifos **and** diazinon, and **operation** discharges
9 irrigation or stormwater runoff to a waterbody listed for toxicity or pesticides on
10 the 2010 List of Impaired Waterbodies (Table 1);

11 (Staff Report Appendix A Order No. R3-2011-0006 (March 2011), pp. 13-14, ¶¶ 13-15, emphasis
12 added to illustrate changes between “project” reviewed within the SEIR and actual Project adopted by
13 the Board on March 15, 2012.) The following tiering criteria are what were actually adopted on
14 March 15, 2012:

15 15. Tier 1 – Applies to all Dischargers whose **individual farm/ranch** meets all of the
16 criteria described in (1a), (1b), and (1c), or **whose individual farm/ranch** is certified in
17 a sustainable agriculture program identified in (1d) that requires and verifies effective
18 implementation of management practices that protect water quality:

19 1a. Discharger does not use chlorpyrifos or diazinon at the farm/ranch, which
20 are documented to cause toxicity in surface waters in the Central Coast Region;

21 1b. **Farm/ranch** is located more than 1000 feet from a surface waterbody listed
22 for toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of
23 Impaired Waterbodies (Table 1);

24 1c. If the Discharger grows crop types with high potential to discharge nitrogen
25 to groundwater (as defined in Attachment A) **at the farm/ranch**, and the
26 **farm/ranch** total irrigated acreage is **less than 50 acres**, and is *not* within 1000
27 feet of a well that is part of a public water system (**as defined by the California
28 Health and Safety Code, section 116275**) that exceeds the maximum
contaminant level (MCL) for nitrate, nitrite, or nitrate + nitrite;

1d. Sustainability in Practice (SIP, certified by the Central Coast Vineyard Team
or other certified programs approved by the Executive Officer.

16. Tier 2 – Applies to all Dischargers **whose individual farm/ranch** does not meet the
Tier 1 or Tier 3 criteria. In general, a Tier 2 Discharger's **farm/ranch** meets at least one
of the characteristics described in (2a), (2b), or (2c):

2a. Discharger applies chlorpyrifos or diazinon at **the farm/ranch**, which are
documented to cause toxicity in surface waters in the Central Coast Region;

2b. **Farm/ranch** is located within 1000 feet of a surface waterbody listed for
toxicity, pesticides, nutrients, turbidity or sediment on the 2010 List of Impaired
Waterbodies (see Table 1);

1 2c. Discharger grows crop types with high potential to discharge nitrogen to
2 groundwater (as defined in Attachment A) at **the farm/ranch**, and the
3 **farm/ranch** total irrigated acreage is **greater or equal to 50 acres and less than**
4 **500 acres**, or the **farm/ranch** is *within* 1000 feet of a well that is part of a public
water system (**as defined by the California Health and Safety Code, section**
116275) that exceeds the maximum contaminant level (MCL) for nitrate, nitrite,
or nitrate + nitrite;

5 17. Tier 3 – Applies to all Dischargers whose **individual farm/ranch** meets one of the
6 following sets of criteria (3a) or (3b):

7 3a. Discharger grows crop types with high potential to discharge nitrogen to
8 groundwater (as defined in Attachment A) at **the farm/ranch**, and farm/ranch
9 total irrigated acreage is **greater than or equal to 500 acres**;

10 3b. Discharger applies chlorpyrifos **or** diazinon at the farm/ranch, and the
11 **farm/ranch** discharges irrigation or stormwater runoff to a waterbody listed for
12 toxicity or pesticides on the 2010 List of Impaired Waterbodies⁹ (Table 1);

13 (Order No. R3-2012-001, pp. 16-17, ¶¶ 15-17, emphasis added to illustrate changes between “project”
14 reviewed within the SEIR and actual preferred Project recommended by staff and adopted by the
15 Board on March 15, 2012.) The Regional Board’s waste discharge program is fundamentally founded
16 upon the tiering structure. Compliance with the 2012 Conditional Waiver is contingent upon
17 determining the applicable tier. As evidenced above in bold, the tiering structure *dramatically*
18 changed after the release of the Final SEIR. Changing the acreage cap for each tier as well as
19 substituting individual “farm/ranch” for “operation” is a fundamental shift that dramatically alters
20 which dischargers belong in which tier (and subsequent reporting and monitoring). Thus, by
21 proposing an alternative tiering structure, a new project alternative was debuted after the
22 environmental review process was completed.

23 As stated previously, a new project must receive full CEQA review. Reliance on existing
24 environmental review which was completed *prior to* the development of the August 10, 2011 Revised
25 Draft Order directly contradicts existing case law.¹⁸ (Pub. Resources Code, §§ 21000, et seq.; Cal.

26 _____
27 ¹⁸CEQA’s statutory framework sets forth a series of analytical steps intended to promote the fundamental goals and
28 purposes of environmental review—information, public participation, mitigation, and governmental agency accountability.
(Cal. Code Regs., tit. 14, § 15002.) Specifically, the basic purposes of CEQA review include: informing governmental
decision makers and the public about the potential significant environmental effects of proposed activities; identifying
ways that environmental damage can be avoided or significantly reduced; requiring changes in projects through the use of
alternatives or mitigation measures when feasible; and disclosing to the public the reasons why a project was approved if
significant environmental effects are involved. (See Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006,
21064.) Adopting a project without complying with the above requirements violates CEQA.

1 Code Regs., tit. 14, § 15000, et seq.) Without proper evaluation of what would result when those
2 elements are combined with each other, the Final SEIR is substantively and procedurally flawed and
3 the fundamental goals of CEQA are not met.¹⁹

4 These last minute changes to the preferred project alternative, as well as those changes made
5 immediately prior to the adoption of the order on March 15, 2012, have deprived the public of
6 meaningful opportunity to comment on the impacts and to suggest feasible alternatives. All
7 alternatives must be subjected to the same “critical evaluation” that occurs in the draft environmental
8 review stages. (*See Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d
9 813, 822.) By failing to prepare additional environmental review and recirculate the document, the
10 public is denied an opportunity to “test, assess, and evaluate data and make an informed judgment as
11 to the validity of the conclusions to be drawn therefrom.” (*Ibid.*; Pub. Resources Code, § 21092.1;
12 Cal. Code Regs., tit. 14, § 15088.5.) Thus, given the significant new information, and the significant
13 changes and additions to overall program, definitions, timeline, compliance, tiers, and monitoring, the
14 SEIR is inadequate for it failed to adequately assess the environmental impacts of the Regional
15 Board’s preferred project and failed to recirculate the SEIR prior to certification. (See Pub. Resources
16 Code, § 21092.1; Cal. Code Regs., tit. 14, §§ 15087, 15088.5.)

17 **9. The SEIR Improperly Shifts The Burden Of Proof And Determination Of**
18 **Significance To The Public**

19 When conducting environmental review pursuant to CEQA, the burden of proof is on the lead
20 agency to show that the project won’t have an impact on the environment. (Cal. Code Regs., tit. 14, §
21 15064.) Under CEQA, if a project clearly will have an impact on the environment, its proponents,
22 here the Regional Board, must identify those impacts and propose mitigations. (Cal. Code Regs., tit.
23 14, § 15002.) The burden of proof is *not* on the public to show that an environmental impact may
24 occur. Further, the public does not bear the burden of determining which portions of a project will

25 ¹⁹ In the same vein, without analyzing the actual Project, it is impossible for the November 2010 Technical Memorandum:
26 Cost Considerations Concerning Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated
27 Lands to analyze the true economic impact of that Project. The SEIR should have been released *after* the development of
28 the August 10, 2011 Staff Draft Order and should have contained a full economic impact analysis of the current proposed
project. The SEIR fails to do so, and therefore there is no basis on which to accurately calculate the economic impact or
costs of the Project.

1 have a significant impact or effect on the environment. Rather, that is the fundamental duty of the
2 lead agency. (Cal. Code Regs., tit. 14, § 15064.)

3 The determination of whether a project may have a significant effect on the environment is a
4 critical step in the CEQA process, and one that requires professional knowledge and judgment, as
5 described in California Code of Regulations, title 14, section 15064. The determination should be
6 based on information and evidence in the record and, to the extent feasible, on scientific and factual
7 data. (*Ibid.*) This determination is made prior to and separate from the development of mitigation
8 measures for the project.

9 The CEQA Guidelines set forth the following definition for significant effect:

10 “Significant effect on the environment” means a substantial, or potentially substantial,
11 adverse change in any of the physical conditions within the area affected by the project,
12 including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic
13 or aesthetic significance. An economic or social change by itself shall not be considered
14 a significant effect on the environment. A social or economic change related to a
15 physical change may be considered in determining whether the physical change is
16 significant.

17 (Cal. Code Regs., tit. 14, § 15382.) According to Public Resources Code section 21083 and CEQA
18 Guidelines section 15065, if any of the following impacts would result from a proposed project, the
19 project is considered to have a significant effect on the environment:

20 The project has the potential to substantially degrade the quality of the environment...

21 The project has the potential to achieve short-term environmental goals to the
22 disadvantage of long-term environmental goals.

23 The project has possible environmental effects which are individually limited but
24 cumulatively considerable. “Cumulatively considerable” means that the incremental
25 effects of an individual project are considerable when viewed in connection with the
26 effects of past projects, the effects of other current projects and the effects of reasonably
27 foreseeable probable future projects.

28 The environmental effects of a project will cause substantial adverse effects on human
beings, either directly or indirectly.

In determining whether a project will have a significant environmental effect, the lead agency
must consider the “whole of the action,” which includes all discretionary approvals by governmental
agencies, ministerial actions as well as discretionary actions, and all constituent parts of a project.
(Cal. Code Regs., tit. 14, §§ 15003(h), 15378.)

1 During opportunities to provide oral and written comments, members of the agricultural
2 community provided testimony regarding the Conditional Waiver’s impacts on agricultural resources,
3 including economic impacts, impacts to total farmland acreage and land use, and impacts from
4 riparian buffer requirements. (See March 14, 2012 Hearing Transcript, pp. 191-194; Letter from
5 David Costa, Costa Family Farms (March 26, 2010) regarding economics, available at
6 <[http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)
7 [transcript.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)>; Letter from Benny Jefferson, Martin Jefferson and Sons (Dec. 23, 2010), regarding
8 riparian areas, buffers, conflicts with Leafy Greens and food safety, and enforcement, available at
9 <[http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.p](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)
10 [df](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)>.) By providing oral and written comments, the public provided ample information to make a “fair
11 argument” that the proposed Project may have a significant environmental impact. (Cal. Code Regs.,
12 tit. 14, § 15064(g)(1), *Friends of B Street v. City of Hayward*, *supra*, 106 Cal.App.3d 988, [to force
13 preparation of an EIR, you need only make a “fair argument” that there may be a significant
14 environmental impact, even though a contrary conclusion may be possible].) Notwithstanding those
15 comments raised, the SEIR stated:

16 With respect to Agricultural Resources, the Final SEIR concludes that adoption of the
17 proposed alternative could result in some economic or social changes but that there was
18 insufficient evidence to conclude that the economic changes would result in adverse
19 physical changes to the environment. *Commenters speculated that the economic impacts*
20 *would be so large as to result in large scale termination of agriculture and that land*
would be sold for other uses that would result in impacts on the environment. No
significant information was provided to justify that concern. (Final SEIR, p. 2, ¶ 14,
emphasis added.)

21 The final SEIR concluded this change was appropriate because the 2011 draft
22 Agricultural Order’s requirement for riparian buffers was reduced to a very small
23 number (smaller than the Feb. 2010 draft Agricultural Order) and no significant
information was provided to suggest the impacts to agricultural resources would be
anything more than “less than significant”. (Final SEIR, p. 3 fn. 3.)

24 Interested persons have submitted comments with regards to the economic pressure the
25 draft 2011 Agricultural Order would place on them. These interested persons speculated
26 that costs of complying with the draft 2011 Agricultural Order may be so high, that a
27 grower would be forced to sell their land or would be forced out of business resulting in
conversion of prime farmland to other non-agricultural uses. They did not provide
specific evidence that this would, in fact, occur. (Final SEIR, pp. 16-17.)

28 The other impacts described by the commenter are very speculative without the support
of substantial evidence and are social and economic impacts, not physical changes in the

1 environment. (Final SEIR, p. 43 regarding Appendix G. Section 3. Importance and
2 Functions of Riparian and Wetland Areas and Appendix D. Section VI. Options for
Riparian and Wetland Area Protection Requirements.)

3 The conclusions within the SEIR and Resolution incorrectly and improperly shift the burden of
4 identifying significant environmental impacts from the lead agency to the public in direct violation of
5 CEQA. (Cal. Code Regs., tit. 14, § 15064.) The SEIR's conclusions also ignore relevant evidence.
6 Public testimony, such as "relevant personal observations" are evidence. (See Letter from David
7 Costa, Costa Family Farms (Jan. 3, 2011), attached as Attachment 13; Letter from David Costa, Costa
8 Family Farms (March 26, 2010) regarding economics, available at <[http://www.waterboards.ca.gov
9 /centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)>; Letter from Benny
10 Jefferson, Martin Jefferson and Sons (Dec. 23, 2010), regarding riparian areas, buffers, conflicts with
11 Leafy Greens and food safety, and enforcement, available at <[http://www.waterboards.ca.gov
12 /centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)>.) For example, an adjacent
13 property owner may testify to traffic conditions based upon personal knowledge. (*Citizens
14 Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151,
15 173.) "CEQA places the burden of environmental investigation on government rather than the
16 public," and if "the local agency has failed to study an area of possible environmental impact, a fair
17 argument may be based on the limited facts in the record." (*Sundstrom V. County of Mendocino*,
18 *supra*, 202 Cal.App.3d 296, 311.) The agency may not "hide behind its own failure to gather relevant
19 data." (*Ibid.*)

20 Further, a full EIR (as opposed to the supplemental EIR prepared here) must be prepared if
21 there is a "serious public controversy" or a "disagreement between experts." (Cal. Code Regs., tit. 14,
22 §§ 15064(f)(1), (f)(4), (g).) CEQA sets a "low threshold" for preparation of an EIR. (*No Oil, Inc. v.
23 City of Los Angeles, supra*, 13 Cal.3d a p. 84.) By attempting to shift the burden of proof to the public
24 and thus avoiding the issue entirely, the conclusions within the Final SEIR are improper and contrary
25 to law.

26 **10. Final SEIR Is Not Based On Substantial Evidence But Rather Mere Speculation**

27 Prior to approving a project, *decision-makers* must be provided with the fullest extent of
28 information available upon which to *base* their *decision*. This determination is based upon whether it

1 can be fairly argued, given the substantial evidence in light of the whole record, that a project may or
2 may not have a significant effect on the environment. “Argument, speculation, unsubstantiated
3 opinion or narrative, or evidence...shall not constitute substantial evidence.” (Cal. Code Regs., tit. 14,
4 § 15064(f)(5).)

5 The Final SEIR is not based on substantial evidence but rather mere speculation and
6 uncertainty. The SEIR is replete with the terms “uncertainty,” “speculative/speculation,” “could be,”
7 and “may be.” For example:

8 “The Central Coast Water Board may not specify the manner of compliance so it has
9 insufficient information to evaluate the extent to which dischargers would choose to use
10 water conservation to comply and to evaluate potential physical changes to the
11 environment that could result.” (Final SEIR, p. 3.)

12 “The Water Board has not received any specific evidence by commenters and has little
13 evidence in the record to demonstrate conclusively that the draft 2011 Agricultural Order
14 will result in significant adverse environmental effects on agricultural or biological
15 resources.” (Final SEIR, p. 10; [See Section B.9 SEIR Improperly Shifts Burden of
16 Proof, *supra*].)

17 “There is not sufficient information to determine the scope of any changes in
18 environmental effects and any potential impacts are very speculative.” (Final SEIR, p.
19 11.)

20 “Because the Water Board cannot generally specify the manner of compliance, the SEIR
21 concluded that it was speculative as to what methods farmers may choose to use to
22 comply.” (Final SEIR, p. 41.)

23 As evidenced in the small selection of examples provided above, the Final SEIR is based upon
24 speculation and uncertainty rather than substantial evidence. “Like an EIR, an initial study or negative
25 declaration ‘must focus on impacts to the existing environment, not hypothetical situations.’ (*County
26 of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.)”
27 *Communities For A Better Environment v. South Coast Air Quality Management Dist., supra*, 48
28 Cal.4th at p. 322.) By speculating on what could happen, rather than on actualities, an improper
environmental baseline and resulting conclusions have been drawn. (*Ibid.*, [“By comparing the
proposed project to what *could* happen, rather than to what was actually happening, the District set the
baseline not according to ‘established levels of a particular use,’ but by ‘merely hypothetical
conditions allowable’ under the permits. (*San Joaquin Raptor Rescue Center v. County of Merced,
supra*, 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.)” emphasis original].) Mere statements of

1 uncertainty or deflections to avoid a proper analysis regarding impacts to agricultural resources or
2 economic impacts do not meet CEQA burdens. Further, notwithstanding the written and oral
3 testimony provided by agricultural stakeholders, the SEIR provides no analysis, unsupportable
4 conclusions, and attempts to improperly shift the burden of providing the evidence to the public. (See
5 Improper Shift in the Burden of Proof, Section B.9 discussed *supra*.) Thus, given the lack of
6 substantial evidence to support the conclusions within the SEIR and the improper reliance on
7 uncertainty and speculation, the Final SEIR fails to satisfy the requirements of CEQA.

8 **11. The Final SEIR’s Analysis Of Impacts Is Improper And Flawed**

9 The Final SEIR fails to properly analyze the potential impacts associated with the Project.
10 Specifically, the SEIR lacks proper review of impacts such as the loss of agricultural lands taken out
11 of production due to proposed requirements and the cost of compliance, loss of agricultural lands
12 through regulatory takings for the installation of riparian buffers, and the impacts from restrictions on
13 the use of tile drains rendering farm land virtually unproductive and thus unusable.

14 Rather than conducting a thorough analysis of all potential impacts to agricultural lands,
15 agricultural vitality, agricultural production, and agricultural resources, the SEIR briefly concludes,
16 “[t]here is not sufficient information to determine the scope of any changes in environmental effects
17 and any potential impacts are very speculative.” (Final SEIR, p. 11; see also Final SEIR, p. 2.) Based
18 on this statement, the SEIR surmises, “the adverse environmental impacts may be less than
19 significant.” (*Ibid.*)

20 CEQA’s informational purposes are not satisfied by an EIR that simply ignores or assumes a
21 solution to potential discharges to waters of the state from agricultural lands. (*Citizens Association for*
22 *Sensible Development of Bishop Area v. County of Inyo, supra*, 172 Cal.App.3d at p. 167.) Rather,
23 decision-makers and the public must be presented with sufficient facts to evaluate the pros and cons of
24 a conditional waiver of waste discharge. (Cal. Code Regs., tit. 14, §§ 15002(a), 15121; *Vineyard Area*
25 *Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th 412; *Santa Clarita*
26 *Organization for Planning the Environment v. County of Los Angeles* (2003) 160 Cal.App.4th 715.)

27 “Mere conclusions simply provide no vehicle for judicial view.” (*Citizens Assn. for Sensible*
28 *Development of Bishop Area, supra*, at p. 171.) By failing to disclose all data and evidence relied

1 upon, the Regional Board is abusing its discretion and failing to comply with CEQA. (*Ibid.*, [“Section
2 1094.5, subdivision (b), states that ‘[abuse] of discretion is established if the respondent has not
3 proceeded in the manner required by law, the order or decision is not supported by the findings, or the
4 findings are not supported by the evidence.’ The Supreme Court has elaborated that ‘. . . implicit in
5 section 1094.5 is a requirement that the agency which renders the challenged decision must set forth
6 findings to bridge the analytic gap between the raw evidence and ultimate decision or order.”
7 (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see
8 *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 429-431 [129 Cal.Rptr. 902].)”].)

9 Conclusory comments in support of environmental conclusions are generally inappropriate.
10 (*Laurel Heights I., supra*, at p. 404.) The SEIR is fundamentally and basically inadequate and
11 conclusory in nature, precluding meaningful public review and comment. (*Mountain Lion Coalition v.*
12 *Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1051; *Laurel Heights I., supra*, at p. 404; Cal.
13 Code Regs., tit. 14, § 15063(c); see Cal. ode Regs., tit. 14, § 15088.5, [regulations apply substantially
14 to initial studies and negative declaration thresholds for recirculation as well.])

15 These conclusory statements within the SEIR provide “no basis for a comparison of the
16 problems involved with the proposed project and the difficulties involved in the alternatives.” (*People*
17 *v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842, quoting *Silva v. Lynn* (1973) 482 F.2d 1282,
18 128; see also *Laurel Heights I., supra*, at p. 404, [“but neither can we countenance a result that would
19 require *blind trust* by the public, especially in light of *CEQA’s fundamental goal that the public be*
20 *fully informed* as to the environmental consequences of action by their public officials” (emphasis
21 added)]; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 415, [“The
22 County’s conclusory evaluation of the amendments fail to support its decision to adopt a negative
23 declaration.”].)

24 Even if a full discussion leaves some uncertainty regarding actual impacts of the anticipated
25 project, CEQA requires some discussion of probable impacts, project alternatives, and the
26 environmental consequences of those contingencies. (*Vineyard Area Citizens for Responsible Growth,*
27 *Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 432.) Such discussion must also be
28

1 supported by substantial evidence and allow for public participation and review.²⁰ (Pub. Resources
2 Code, § 21091(d)(2); Cal. Code Regs., tit. 14, §§ 15088, 15121, 15384.) By failing to analyze
3 probable impacts and merely concluding that impacts are speculative, the SEIR is improper and the
4 error is prejudicial. (See Section B.10 Final SEIR Not Based on Substantial Evidence but Rather
5 Mere Speculation, *supra*.)

6 **12. The SEIR Contains An Inadequate Assessment Of Significant Impacts And**
7 **Effects On The Environment**

8 The CEQA Guidelines define a “significant effect” as “a substantial, or potentially substantial,
9 adverse change in any of the physical conditions within the area affected by the project including land,
10 air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance. An
11 economic or social change by itself shall not be considered a significant effect on the environment. A
12 social or economic change related to a physical change may be considered in determining whether the
13 physical change is significant.” (Cal. Code Regs., tit. 14, § 15382; see also Pub. Resources Code, §
14 21068.)

15 The CEQA Guidelines further state that, “An ironclad definition of significant effect is not
16 possible because the significance of an activity may vary with the setting. For example, an activity
17 which may not be significant in an urban area may be significant in a rural area.” (Cal. Code Regs.,
18 tit. 14, § 15064.) Appendix G of the CEQA Guidelines describes impacts that the California
19 Resources Agency has determined are *normally considered significant*. These guidelines require that
20 physical changes in the environment be evaluated based on factual evidence, reasonable assumptions
21 supported by facts, and expert opinion based on fact. Given that many factors have to be analyzed and
22 significant effects and impacts should be determined on a case-by-case basis, the Regional Board
23 cannot rely on previous antiquated environmental analysis to conclude possible potential impacts from
24 the 2012 Conditional Waiver. Rather, the Regional Board should have reviewed all scientific data and

25 _____
26 ²⁰ By relying on conclusory language, lack of evidence, unidentified and unsubstantiated claims, and unlike comparisons
27 to support its findings that no significant environmental affects will occur, the public’s ability to provide input, to
28 collaborate with, and to aid in finding solutions to maintain and/or improve water quality is largely restricted and makes it
impossible for the public, many of whom have actively asserted a keen and sophisticated interest in the development of
revised/new discharge requirements, to fully participate in the assessment of project impacts and alternatives associated
with the project. (See *Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal.App.3d 1043, 1051.)

1 facts, especially information collected since the initiation of the 2004 Conditional Waiver, prior to
2 determining the 2012 Conditional Waiver’s potential to significantly effect or impact the
3 environment.²¹ By failing to proceed in this manner, proper environmental review was never
4 conducted for the 2012 Conditional Waiver.

5 **13. The Regional Board’s Findings Violate CEQA**

6 The Regional Board’s Findings violate the requirements of the CEQA. (See Resolution No.
7 R3-2012-0012.) The Findings fail to identify the changes or alterations that are required to avoid or
8 substantially lessen the Project’s significant environmental effects (Cal. Code Regs., tit. 14, §
9 15091(a)(1); the Findings are not supported by substantial evidence (*Id.*, § 15091(b)); and the Findings
10 fail to specify the location and custodian of the record of proceedings (*Id.*, § 15091(e)). By failing to
11 include the above along with a brief explanation of the rationale for each finding, the Resolution
12 certifying the Final SEIR, Findings, and Statement of Overriding Considerations is improper.

13 **14. The SEIR Fails To Consider Significance Of Social And Economic Impacts And**
14 **Cumulative Effects**

15 Although impacts that are solely economic in nature do not constitute “significant effects on
16 the environment,” economic or social impacts that will or have the potential to cause a physical
17 change should be considered. (Cal. Code Regs., tit. 14, §§ 15064(e), 15131, 15382.) The term
18 “significant effect on the environment” is defined in Section 21068 of CEQA as meaning “a
19 substantial or potentially substantial adverse change in the environment.” (Pub. Resources Code, §
20 21068.) This focus on physical changes is further reinforced by sections 21100 and 21151. (See
21 discussion following Cal. Code Regs., tit. 14, § 15131.) Despite the implication of these sections,
22 CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern.
23 (*Ibid.*) Thus, in certain situations such as the adoption of an expansive regulatory irrigated lands
24 discharge program, economic and social effects of the project *must* be used to determine the

25 _____
26 ²¹ Water quality regulations that aim to improve environmental quality can have unintended consequences that harm the
27 environment and natural resources. The reallocation of water from one location to another, to meet water quality
28 regulations, may reduce the well-being of fish and wildlife dependent on the water in the source region. Reduction of use
of chemical pesticides that reduce farm productivity may lead to an increase in utilized land use and expansion of the
utilized land base to wilderness areas. Diversion of water resources to meet environmental quality objectives may reduce
the capacity to utilize this water in provision of environmental amenities. Thus, proper environmental analysis is needed.

1 significant effects on the environment. (*Citizens Assn. for Sensible Development of Bishop Area*,
2 *supra*, at p. 170, [“The lead agency shall consider the secondary or indirect environmental
3 consequences of economic and social changes.”].) Since such effects were not considered in the
4 SEIR, the document is incomplete and flawed.

5 In *Citizens Association for Sensible Development of Bishop Area v. Inyo*, the court held that
6 “economic or social change may be used to determine that a physical change shall be regarded as a
7 significant effect of the environment. Where a physical change is caused by economic or social effects
8 of a project, the physical change may be regarded as a significant effect in the same manner as any
9 other physical change resulting from the project. Alternatively, economic and social effects of a
10 physical change may be used to determine that the physical change is a significant effect on the
11 environment.” (*Ibid.*)

12 The 2012 Conditional Waiver’s requirements result in dramatic and severe impacts on the
13 agricultural industry, which will have a significant effect on the economic and social environment of
14 the Region. Such impacts include negative economic consequences, the possibility of eliminating
15 agricultural crops produced in the area, loss of jobs, loss of food supply, loss of prime agricultural
16 lands, economic collapse of local communities, changes to the landscape and land uses, loss of
17 wildlife habitat, loss of groundwater recharge areas, as well as other social and economic impacts. In
18 addition to direct impacts, and indirect impacts and consequences, these cumulative²² social and
19 economic consequences are reasonably foreseeable and must be analyzed.

20 Realizing that the second and third sentences of section 15382 can cause confusion, the
21 discussion portion of the section provides:

22 The second and third sentences pose a problem of interpretation that has caused
23 controversy for many years. The controversy centers around the extent to which CEQA
24 applies to economic and social effects of projects. In determining whether an effect is
25 significant, however, Section 21083(c) of CEQA requires an effect to be found
26 significant *if the activity would cause an adverse effect on people.*

27 (Discussion following Cal. Code Regs., tit. 14, § 15382, emphasis added.) As indicated during public
28

22 “Cumulative impacts” are “two or more individual effects which, when considered together, are considerable
or....compound to increase other environmental impacts. (Cal. Code Regs., tit. 14, § 15355.)

1 testimony and written comments, the 2012 Conditional Waiver will have an adverse effect on the
2 agricultural community in many ways. (See Letter from David Costa, Costa Family Farms (March 26,
3 2010) regarding economics, available at <[http://www.waterboards.ca.gov/centralcoast/board_info/
4 agendas/2012/march/Item_4/item4_3_14_transcript.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/march/Item_4/item4_3_14_transcript.pdf)>; Letter from Benny Jefferson, Martin
5 Jefferson and Sons (Dec. 23, 2010), regarding riparian areas, buffers, conflicts with Leafy Greens and
6 food safety, and enforcement, available at <[http://www.waterboards.ca.gov/centralcoast/
7 water_issues/programs/ag_waivers/docs/ag_order2/11.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/11.pdf)>.) These economic and social impacts will
8 adversely affect people within the Region and the state. (See March 14, 2012 Hearing Transcript, pp.
9 191-194, [Dr. Brad Barbeau’s testimony regarding economic and social changes from the Conditional
10 Waiver; “[T]his regulation absolutely has the potential to be a game changer. It changes the rules of
11 the game and it’s going to cause an adaptive response.” (*Id.* at p. 193, ¶¶ 14-17.) “This is going to
12 impact growers. It’s going to impact what crops get produced. It’s going to impact land use in ways
13 that I don’t think anybody has a crystal ball to exactly know what the ultimate outcomes are going to
14 be. (*Id.* at p. 193, ¶¶ 20-24.); Letter from William Thomas, Best Best & Kreiger (Dec. 28, 2010)
15 regarding economics, available at <[http://www.waterboards.ca.gov/centralcoast/water_issues/
16 programs/ag_waivers/docs/ag_order2/15.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/15.pdf)>.)

17 Regardless of case law interpreting the need for review of economic and social effects, as well
18 as the discussion within the CEQA Guidelines, the Regional Board maintains that no such analysis
19 must be done. (Final SEIR, p. 40, Response to Comment No. 497: “The CEQA Guidelines specify
20 that economic and social effects of a project shall not be treated as significant effects on the
21 environment...The Water Board is only required to analyze the physical changes to the environment;”
22 p. 42, Response to Comment No. 500: “[T]he CEQA Guidelines do not require an evaluation of social
23 and economic impacts.”) The Regional Board does not attempt to contrast case law, such as the
24 following, that clearly state otherwise:

25 ‘CEQA is not a fair competition statutory scheme.’ (*Waste Management of Alameda*
26 *County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1235, 94 Cal.Rptr.2d
27 740.) Therefore, the economic and social effects of proposed projects are outside
28 CEQA’s purview. (Guidelines, § 15131, subd. (a).) Yet, if the forecasted economic or
social effects of a proposed project directly or indirectly will lead to adverse physical
changes in the environment, then CEQA requires disclosure and analysis of these
resulting physical impacts. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th

1 1004, 1019, 100 Cal.Rptr.2d 413 (*Friends of Davis*); *Citizens for Quality Growth v. City*
2 *of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445–446, 243 Cal.Rptr. 727 (*Mt. Shasta*.)
3 Subdivision (e) of Guidelines section 15064 provides that when the economic or social
4 effects of a project cause a physical change, this change is to be regarded as a significant
5 effect in the same manner as any other physical change resulting from the project. (See,
6 e.g., *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d
7 123, 131, 192 Cal.Rptr. 480 [potential of increased student enrollment in an already
8 overcrowded school resulting from construction of the proposed apartment complex was
9 an environmental effect that required treatment in an EIR because it could lead to the
10 necessity of constructing at least one new high school].) Conversely, where economic
and social effects result from a physical change that was itself caused by a proposed
project, then these economic and social effects may be used to determine that the
physical change constitutes a significant effect on the environment. (See, e.g.,
Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 197, 228 Cal.Rptr.
868 [when a waste management facility was proposed next to a religious retreat center,
CEQA required study whether the physical impacts associated with the new facility
would disturb worship in the natural environment of the retreat center].)

11 (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205.)

12 Rather, the SEIR attempts to dodge the issue by requiring the public to provide the substantial
13 evidence to prove possible economic or social costs. (Final SEIR, p. 40, Response to Comment No.
14 497: “The commenter has provided no substantial evidence that economic costs will result in physical
15 changes to the environment, other than speculating that some changes could occur.”) As discussed
16 *supra*, shifting the burden to provide substantial evidence to the public is improper. (See Section B.9
17 The SEIR Improperly Shifts The Burden of Proof And Determination Of Significance To The Public,
18 *supra*.) The Final SEIR should have properly evaluated the resulting social and economic effects from
19 the Project.

20 Given the numerous violations contained within the Final SEIR discussed *supra*, the
21 appropriate remedy for the State Board is to set aside the Resolution certifying the SEIR, Findings,
22 and Statement of Overriding Considerations, as well as voiding the adoption of the 2012 Conditional
23 Waiver, in its entirety, which relies exclusively on the certification of the SEIR. (See *Friends of*
24 *Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 182, [the appropriate remedy for the
25 CEQA violation was to set aside both the resolution placing Ordinance No. I-97-1 on the ballot and
26 the election because failure to comply with CEQA made the election fundamentally unfair and
27 affected the result.].)

1 **C. THE 2012 CONDITIONAL WAIVER IS BASED UPON AN INCORRECT STANDARD**
2 **IN DIRECT CONFLICT WITH THE PORTER-COLOGNE WATER QUALITY**
3 **CONTROL ACT**

4 The 2012 Conditional Waiver does not conform to the requirements and standards set forth by
5 the Porter-Cologne Water Quality Control Act since the Conditional Waiver is based on inappropriate
6 and arbitrary standards that are incorrectly utilized and relied upon to formulate the fundamental core
7 requirements that will be used to control discharges from irrigated lands.

8 **1. The Regional Board’s Statutory Obligations Under The Porter-Cologne Act**

9 In enacting the Porter-Cologne Act, the Legislature laid out specific goals and objectives for
10 the State’s waters. Regional Boards must conform to all such statutory mandates, including the
11 Legislature’s objective:

12 The Legislature further finds and declares that activities and factors which may affect the
13 quality of the waters of the state shall be regulated to *attain the highest water quality*
14 *which is reasonable*, considering all demands being made and to be made on those waters
15 and the total values involved, beneficial and detrimental, economic and social, tangible
16 and intangible.

17 (Wat. Code, § 13000, emphasis added.) In a recent decision, the California Supreme Court discussed
18 the Legislature’s intent, confirming its goal “to attain the highest quality which is reasonable.” (*City*
19 *of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.)

20 The use of the term “reasonable” and the “reasonableness” standard is not limited to the
21 express goals laid out in Water Code section 13000. Rather, the Porter-Cologne Act expressly calls
22 for reasonable actions throughout. (See Wat. Code, § 13241, [calling for water quality objectives that
23 will provide “*the reasonable protection of beneficial uses*” upon mandated review of specific factors],
24 emphasis added; Wat. Code, § 13050(h), [defines “water quality objectives” as “the limits or levels of
25 water quality constituents or characteristics which are established for *the reasonable protection of*
26 *beneficial uses of water* or the prevention of nuisance within a specific area.”], emphasis added.)
27 Thus, when analyzing impacts to water quality and adopting conditional waivers of waste discharge,
28 the Regional Board must comply with and conform to the Legislative intent of the Porter-Cologne Act
by applying the “reasonableness standard,” that is, evaluate if the activity or control limit will
reasonably protect the beneficial uses.

1 **2. The Regional Board Applied An Arbitrary And Capricious Standard When**
2 **Drafting The 2012 Conditional Waiver**

3 Although the Regional Board correctly cited its authority and obligation to control water
4 quality, the Regional Board arbitrarily and capriciously applied its authority when crafting the 2012
5 Conditional Waiver. (Order No. R3-2012-0011, p. 41, ¶ 1.) Specifically, the Regional Board did not
6 apply the proper standard when analyzing the water quality impacts, creating the conditions of the
7 waiver, and developing the monitoring and reporting requirements. Instead, as documented
8 throughout the 2012 Conditional Waiver and all associated documents, staff used “highest water
9 quality” as the standard in determining compliance limits, conditions, analysis and comparison of
10 impacts, and in staff’s ultimate decision on the preferred alternative. For example, the opening
11 paragraph of the Additional Findings states:

12 The purpose of this Order is to is [sic] focus on the *highest water quality priorities and*
13 *maximize water quality protection* to ensure the long-term reliability and availability of
 water resources of sufficient supply and quality for all present and future beneficial uses,
 including drinking water and aquatic life.

14 (*Ibid.*, emphasis added.) The Porter-Cologne Water Quality Control Act does not mandate absolute
15 pure water quality or the highest level of protection possible. Rather, the Act calls for “the highest
16 water quality which is reasonable” (Wat. Code, § 13000) and “ensure the reasonable protection of
17 beneficial uses and the prevention of nuisance.” (Wat. Code, § 13241.) Further, the Act does not
18 mandate regulatory procedures that are unnecessary to protect water quality or that attempt to
19 eliminate all measurable traces of compounds in waters.

20 Throughout the state, agricultural discharges are regulated under Chapter 4, Article 4 of the
21 Act. Dischargers, such as agriculture, must file a report of waste discharge if their **discharge of waste**
22 “could **affect the quality** of waters of the state.”²³ (Wat. Code, § 13260(a)(1), emphasis added.) As
23 emphasized above, agricultural nonpoint source dischargers are regulated if they are (1) discharging
24 waste that (2) could affect the quality of waters of the state. (*Ibid.*) A mere discharge is not enough to
25 trigger the regulation, control, or prohibition of nonpoint sources discharges in order to obtain the

26 _____
27 ²³ Many Regional Boards regulate the discharges of waste from irrigated lands through conditional waivers of waste
28 discharge requirements pursuant to section 13269 in which each discharger’s notice of intent constitutes a report of waste
discharge.

1 “highest water quality.” As currently written, the 2012 Conditional Waiver is overbroad and
2 inconsistent with the Porter-Cologne Act.

3 The Regional Board cites no authority allowing the use of a standard to require conditions that
4 obtain “*highest water quality priorities and maximize water quality protection.*” Rather, the statutory
5 authority laid out in the Porter-Cologne Act and cited within the 2012 Conditional Waiver clearly and
6 unequivocally calls for the “reasonable” protection of water. By using a different standard, the 2012
7 Conditional Waiver is fundamentally flawed in its analysis.

8 **D. FAILURE TO ADEQUATELY ANALYZE THE ECONOMIC IMPACTS OF THE 2012**
9 **CONDITIONAL WAIVER UNDER PORTER-COLOGNE**

10 The requirement to consider economics under Porter-Cologne is absolute. Water Code, section
11 13141 explicitly mandates:

12 State policy for water quality control adopted or revised in accordance with the
13 provisions of this article, and regional water quality control plans approved or revised in
14 accordance with Section 13245, shall become a part of the California Water Plan
15 effective when such state policy for water quality control, and such regional water quality
16 control plans have been reported to the Legislature at any session thereof. *However,*
prior to implementation of any agricultural water quality control program, an estimate of
the total cost of such a program, together with an identification of potential sources of
financing, shall be indicated in any regional water quality control plan.

17 (Wat. Code, § 13141, emphasis added.) Before a Regional Board can impose waste discharge
18 requirements or conditioned water quality certification for discharges from irrigated lands, Porter-
19 Cologne requires that the Regional Board “shall take into consideration” the following factors: “the
20 beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other
21 waste discharges, the need to prevent nuisance, and the provisions of Section 13241.” (Wat. Code, §
22 13263.) Section 13241 in turn lists six “factors to be considered,” including “economic
23 considerations” and “water quality conditions that could reasonably be achieved through the
24 coordinated control of all factors which affect water quality in the area.” (Wat. Code, § 13241.)

25 While a cost considerations analysis was conducted within the Draft SEIR, no economic
26 analysis has been conducted for the actual Project, the 2012 Conditional Waiver, which was
27 substantially revised twice after the completion of the cost analysis. Given that the 2012 Conditional
28 Waiver contains brand new components never previously analyzed, reliance on the previous cost

1 considerations analysis does not comply with Porter-Cologne. A full analysis properly acknowledging
2 the total cost of an agricultural water quality control program and the potential sources of financing
3 must be completed. Anticipated program implementation costs to the agricultural community include
4 increases in potential fees, management practice implementation, monitoring costs, report preparation,
5 and cost for education, as well as other costs. Given that the impacts of water quality regulations
6 frequently take years to materialize, the Regional Board should analyze the economic costs and
7 impacts within a dynamic structure taking into account the projected changes in the economic situation
8 *over time.*

9 In addition to direct costs imposed on the agricultural community, the Regional Board should
10 have evaluated indirect costs, including the economic consequences that are transmitted via market
11 interactions to other groups, such as consumers. Water quality regulation, such as the 2012
12 Agricultural Order, increases the average cost of production and has a direct negative effect on the
13 producer and the consumer through the resulting increase in variable costs and the output price. The
14 propagation of the impacts of a regulation, such as this, through the economy is well documented and
15 can be quantified by economic analysis. Further, such analysis shall be conducted prior to adoption or
16 implementation of any program. (Wat. Code, § 13141.)

17 **E. THE 2012 CONDITIONAL WAIVER DICTATES THE MANNER OF COMPLIANCE**
18 **IN VIOLATION OF WATER CODE SECTION 13360**

19 The 2012 Conditional Waiver violates the prohibitions set forth under Water Code section
20 13360 by illegally dictating the manner of compliance. Water Code section 13360(a) provides in
21 pertinent part that:

22 No waste discharge requirement or other order of a Regional Board or the state board or
23 decree of a court issued under this division shall specify the design, location, type of
24 construction, or particular manner in which compliance may be had with that
25 requirement, order, or decree, and the person so ordered shall be permitted to comply
26 with the order in any lawful manner.

27 In summation, section 13360 allows the Regional Board to identify the “disease and command
28 that it be cured,” but prohibits the Regional Board from “dictating the cure.” (See *Tahoe Sierra
Preservation Council v. State Water Resources Control Board* (1989) 210 Cal.App.3d 1421, 1438,
[“The .75 inch numerical SUSMP standard is clearly a ‘design’ standard and a particular manner in

1 which ‘compliance may be had,’ and represents ‘dictating the cure.’ As such, it violates the
2 requirements of Water Code Section 13360(a).”].)

3 The 2012 Conditional Waiver violates Water Code section 13360(a) in numerous ways, i.e., in
4 each instance where the Regional Board seeks to impose a “particular manner” in which compliance
5 may be had. The 2012 Conditional Waiver does not simply direct dischargers to improve water
6 quality by complying with a time schedule. Rather, the 2012 Conditional Waiver specifically states
7 *how* a discharger will comply and *what* a discharger *must do on their field*. As such, the 2012
8 Conditional Waiver is in direct contrast with the situation presented in *Pacific Water Conditioning*
9 *Assn., Inc. v. City Council* (1977) 73 Cal.App.3d 546, 554 in which no violation of Water Code section
10 13360 occurred because the order simply ordered the City to comply with portions of the order in
11 accordance with a time schedule and did not state anything regarding the manner in which the City
12 must comply.

13 Within the Final SEIR, it states that “the Central Coast Water Board *may not generally* specify
14 the manner of compliance” or “the Central Coast Water Board may not specify the manner of
15 compliance.” (Order No. R3-2012-0011 p. 12, ¶ 41, emphasis added.) Unfortunately, in addition to
16 the first quote misstating the law, these statements are incorrect since numerous times within the 2012
17 Conditional Waiver and accompanying documents, specific types of management practices are
18 mandated, including, but not limited to:

19 37. Dischargers *must minimize the presence of bare soil* vulnerable to erosion and soil
20 runoff to surface waters and implement erosion control, sediment, and stormwater
21 management practices in non-cropped areas, such as unpaved roads and other heavy use
22 areas. (Order No. R3-2012-0011 p. 20, ¶ 37, emphasis added.)

23 39. Dischargers must a) *maintain existing, naturally occurring, riparian vegetative cover*
24 (such as trees, shrubs, and grasses) in aquatic habitat areas as necessary to minimize the
25 discharge of waste; and b) *maintain riparian areas* for effective streambank stabilization
26 and erosion control, stream shading and temperature control, sediment and chemical
27 filtration, aquatic life support, and wildlife support to minimize the discharge of waste.
28 (Order No. R3-2012-0011 p. 20, ¶ 39, emphasis added.)

80. By October 1, 2016, Tier 3 Dischargers...must develop a Water Quality Buffer Plan:

“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. For construction activities, ***minimum width of the filter strip shall be***

1 *thirty feet, wherever possible.*” (Order No. R3-2012-0011 pp. 30-31, ¶ 80, italics
2 original, bold emphasis added; see also MRP Order No. R3-2012-03, p. 21, ¶ 2.)

3 Paragraph 37 requires prevention of bare soil. (Order No. R3-2012-0011 p. 20, ¶ 37.)

4 Paragraph 39 requires maintenance of naturally occurring riparian cover and maintenance of riparian
5 areas. (Order No. R3-2012-0011 p. 20, ¶ 39.) Paragraph 80 requires riparian habitat buffers in the
6 form of filter strips of at least 30 feet, as well as vegetation within the buffer zone. (Order No. R3-
7 2012-0011 pp. 30-31, ¶ 80, see also MRP Order No. R3-2012-03, p. 21, ¶ 2.) All of these conditions
8 represent a dictation of the cure rather than allowing individual growers the ability to determine what
9 management practices work best for their specific farms.

10 Condition 78 dictates the amount of fertilizer Tier 3 dischargers will be allowed to use.²⁴

11 a. Dischargers producing crops in annual rotation (such as a cool season vegetable in a
12 triple cropping system) must report progress towards a Nitrogen Balance ratio target
13 equal to one (1).

14 b. Dischargers producing annual crops occupying the ground for the entire year (e.g.,
15 strawberries or raspberries) must report progress towards a Nitrogen Balance ratio
16 target equal to 1.2.

17 (Order No. R3-2012-0011 p. 30, ¶¶ 78(a), (b).) This condition, besides prohibiting activities that are
18 not inherently discharges of waste, regulates the exact amount of fertilizer a discharger can apply to
19 his/her field. In order to meet a “nitrogen balance ratio” of 1.0 or 1.2 for a specific crop with uniform
20 fertilizer application, the mathematical equation will provide only one answer--a discharger will only
21 be allowed one specific amount of fertilizer that he/she can apply. Thus, by mathematics alone, this is
22 a dictation of management practices.

23 The imposition of such “particular manners” of compliance violates the express prohibition
24 under California Water Code Section 13360(a). “Section 13360 is a shield against unwarranted
25 *interference with the ingenuity of the party* subject to a waste discharge requirement...It preserves the
26 freedom of persons who are subject to a discharge standard to *elect between available strategies to*
27 *comply with that standard.*” (*Tahoe-Sierra Preservation Council, supra*, (1989) 210 Cal.App.3d 1438,
28 emphasis added.) The 2012 Conditional Waiver does not allow a grower the ability to “elect between

24 In addition to being a dictation of management practices, regulation of fertilizers is beyond the scope and authority of the Regional Board.

1 available strategies” in order to “cure” the water quality issues. (*Ibid.*) Thus, the 2012 Conditional
2 Waiver contains provisions that are in direct conflict with Water Code section 13360(a).²⁵

3 **F. THE 2012 CONDITIONAL WAIVER IS INCONSISTENT WITH THE REGIONAL**
4 **BOARD’S BASIN PLAN**

5 In addition to containing conditions that dictate the manner of compliance, *supra*, certain
6 conditions within the 2012 Conditional Waiver are inconsistent with the Regional Board’s Basin Plan.

7 Condition 39, which applies to all dischargers, requires dischargers to maintain existing,
8 naturally occurring riparian vegetative cover and maintain riparian areas for effective stabilization and
9 erosion control. (Order No. R3-2012-0011 p. 20, ¶ 39.) In contrast, the Basin Plan states that “erosion
10 from nonpoint pollution sources shall be minimized through implementation of BMP’s.” (Water
11 Quality Control Plan for the Central Coast Basin (June 8, 2011) Section V.G. 1, p. V-13, hereinafter
12 “Basin Plan”.) The Regional Board’s Basin Plan allows for growers to determine which management
13 practices to employ in order to minimize sediment and control erosion. By superseding the
14 requirements within the Basin Plan and prescribing specific BMPs, condition 39 is improper.

15 Condition 80 requires filter strips of at least 30 feet in width. (Order No. R3-2012-0011 pp.
16 30-31, ¶ 80; see also MRP Order No. R3-2012-03, p. 21, ¶ 2.) In contrast, the Basin Plan states that
17 filter strips of at least 30 feet are required for “construction activities.” (Basin Plan, Section V.G. 4, p.
18 V-14, [“For construction activities, minimum width of the filter strip shall be thirty feet, wherever
19 possible as measured along the ground surface to the highest anticipated water line.”].) The 2012
20 Conditional Waiver regulates the discharges of waste from irrigated lands; it does not regulate
21 construction activities; nor are routine agricultural activities considered construction activities. By

22 ²⁵ Regional Board staff has stated that growers do not have to immediately comply with water quality standards given the
23 “Time Schedule for Milestones” in Table 4 of the Conditional Waiver. (March 15, 2012 Hearing Transcript, p. 53, ¶¶ 22-
24 24; p. 55, ¶¶ 5-7; Order No. R3-2012-0011, p.4.) However, Table 4 is simply a list of “milestones.” As stated in the July
25 6, 2011 Staff Report: “The milestones, as described in Table 4 of the Draft Agricultural Order are not in of themselves
26 compliance conditions and are not enforceable. They are targets or goals that staff will use to evaluate effectiveness of
27 implementation efforts and progress improving towards water quality.” (Staff Report For Regular Meeting of September 1,
28 2011 (July 6, 2011), p.18; see also March 15, 2012 Hearing Transcript, p. 73-74, [“What Table 4 states in the Order is that
these milestones will be used to evaluate progress towards water quality improvement. That milestone is still how we’re
going to measure progress. *But it’s not a compliance condition to achieve it.*”], emphasis added.) Notwithstanding the
recognition that milestones are simply “goals” that cannot be enforced, the milestones in Table 4 continue to be referenced
to back away from the Conditional Waiver’s immediate compliance requirement. Any reliance on milestones does not
change the plain terms of the Conditional Waiver which continues to require immediate compliance with water quality
standards.

1 mandating 30 foot buffers for nonpoint source discharges, condition 80 is inconsistent with the Basin
2 Plan.

3 **G. THE MONITORING AND REPORTING PROVISIONS EXCEED THE REGIONAL**
4 **BOARD’S AUTHORITY SINCE NO NEXUS IS PROVIDED**

5 Within the 2012 Conditional Waiver, numerous monitoring reports and technical reports are
6 required to be submitted to the Regional Board. (See Order No. R3-2012-0011 pp. 27-28, ¶¶ 67-68
7 [annual compliance document], p. 28, ¶ 69 [photo monitoring], p. 29, ¶¶ 70-71 [total nitrogen
8 reporting], pp. 29-30, ¶¶ 74-79 [irrigation and nutrient management plan], pp. 30-31, ¶ 80-81 [water
9 quality buffer plan].) Although the Regional Board has the authority, pursuant to Water Code section
10 13267, to require monitoring reports and technical reports, “the burden, including costs, of these
11 reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained
12 from the reports.” (Wat. Code, § 13267(b)(1).) Additionally, the Regional Board *shall* provide each
13 person “with a written explanation with regard to the need for the reports, and *shall* identify the
14 evidence that supports requiring that person to provide the reports.” (*Ibid.*, emphasis added.)

15 Although various monitoring reports and technical reports are referenced in the 2012
16 Conditional Waiver and accompanying appendices, no nexus as to the burden, costs, need, or benefits
17 is found. Furthermore, no concrete evidence is provided that supports requiring farmers to provide
18 such reports. Mere unsupported assertions that a need or nexus exists fail to validate a section 13267
19 request. Thus, the provisions requiring monitoring reports and technical reports do not comply with,
20 in whole or in part, the Regional Board’s statutory authority and are invalid.

21 **H. THE 2012 CONDITIONAL WAIVER’S REQUIREMENT FOR IMMEDIATE**
22 **COMPLIANCE WITH WATER QUALITY STANDARDS IS IMPROPER**

23 The clear language of the many provisions throughout the 2012 Conditional Waiver illustrates
24 the requirement for immediate compliance with water quality standards. For example, the following
25 provisions all call for immediate compliance and do not contain qualifying language or provide future
26 time frames for compliance:

27 This Order requires compliance with water quality standards. (Order No. R3-2012-0011
28 p. 4, ¶ 10.)

Dischargers must...meet water quality standards. (Order No. R3-2012-0011 p. 4, ¶ 10.)

1 Dischargers who are subject to this Order shall implement management practices, as
2 necessary, to improve and protect water quality and to achieve compliance with
applicable water quality standards. (Order No. R3-2012-0011 p. 15, ¶ 12.)

3 Dischargers must comply with applicable water quality standards, as defined in
4 Attachment A, protect the beneficial uses of waters of the State and prevent nuisance as
defined in Water Code section 13050. (Order No. R3-2012-0011 p. 18, ¶ 22.)

5 Order No. R3-2012-0011 (Conditional Waiver of Waste Discharge Requirements for
6 Discharges from Irrigated Lands) requires Dischargers to comply with applicable state
7 plans and policies and applicable state and federal water quality standards. (Order No.
8 R3-2012- 011 (Conditional Waiver of Waste Discharge Requirements for Discharges
from Irrigated Lands) requires Dischargers to comply with applicable state plans and
policies and applicable state and federal water quality standards. (Order No. R3-2012-
0011 p. 40.)

9 The requirement for immediate compliance with water quality standards is improper and
10 inconsistent with the Water Code and the Nonpoint Source Policy. Water Code section 13269, the
11 section governing conditional waivers of waste discharge requirements, contains no provisions
12 requiring immediate compliance with water quality standards. Rather, the only provision applicable to
13 the matter at hand is section 13269's call that "the waiver is consistent with any applicable state or
14 regional water quality control plan." (Wat. Code, § 13269(a)(1).)²⁶

15 The Nonpoint Source Policy also does not require immediate compliance with water quality
16 standards. Key Element 2 states: "We recognize that in the earlier stages of some pollution control
17 programs, *water quality changes may not be immediately apparent*, even with the implementation of
18 pollution control actions. Although MP implementation never may be a substitute for meeting water
19 quality requirements, MP implementation assessment may, in some cases, be used to measure
20 nonpoint source control programs." (Nonpoint Source Policy, p. 12, emphasis added.) Key Element 3
21 goes on to state, "where a RWQCB determines it is necessary *to allow time to achieve water quality*
22 *requirements, the NPS control implementation program shall include a specific time schedule*, and
23 corresponding quantifiable milestones designed to measure progress toward reaching the specified
24

25 _____
26 ²⁶ The Regional Board's Basin Plan is to contain a program of implementation for achieving water quality objectives.
27 Water Code section 13242 governs the program of implementation and requires: "(a) A description of the nature of actions
28 which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or
private. (b) A time schedule for the actions to be taken. (c) A description of surveillance to be undertaken to determine
compliance with objectives. (Wat. Code, § 13242.) Upon review of the Basin Plan, it fails to directly state what actions
are necessary to achieve the objections as well as specifying a time schedule for the actions to be taken.

1 requirements.”²⁷ (*Id.* at p. 13, emphasis added.) As evidenced by the Nonpoint Source Policy,
2 implementation of management practices (“MP”) is the process for achieving water quality standards.
3 This exact method, recognized and supported by the State Board, can require time, and necessitates
4 flexibility. (*Ibid.*, *Id.* at p. 10, [“The RWQCBs have broad flexibility and discretion in using their
5 administrative tools to fashion NPS management programs.”].) Imposing immediate compliance with
6 water quality standards improperly conflicts with the Nonpoint Source Policy.

7 During the March 15, 2012 hearing, Board Counsel addressed comments raised by Petitioners
8 regarding the 2012 Conditional Waiver’s requirements for immediate compliance with water quality
9 standards. Board Counsel stated:

10 “[T]here are numerous provisions in the Order, both in the findings and in the Order part
11 that make it clear that for purpose...” (March 15, 2012 Hearing Transcript, p. 53, ¶¶ 22-
24.)

12 “There’s nothing in the Order that would require them to be in compliance tomorrow. It’s
13 made very clear.” (March 15, 2012 Hearing Transcript, p. 55, ¶¶ 5-7.)

14 Those statements are incorrect. The Order itself does not contain appropriate compliance
15 schedules. Further, the plain language of the Conditional Waiver does not contain any provisions
16 qualifying the immediate compliance language. Finally, regarding the provision that does provide for
17 some limiting language, it is not in the Order itself but rather embedded in the findings section of
18 Attachment A. (Order No. R3-2012-0011 p. 41, ¶ 2.) Findings, by their very nature, are not
19 conditions and cannot be enforced. Therefore, nothing within the provisions of the Order limits or
20 modifies the plain language calling for immediate compliance with water quality standards.

21
22
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25 _____
26 ²⁷ The “time schedule” within the 2012 Conditional Waiver does not meet the requirements for a time schedule put forth
27 by the Nonpoint Source Policy. (See Order R3-2012-0011, pp. 32, 37-41.) The time schedule for Tier 3 contains generic
28 statements that are not tied to water quality standards. Further, the requirements are not concentration standard
requirements but load based. (*Id.* at p. 32.) Petitioners challenge the 2012 Conditional Waiver’s failure to contain a proper
compliance schedule tied to water quality standards. Petitioners herein incorporate by reference those arguments made by
the petition submitted by Tess Dunham on April 16, 2012 regarding compliance with water quality standards, compliance
schedules, and time schedules.

1 **I. THE ANALYSIS OF THE AG ALTERNATIVE PROPOSAL WAS IMPROPER AND**
2 **BIASED**

3 **1. The Ag Alternative Complies with Porter-Cologne and the Nonpoint Source Policy**

4 The Addendum to the Staff Report, as well as statements made during the Board hearing on
5 March 14 and 15, 2012, incorrectly concluded, “the Agricultural Alternative Proposal does not comply
6 with Water Code Section 13269 and the NPS Policy.” (Staff Report For Regular Meeting of
7 September 1, 2010 (prepared August 10, 2011), p. 2; Staff Report For Regular Meeting of March 14-
8 15, 2012 (Feb. 22, 2012), pp. 15-16; March 14, 2012 Hearing Draft Transcript, p. 33, ¶¶ 19-24,
9 [“However, as we’ve reported to you many times in all of our Staff reports, we continue to find that
10 the AG Proposal is legally inadequate and unenforceable because it’s not crafted as required by the
11 Nonpoint Source Policy or consistent with the Water Code.”]; March 15, 2012 Hearing Transcript, p.
12 46, ¶¶ 23-25, p. 57, ¶¶ 18-25, p. 58, ¶¶ 1-25.) These conclusions are based on misguided
13 interpretations of Porter-Cologne and the NPS Policy, and improperly biased members of the Board
14 from fully considering the Ag Alternative Proposal. (March 15, 2012 Hearing Transcript, p. 130, ¶¶ 6-
15 8, [“I was really leaning toward the Ag Proposal, and then the legality issues came up.”].)

16 During the March 14, 2012 hearing, Regional Board staff once again concluded that the Ag
17 Proposal, specifically the use of third party groups, does not comply with the Water Code or NPS
18 Policy:

19 [M]ost [sic] the reporting elements describe activities by the third-party group, and not
20 activities or progress by the actual dischargers. Monitoring and reporting of discharger
effectiveness and pollution reduction are necessary and required by the Water Code and
the Nonpoint Source Policy.

21 (March 14, 2012 Hearing Draft Transcript, p. 34, ¶¶ 15-20.) The above statement attempts to disprove
22 the legality of third-party groups and limit the application of Water Code section 13269 to individual
23 dischargers only. Water Code 13269 states:

24 [T]he provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section
25 13263, or subdivision (a) of Section 13264 *may be waived by the state board or a*
26 *regional board as to a specific discharge or type of discharge* if the state board or a
27 regional board determines, after any necessary state board or regional board meeting, that
the waiver is consistent with any applicable state or regional water quality control plan
and is in the public interest. (Wat. Code, § 13269(a)(1), emphasis added.)

28 Accordingly, section 13269 does not limit the waiving of waste discharge requirements *only to*

1 *individual dischargers*. Rather, section 13269 is much broader and applies to “discharges or types of
2 discharge,” including the very conditions proposed in the Ag Alternative Proposal. (*Ibid.*)

3 Additionally, a conclusion is drawn that the Ag Alternative Proposal is not consistent with the
4 Water Code, the Basin Plan, and the NPS Policy because it “would allow the ‘third-party group’ to be
5 responsible for compliance, rather than the individual discharger.” (March 14, 2012 Hearing Draft
6 Transcript, p. 33, ¶¶ 19-24; March 15, 2012 Hearing Transcript, p. 46, ¶¶ 23-25, p. 57, ¶¶ 18-25, p. 58,
7 ¶¶ 1-25; August 10, 2011 Staff Report, p. 5.) This conclusion is not supported by any evidence or
8 citation.

9 Within the Ag Alternative Proposal, substantial conditions are included detailing the
10 requirements for the third-party group as well as individual dischargers. Foremost, all dischargers,
11 even those who participate within a third-party group, must comply with water quality standards.
12 Explicit language in the May 2011 Attachment B clearly indicates that *both* the third-party groups *and*
13 its participants are responsible for meeting all of the conditions contained therein. Specifically, the
14 language of the May 2011 Attachment B states, “[a] third party group and/or its participants shall
15 comply with the following conditions.” (Ag Alternative Proposal, Attachment B (May 2011) p. 1.)
16 The use of “and/or” is modeled directly after the Central Valley Regional Water Quality Control
17 Board, Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge
18 Requirements for Discharges From Irrigated Lands, which utilizes the conjunctive “and” as well as the
19 disjunctive “or” throughout the Order and Attachments. The use of “and/or” is not unclear (see July 6,
20 2011 Staff Report, p. 10), but rather overly inclusive and ensures that the individual discharger is
21 ultimately responsible for the conditions of the Order, as specified in Attachment B. Thus, if a third-
22 party group fails to perform the required conditions, the Regional Board may bring an enforcement
23 action for noncompliance against the individual discharger. (See Wat. Code, § 13267; July 6, 2011
24 Staff Report, p. 23, [Consequences for noncompliance with the Ag Alternative Proposal is the same as
25 that found in staff’s Draft Order. Thus, the following sentence is applicable to both the Ag Alternative
26 Proposal and staff’s Draft Order: “If the discharger fails to address impacts to water quality by taking
27 the actions required by the Order, including evaluating the effectiveness of their management practices

1 and improving as needed, the discharger would then be subject to progressive enforcement and
2 possible monetary liability.”].)²⁸

3 Further, the Ag Alternative Proposal’s third-party group conditions, as further detailed in
4 Agriculture’s Power Point Presentation presented during the March 14, 2012 Hearing, comply with the
5 NPS Policy because individual dischargers, and not the third-party group, implement and improve
6 management practices. As stated in the Staff Report to bolster staff’s Draft Order, “consistent with the
7 NPS Policy, dischargers comply by implementing and improving management practices.” (July 6,
8 2011 Staff Report, pp. 22-23.) In other words, compliance with the conditional waiver and the NPS
9 Policy is tantamount to the implementation of management practices. The Ag Alternative Proposal
10 contains numerous provisions explicitly requiring the implementation of management practices:

11 (4) Implement the Farm Plan and management practices to improve water quality; and

12 (5) Assess the effectiveness of implemented agricultural management practices in
13 attaining water quality benchmarks and, when necessary to attain water quality
14 benchmarks, and identify, implement, or upgrade management practices. (Ag Alternative
15 Proposal (Dec. 3, 2010), p. 1, ¶¶ 4-5, available at <[www.waterboards.ca.gov/rwqcb3
/water_issues/programs/ag_waivers/docs/ag_order/ag_%20alt%20proposal_2010dec03.p
df](http://www.waterboards.ca.gov/rwqcb3/water_issues/programs/ag_waivers/docs/ag_order/ag_%20alt%20proposal_2010dec03.pdf)>.)

16 ...

17 Dischargers who are participating in a third party group shall implement management
18 practices, as necessary, to achieve best practicable treatment or control of the discharge to
19 reduce wastes in the discharges. (Ag Alternative Proposal, Attachment B (May 2011) p.
20 2, ¶ 6.)

21 Therefore, as evidenced by these conditions, the Ag Alternative Proposal requires individual
22 dischargers to implement and improve management practices, and complies with the NPS Policy.

23 Given that the Staff Reports and statements made during the two-day hearing on the adoption of the

24 ²⁸ As evidenced by the NPS Policy, the Regional Board retains its discretionary authority to ensure compliance with the
25 conditions of the waiver:

26 “[T]he RWQCBs retain their prosecutorial discretion to decide how to ensure compliance with their conditional
27 waivers.”

28 ...

“There are many different ways for the RWQCBs to ensure compliance.”
(NPS Policy, p. 5.)

The Ag Alternative Proposal does not infringe upon the Regional Board’s discretion. Thus, statements within the
Addendum to the Staff Report indicating that “it would limit the Board’s Authority and discretion to enforce” or it “is
clearly not enforceable” are irrelevant and improperly biased members of the Board. (July 6, 2011 Staff Report, p. 2.)

1 Conditional Waiver were legally incorrect and erroneous, the Board members' opinions on the legality
2 and validity of the Ag Alternative Proposal were improperly biased.

3 **2. The Ag Alternative's Use of Third-Party Groups/Coalitions to Manage**
4 **Components of the Irrigated Lands Regulatory Program is Proper and Is Based**
5 **on An Existing Coalition Group Conditional Waiver**

6 The Ag Alternative Proposal's third-party group is based on the Central Valley Regional Water
7 Quality Control Board's "Coalition Group Conditional Waiver of Waste Discharge Requirements for
8 Discharges From Irrigated Lands." (Central Valley Regional Water Quality Control Board, Order No.
9 R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges
10 From Irrigated Lands.) The Central Valley Regional Board has long approved of and encouraged the
11 use of third-party groups to aid in the implementation of the irrigated lands regulatory program. The
12 Central Valley Regional Board has found, and the State Board has agreed, that the use of coalitions or
13 third-party groups is consistent with the Water Code and the NPS Policy. In particular, the Central
14 Valley Regional Board's findings conclude:

15 As authorized by Water Code Section 13269, this Order conditionally waives the
16 requirement to file WDRs and obtain WDRs for Dischargers, as defined in Attachment
17 A, who are participants in a Coalition Group that complies with the *Coalition Group*
18 *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated*
19 *Lands*. (Central Valley Regional Board, Coalition Group Waiver, p. 2, ¶ 10.)

20 The Central Valley Water Board acknowledges that the Coalition Groups are not
21 responsible for enforcing the Water Code. (Central Valley Regional Board, Coalition
22 Group Waiver, p. 3 ¶ 14.)

23 Neither the Water Code nor Resolution No. 68-16 requires instantaneous compliance
24 with applicable water quality standards. (Central Valley Regional Board, Coalition
25 Group Waiver, p. 6 ¶ 24.)

26 The Ag Alternative Proposal's third-party group concept borrows conditions and language
27 *directly* from the Central Valley Coalition Group Waiver, a waiver found to be in compliance with the
28 NPS Policy and Porter-Cologne. Accordingly, if the inclusion of third-party groups is tantamount to a
legal means of compliance within staff's Draft Order (see August 10, 2011 Staff Report, p. 7), the
inclusion of a third-party group developed by agricultural stakeholders and based on a legally valid

1 existing coalition conditional waiver should also be a legal means to compliance.²⁹

2 **J. THE 2012 CONDITIONAL WAIVER'S TIERING STRUCTURE IS ARBITRARY**

3 The 2012 Conditional Waiver groups individual farms, or dischargers, into three tiers with
4 each tier distinguished by four criteria: size of farm operation, proximity to an impaired watercourse,
5 use of certain chemicals, and type of crop grown. (See Order No. R3-2012-0011 pp. 16-17; Final
6 SEIR, pp. 6-7.)

7 The four criteria used to distinguish the tiers are arbitrary designations not based on sound
8 science and not supported by evidence. All of these factors have little bearing on relative risk to water
9 quality: size does not equate to water quality problems; proper use of two types of approved pesticides
10 does not equate to water quality problems; crop types do not equate to water quality problems; and
11 proximity to a 303(d) listed waterbody does not equate to water quality problems especially since mere
12 location is the trigger.³⁰ Additionally, by merely triggering the criteria above, the tiering structure
13 creates a false premise of polluting water unless a grower can prove otherwise. (See Letter from
14 David Costa, Costa Family Farms (Jan. 3, 2011), available at <[http://www.waterboards.ca.gov/
15 centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/67.pdf](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order2/67.pdf)> attached as Attachment 13.)³¹

16 The tiering structure is arbitrary and essentially flawed since it does not look at actual ways to
17 analyze relative risk to water quality. Rather, the tiering structure improperly focuses the Program on
18 arbitrary designations associated with agricultural production rather than scientifically sound and
19 proven factors causing water quality impairments.

20 In addition to the arbitrary nature of the tiering structure, provisions within the 2012

21 _____
22 ²⁹ The State Board also recognizes the validity of third party groups within the irrigated lands regulatory program
23 structure. (See SWRCB 2010-2011 Fee Schedule available at <[http://www.swrcb.ca.gov/resources/fees/docs/Irrigated
24 _agricultural_discharge_waiver_fees.pdf](http://www.swrcb.ca.gov/resources/fees/docs/Irrigated_agricultural_discharge_waiver_fees.pdf)>.) Moreover, the State Board, recognizing the benefits of a third-party group or
25 coalition, encourages the use of third-party groups by reducing the fees associated with waivers for discharges from
26 agricultural land if a discharger is a member of an approved third-party group. (*Ibid.*; see also State Board Water Quality
Orders.) The payment of the annual fee, either through discharger participation in a third-party group or as an individual,
is further reiterated by the NPS Policy: "Dischargers operating under a WDR must submit an annual fee to the appropriate
RWQCB to cover administrative costs. The fee schedule is determined by the SWRCB, based upon factors such as total
flow, volume, number of animals or area involved, etc." (SWRCB, Policy For Implementation and Enforcement of The
Nonpoint Source Pollution Control Program (May 20, 2004) p. 4 ("NPS Policy").)

27 ³⁰ Thus, even if a property does not drain into that watercourse but is nevertheless within 1,000 feet, the farm falls within
the higher tier.

28 ³¹ Although many comment letters and public testimony spoke on the arbitrary nature of the tiers and failure to tie tier
designations to risk of water quality, the testimony and comment letters were essentially ignored.

1 **SUPPORT FOR REQUEST FOR IMMEDIATE STAY**

2 Pursuant to Water Code section 13321 and Title 23, California Code of Regulations section
3 2053, Petitioners request an immediate stay of Order No. R3-2012-0011.³² Concurrently with this
4 request for immediate stay, Petitioners request the State Board take any action necessary to extend the
5 2004 Agricultural Order at least until the State Board takes final action on this Petition in order to
6 ensure that Petitioners are not immediately harmed. Under section 2053 of the State Board’s
7 regulations, (Cal. Code Regs., tit. 23, § 2053), a stay of the effect of an order shall be granted if
8 petitioner shows:

- 9 (a) There will be substantial harm to the Petitioner or to the public interest if a stay is not granted;
- 10 (b) There will be no substantial harm to other interested persons and to the public interest if a stay
11 is granted;
- 12 (c) There are substantial questions of fact or law regarding the disputed action.

13 The requirements for the issuance of a stay are clearly met in this case as evidenced in the Request for
14 Stay submitted on or about April 16, 2012 by Theresa A. Dunham.

15 **A. Petitioners Will Suffer Substantial Harm if a Stay is Not Granted**

16 If Order No. R3-2012-0011 is not stayed, Petitioners and their members will suffer substantial harm
17 because of the obligation to comply immediately with the additional conditions imposed by the Conditional
18 Waiver. In general, Petitioners and their members will be harmed by increased costs and additional
19 monitoring and reporting obligations that must be incurred immediately in order to comply with the
20 Conditional Waiver. These harms to Petitioners and their members are explained above in this Petition and
21 are hereby incorporated by this reference.

22 **B. Interested Persons and the Public Interest Will Not be Substantially Harmed if a Stay is
23 Granted**

24 Interested persons and the public interest will not be substantially harmed if a stay is granted as water
25 quality will still be regulated.

26 _____
27 ³² Petitioners hereby support and incorporate by this reference the arguments and declarations included in the Request for Stay
28 submitted on or about April 16, 2012 by Theresa A. Dunham.

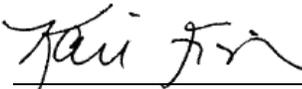
1 **C. Substantial Questions of Law and Fact Exist**

2 As explained in detail in the Request for Stay submitted on or about April 16, 2012 by Theresa
3 A. Dunham, there are substantial questions of both law and fact regarding the Regional Board’s adoption of
4 Order No. R3-2012-0011.

5 FOR ALL THE FOREGOING REASONS, Petitioners respectfully support the Request For
6 Stay and ask that the State Board grant a stay of the effect of Order No. R3-2012-0011 until such time
7 as final action is taken on this Petition. Petitioners also request that the State Board take any action
8 necessary to extend Order No. R3-2004-0117 while the stay is in effect.

9 Dated: April 16, 2012

CALIFORNIA FARM BUREAU FEDERATION

10
11 

12 _____
By: KARI E. FISHER
13 Attorney for California Farm Bureau Federation;
14 Monterey County Farm Bureau;
15 San Benito County Farm Bureau;
16 San Luis Obispo County Farm Bureau;
17 San Mateo County Farm Bureau;
18 Santa Barbara County Farm Bureau;
19 Santa Clara County Farm Bureau;
20 Santa Cruz County Farm Bureau

1 **PROOF OF SERVICE**

2 I, PAMELA K. HOTZ, declare as follows:

3 At the time of service I was at least 18 years of age; not a party to the within action; and employed in the
4 County of Sacramento at 2300 River Plaza Drive, Sacramento, CA 95833.

5 On this date, I served the following document(s) in the manner set forth below: **PETITION FOR
6 REVIEW, OR ALTERNATIVELY, REQUEST FOR OWN MOTION REVIEW OF THE
7 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD’S ORDER NO. R3-
8 2012-0011, R3-2012-0011-01, R3-2012-0011-02, AND R3-2012-0011-03, RESOLUTION NO. R3-
9 2012-0012 AND FILING OF THE NOTICE OF DETERMINATION FOR THE CONDITIONAL
10 WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM
11 IRRIGATED LANDS; PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF
12 PETITION [Water Code § 13320]**

13 **UNITED STATES MAIL [C.C.P. § 1013]** I enclosed the documents in a sealed envelope addressed to the
14 following persons and

15 deposited the sealed envelope with the United States Postal Service with postage thereon fully prepaid at
16 Sacramento, CA addressed as follows:

17 placed the envelope for collection and mailing, following our ordinary business practices. I am readily
18 familiar with our practice for collection processing correspondence for mailing. On the same day that the
19 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with
20 the United States Postal Service, in a sealed envelope with postage thereon fully prepaid at Sacramento,
21 CA address as follows :

22 Roger W. Briggs, Executive Officer
23 Central Coast Regional Water Quality Control Board
24 895 Aerovista Place, Suite 101
25 San Luis Obispo, CA 93401

26 **OVERNIGHT DELIVERY [C.C.P. § 1013(c)]** I enclosed the documents in a sealed envelope provided by
27 an overnight delivery carrier and addressed it to the persons identified below. I placed said envelope for
28 collection at a regularly utilized drop box of the overnight carrier addressed as follows:

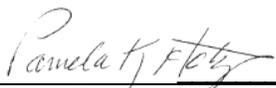
Tracking No:

EMAIL [C.C.P. § 1010.6] Based on a court order or an agreement of the parties to accept service by email, I
caused the documents to be sent to the following persons at the following email address, and did not receive,
within a reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful:

Email: jbashaw@waterboards.ca.gov

Executed at Sacramento, CA

Dated: April 16, 2012


PAMELA K .HOTZ