



**The Otter Project**

[www.otterproject.org](http://www.otterproject.org)

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July 22, 2016

Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA. 93401-7906

**Via email**

Re: 7/28/16 Agenda Item 6 – Process and Timing of Efforts to Replace or Renew the Agricultural Regulatory Order

Dear Chair Wolff, Executive Officer Robertson, Mr. Packard, and Mr. Rose:

Thank you for considering this letter and thank you, in advance, for hearing our comments at the upcoming 7/29-29/2016 board meeting.

The staff report for Agenda Item 6 outlines a plan to replace the operative dates from the 2012 Agricultural Order and to essentially renew that Order (with changed and deleted dates) for a five-year term.

As you know, in August of 2015 the Sacramento Superior Court issued a ruling critical of the 2012 Order as crafted by the Region and as amended by the State. Judge Frawley was fairly specific in his 44-page critique and we believe his judgement is a roadmap to a legal order protective of human health, the environment, and water quality.

Entirely independent of the issue of the appeal, subsequent Ag Orders in the Los Angeles Region and in the East San Joaquin (ESJ) (still in draft) have generally complied with Judge Frawley's Central Coast judgement and have incorporated many changes consistent with the ruling. We find it incredulous that the Central Coast – the subject of the lawsuit – has chosen to ignore the ruling while the State (who crafted the ESJ draft) and the LA Regional Board have generally abided by it.

A justification for your decision seems to be that there is too little time to craft a new order. We disagree. It is our understanding that if you have a draft in early November, you could have a workshop in late November, have Board discussion in December, circulate a revised draft Order in December with public comments due in January, and have an adoption hearing in March. Entire books have been written in 30 days; certainly, given the detailed roadmap in Judge Frawley's ruling, staff can craft a new Order in the next three months. Judge Frawley points to the Central Coast's February 2010 draft Order as one possible solution. You also have the models of LA and ESJ.

We also wish to point out that Judge Frawley's ruling was made 23 months before the new Order must be in place. We witnessed first-hand Executive Officer Harris' reluctance to engage the task of crafting a new order. Mr. Harris left in December, leaving 15 months to craft a new Order. Mr. Roberson was appointed in March, leaving 12 months to craft a new Order. Our point is that the short deadline is self-inflicted: Human health, the environment, and water quality should not suffer from the Board's self-inflicted wound.

We have stood up at several board meetings and reminded the Board that a new Order is due in March 2017. The response has sometimes been that nothing can be done because Judge Frawley's decision has been appealed. All parties – the petitioners, State Board, Attorney General's Office, and the interveners – agree that the Regional Board has an independent obligation to craft a new Order. The appeal process cannot be used as an excuse to delay.

And finally, the issue of whether a renewal of the existing Order can serve as a "new" Order has already been proposed and dismissed. As generally happens, the judge asked the prevailing party, in this case Coastkeeper et. al., to "prepare the Order." Our draft judgement was opposed by the State and interveners. The State argued that the Ag Order could simply be renewed and abracadabra, the renewal would be a "new" Order. In our reply, we argued against that plan. The Judge chose our course of action. How can the Region (a subsidiary of the State) do what the State cannot do? I have attached our argument.

Thank you for considering these comments. I wish to request extra time -- six total minutes – to speak to this item at the upcoming meeting. Thank you again for your service to the State.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Shimek', is positioned above the typed name.

Steve Shimek  
Executive Director  
[exec@otterproject.org](mailto:exec@otterproject.org)

Attachment

September 9, 2015

**VIA FEDEX**

Hon. Timothy J. Frawley  
Superior Court of California,  
County of Sacramento  
720 Ninth Street, Dept. 29  
Sacramento, CA 95814

**Re: *Monterey Coastkeeper v. State Water Resources Control Board,*  
Case No. 34-2012-80001324**

Dear Judge Frawley:

Pursuant to this Court's August 10, 2015, Ruling on Submitted Matter and California Rule of Court 3.1312, Petitioners hereby submit their proposed judgment and writ in the above-referenced case.

Consistent with Rule 3.1312, Petitioners transmitted to Respondent State Water Resources Control Board ("State Board") and Respondent-Intervenors Ocean Mist Farms, et al., a proposed judgment and writ on August 14, 2015, within five days of the Court's August 10, 2015, Ruling ("Ruling"). In the ensuing weeks, the parties exchanged multiple drafts in an attempt to reach agreement on the language of the proposed judgment and writ. The parties were able to reach agreement on a number of issues, which agreement is reflected in the attached versions of the proposed judgment and writ.

Unfortunately, the parties were unable to reach agreement on one issue—whether the judgment should either:

- As Petitioners propose, require the State Board to reconsider the Central Coast Regional Water Quality Control Board ("Regional Board") Order No. R3-2012-0011 ("2012 Waiver") and associated monitoring and reporting program, and take "those additional actions that are within Respondent's discretion and are sufficient to formulate a new or modified waiver" or other adequate regulatory program "which is consistent with this Court's Ruling"; or
- As the State Board proposes, allow the State Board to "either decline to review the administrative petitions" for review of the 2012 Waiver, which dismissal, if lawful, would have the effect of reinstating the 2012 Waiver, "or formulate a new or

modified waiver” or other regulatory program “that is consistent with this Court’s Ruling” (emphasis added).

In Petitioners’ view, requiring the State Board to take “those additional actions that are within Respondent’s discretion and are sufficient to formulate a new or modified waiver” or other adequate regulatory program “consistent with this Court’s Ruling” is (1) broad enough to avoid impinging on the State Board’s lawful discretion and (2) specific enough to require the State Board to take action that complies with the Court’s Ruling.

On the other hand, a judgment that allows the State Board to simply decline review of the administrative petitions, and thereby reinstate the 2012 Waiver, (1) would not be consistent with the Court’s Ruling; (2) would fail to take into account the many ways in which the Modified Waiver (and the 2012 Waiver before it) have failed to restore and protect water quality in the Central Coast Region; and (3) would contemplate an action that is not permitted under the State Board’s own procedures.<sup>1</sup>

On the first point, the Court’s Ruling found that the State Board’s Order WQ 2013-0101 (“Modified Waiver”) violated the California Water Code and the State Nonpoint Source Policy for a number of reasons, and that the Modified Waiver failed to apply the State Antidegradation Policy consistent with applicable case law. Accordingly, the Court granted Petitioners’ petition for a writ of mandate and indicated it would

issue a peremptory writ of mandate compelling Respondent State Board to set aside [the Modified Waiver] and reconsider the [2012 Waiver] and related Monitoring and Reporting Program . . . . The State Board may choose to allow the Modified Waiver to remain in effect on an interim basis while the State Board takes action to formulate a new waiver consistent with this ruling.

Ruling at 44 (emphasis added); see also id. at 2 (“The court shall grant the petition and issue a peremptory writ of mandate commanding Respondent State Board to reconsider the Waiver.”). The Court added that the State Board must, on remand, “reconsider whether the [U.C. Davis] Report should be admitted into the record” and “consider what, if any, supplemental review may be required to comply with CEQA in connection with the Waiver.” Ruling at 43-44.

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<sup>1</sup> To be clear, the question of whether future State Board action dismissing the administrative petitions and reinstating the 2012 Waiver would comply with the Court’s Ruling is not before the Court at this time. The State Board’s proposed judgment inappropriately jumps the gun and asks the Court to determine now that such action would expressly comply with the Court’s Ruling. Petitioners’ proposed judgment is appropriately neutral on this question. Petitioners point out problems with the State Board’s proposed language, not to seek a determination now as to whether reinstating the 2012 Waiver would comply with the Ruling, but instead to highlight the reasons why the Court should not adopt a judgment that forecloses, in one party’s favor, that question at this time.

By its own language, the Court's Ruling plainly requires the State Board to do two things: (1) reconsider the 2012 Waiver, and (2) formulate a new waiver consistent with the Ruling. Petitioners' proposed judgment and writ reflect these commands; they direct the State Board to reconsider the 2012 Waiver and "[t]ake those additional actions that are within [the Board's] discretion and are sufficient to formulate a new or modified waiver . . . , or another program . . . , which is consistent with this Court's Ruling on Submitted Matter." This language does not constrain the State Board's discretion to take whatever action it prefers, so long as that action yields a waiver that addresses the deficiencies the Court identified in its Ruling.

The State Board's proposed judgment, in contrast, is not consistent with the Court's Ruling because it expressly allows an alternative means of compliance that the Ruling does not support. By allowing the Board to "either decline to review the administrative petitions, or formulate a new or modified waiver," the Board's proposed judgment would allow the Board simply to dismiss the administrative petitions for review of the 2012 Waiver and reinstate that Waiver. Such action would neither "reconsider" the 2012 Waiver nor "formulate a new waiver consistent with" the Court's Ruling, and thus would deny Petitioners the relief the Ruling grants (or expressly intends to grant).

In Petitioners' view, at least some modifications of the 2012 Waiver would be required by the Court's Ruling. Consider five examples. First, the 2012 Waiver, like the Modified Waiver, adopts an iterative compliance approach the Court held was "inadequate to ensure any meaningful progress toward achieving quantifiable reductions in pollutant discharges." Ruling at 35. Although the Modified Waiver's main iterative provision, Provision 83.5, is absent in the 2012 Waiver, in adopting Provision 83.5 the State Board said it intended to "make explicit the Regional Board's intent that implementation of increasingly more effective management practices in an iterative manner as necessary constitutes compliance" with water quality standards and other provisions of the 2012 Waiver. SB 7186. According to the State Board, the 2012 Waiver's Provision 12 and Finding 10 provide that the Regional Board will not take enforcement action against dischargers for violations of water quality standards so long as that discharger is implementing or improving undefined management practices. SB 7185.

Second, the Court faulted the Modified Waiver for the small number of growers subject to the "more stringent" requirements of Tier 3, which includes only about 3% of growers and 14% of the irrigated acreage in the Central Coast Region. Ruling at 35. The vast majority of growers, 97% or more, would be subject to requirements equal to or less stringent than those in the 2004 Waiver, which was unsuccessful at reducing pollution and preventing further degradation. Ruling at 30, 33, 35. In addition, the Modified Waiver allows Tier 3 growers to move to a lower tier by participating in an approved alternative third party project/program or by switching to pesticides other than diazinon or chlorpyrifos. Ruling at 33. The 2012 Waiver suffers from these same deficiencies. See RB 7779, 8478-79 (allowing Tier 3 growers to move to a lower tier).

Third, the 2012 Waiver violates the State Nonpoint Source Policy in the same ways as the Modified Waiver. See Ruling at 38. Specifically, first, the 2012 Waiver does not contain adequate monitoring and reporting to verify compliance with requirements and measure progress over time. See infra. Second, the 2012 Waiver does not contain specific time schedules designed to measure progress toward reaching quantifiable milestones; rather, the 2012 Waiver's time schedules are "administrative in nature (not water quality)." RB 7769. Third, the 2012 Waiver does not contain a description of the actions to be taken if verification and feedback mechanisms indicate that management practices are failing. Indeed, "there are no defined requirements to specifically meet water quality standards or objectives in runoff or discharges in the Order." RB 7769.

Fourth, the Court found that the Modified Waiver lacked sufficient compliance and verification monitoring. Ruling at 41-42. Like the Modified Waiver, the 2012 Waiver relies on iterative management practice implementation to achieve water quality standards, RB 7769-71, and cooperative surface receiving water monitoring to identify exceedances among only a small percentage of growers, SB 7198-99. Furthermore, the State Board itself was "skeptical that the [Regional Board] has adopted the monitoring program best suited to meet the purpose of identifying and following upon high-risk discharges," and acknowledged the limitations of the representative monitoring approach taken in the 2012 Waiver. SB 7198. In fact, the State Board found that the 2012 Waiver did "not establish the type of comprehensive process necessary to identify and address problem dischargers." SB 7199. Since the 2012 Waiver takes the same or an even less-effective approach to compliance and verification monitoring as the Modified Waiver, the 2012 Waiver violates section 13269(a)(2).

Fifth, like the Modified Waiver, the 2012 Waiver does not assess compliance with the State Antidegradation Policy consistent with Asociacion de Gente Unida Por el Agua v. Central Valley Reg'l Water Quality Control Bd., 210 Cal. App. 4th 1255 (2012) ("AGUA"). See Ruling at 39. Among other things, there are no findings in the 2012 Waiver that the Central Coast Region has high quality waters. Despite the strong record evidence that there are such waters, see, e.g., RB 5444-5512, the Waiver simply assumes that there are high quality waters without any analysis comparing the "baseline water quality" to the water quality objectives established to protect designated beneficial uses. SB 7279; RB 8509.<sup>2</sup>

These deficiencies are already making themselves plain during the time the 2012 Waiver and the Modified Waiver have been in effect. As the attached Declaration of Steve Shimek explains, first, to avoid the more stringent requirements of Tier 3, growers are substituting diazinon and chlorpyrifos with more toxic and more persistent pesticides. As a

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<sup>2</sup> At a minimum, the State and/or Regional Boards must update the deadlines in the 2012 Waiver, many of which will pass in the coming months. For example, by October 1, 2015, Tier 3 dischargers must have: (1) effectively controlled individual waste discharges of pesticides and toxic substances (Provision 80); (2) effectively controlled waste discharges of sediment and turbidity (Provision 81); (3) determined crop nitrogen uptake (if high nitrate loading risk); (4) submitted an irrigation and nutrient management plan; and (5) submitted progress towards nitrogen balance ratios. RB 8496, 8501. Modifying these deadlines will plainly require a "new or modified" waiver.

result, fewer farms and acres are subject to the only requirements that make the Modified Waiver and the 2012 Waiver more stringent than the 2004 Waiver. Indeed, where the Regional Board estimated in 2011 that Tier 3 would apply to 100 farms and 54% of irrigated acreage, as of May 2015, those figures are 49 and 5%, respectively. Of those 49 farms, 71% report that they have no discharges and therefore are not subject to any monitoring requirements. Not surprisingly, water quality in the Central Coast Region continues to degrade. Six of eight monitoring sites show worsening nitrate pollution, and toxicity, especially sediment toxicity, continues to get worse, even though the industry continues to use a test organism that fails to reveal just how toxic the waters are. These facts are further proof that, whatever action the State Board takes, that action must yield a regulatory program with “requirements reasonably designed to show measureable progress toward improving water quality over the short-term and achiev[e] water quality standards in a meaningful timeframe.” Ruling at 32. The 2012 Waiver does not, and cannot, do that.

Given these clear problems in the 2012 Waiver, and given the Court’s command that the State Board “reconsider” the 2012 Waiver and “formulate a new waiver” that corrects the problems the Court has identified, Petitioners submit that the Court’s judgment cannot allow the State Board to take action that would merely reinstate the 2012 Waiver.

Petitioners also submit that the Board cannot, under its regulations, simply dismiss the administrative petitions for review of the 2012 Waiver. The State Board avers, in the attached September 3, 2015, email message, that any judgment or writ that “precludes the State Water Board from exercising its discretion to decline further review of the administrative petitions,” and thereby reinstate the 2012 Waiver, is “contrary to established precedent.” Petitioners respectfully disagree. Where the State Board accepts review of a regional board decision by administrative petition, the State Board must take action on the petition within a specified period, or the petition is deemed denied. 23 Cal. Code Reg. § 2050.5(b). If the Board cannot meet that deadline, it may instead choose to review the regional board’s decision on its (the State Board’s) own motion. Water Code § 13320; Cal. Code Reg. § 2050.5.

Here, the State Board initially took up review of the Regional Board’s 2012 Waiver by way of administrative petitions, but “ultimately decided to review the Regional Board’s actions on its own motion.” Ruling at 22; see also SB 5637. That decision effectively disposed of the administrative petitions and left the State Board with the choices accorded it under Water Code § 13320(c) (“Upon finding that the action of the regional board, or failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to another state agency having jurisdiction, take appropriate action itself, or take any combination of those actions.”). The State Board’s prior actions and this Court’s Ruling properly require that the Board take one of these enumerated actions, rather than simply dismiss the administrative petitions for

review. Petitioners' proposed judgment and writ leave the State Board with all the discretion the law affords it.<sup>3</sup>

Because the parties were unable to reach agreement on a single proposed judgment and writ, Petitioners are attaching to this letter five documents: (1) Petitioners' proposed judgment and writ (Exhibit A); (2) the declaration of Steve Shimek in support of Petitioners' proposed judgment and writ (Exhibit B); (3) the State Board's proposed judgment and writ (Exhibit C); (4) the State Board's email message in support of its proposed judgment and writ (Exhibit D); and (5) a redline showing the difference between Petitioners' and the State Board's proposed judgments and writs (Exhibit E). Respondent-Intervenors Ocean Mist Farms did not ask Petitioners to submit a separate proposed judgment and writ, or any other document, with this letter.

We appreciate the Court's continued consideration of this matter.

Sincerely,



Matthew J. Sanders

#### Attachments

cc: Matthew J. Goldman  
Theresa A. Dunham  
Kari E. Fisher  
William J. Thomas  
Jason E. Resnick

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<sup>3</sup> The State Board's reliance on *People ex. rel. Cal. Reg'l Water Quality Control Bd. v. Barry*, 194 Cal. App. 3d 158 (1987), and *Johnson v. State Water Res. Control Bd.*, 123 Cal. App. 4th 1107 (2004), is misplaced. In both cases, the State Board declined to consider petitions challenging regional board action as an initial matter without conducting any review. *Barry*, 194 Cal. App. 3d at 167-68; *Johnson*, 123 Cal. App. 4th at 1111. Here, the State Board found that the petitions complied with Cal. Code Reg. § 2050, requiring it to act upon the petitions in the time period specified by section 2050.5(b). The State Board was unable to meet the time limits for deciding the petitions, and decided to review the Regional Board's actions on its own motion.



# **Exhibit A**

**(Petitioners' proposed judgment and writ)**

1 Deborah A. Sivas, CA Bar No. 135446  
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Attorneys for All Petitioners

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF MANDATE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE § 1094.5**

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 This matter came on for hearing on May 15, 2015, in Department 29. All parties were  
2 represented through their respective attorneys. The matter was argued and taken under submission. On  
3 August 10, 2015, the Court entered its Ruling on Submitted Matter, attached hereto as Exhibit A and  
4 hereby incorporated into this Judgment. In accordance with that Ruling on Submitted Matter,  
5 IT IS ORDERED, ADJUDGED AND DECREED:

6 1. Judgment is entered in favor of Petitioners in this proceeding.

7 2. A peremptory writ of mandate (“Writ”) shall issue under seal of this Court commanding  
8 Respondent State Water Resources Control Board (“Respondent”) to set aside its Order No. WQ 2013-  
9 0101.

10 3. The Writ shall further command Respondent to reconsider the Conditional Waiver of  
11 Waste Discharge Requirements (Order No. R3-2012-0011) and related Monitoring and Reporting  
12 Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03) consistent with the  
13 Ruling on Submitted Matter. Nothing in this Judgment or in the Writ is intended to limit or control the  
14 discretion legally vested in Respondent.

15 4. Pursuant to this Court’s Ruling on Submitted Matter, Respondent shall:

16 a. Reconsider the Conditional Waiver of Waste Discharge Requirements (Order  
17 No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-  
18 2012-0011-02, and R3-2012-0011-03);

19 b. Take those additional actions that are within Respondent’s discretion and are  
20 sufficient to formulate a new or modified waiver under Water Code § 13269, or another program that  
21 satisfies the waste discharge requirements of the Water Code such as those set forth in Water Code  
22 § 13263, which is consistent with this Court’s Ruling on Submitted Matter;

23 c. Ensure that the new or modified waiver or other program referred to in paragraph  
24 4(b) is in place and effective on or before March 15, 2017; and

25 d. File and serve an interim return to this Writ on or before December 1, 2015,  
26 specifying what actions Respondent has taken or will take to satisfy the Court’s Judgment and Writ.

27 In addition, Respondent shall file and serve a return to the Writ in satisfaction of this Judgment  
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- 2 -

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 and Writ, on or before April 15, 2017.

2           5.       Respondent may allow the Conditional Waiver of Waste Discharge Requirements  
3 (Order No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-  
4 01, R3-2012-0011-02, and R3-2012-0011-03), as modified by Respondent's Order WQ 2013-0101, to  
5 remain in effect on an interim basis, but only until March 15, 2017, while Respondent takes action to  
6 satisfy this Judgment and return the Writ.

7           6.       This Court shall retain jurisdiction for purposes including, but not limited to, issuing any  
8 orders that are necessary to enforce the Judgment and to facilitate its satisfaction.

9           7.       Petitioners are awarded their costs of suit in the amount of \$\_\_\_\_\_  
10 This Court retains jurisdiction to determine the matter of entitlement to attorney fees and the amount of  
11 any award pursuant to a timely filed motion by Petitioners.

12  
13 IT IS SO ORDERED, ADJUDGED, AND DECREED.

14  
15 Date: September \_\_\_\_\_, 2015

\_\_\_\_\_  
16 Hon. Timothy M. Frawley  
17 California Superior Court Judge  
County of Sacramento

18 **Submitted by:**

19  
20 \_\_\_\_\_, September \_\_\_\_, 2015  
21 Deborah A. Sivas  
Attorney for Petitioners

22 **Approved as to form by:**

23  
24 \_\_\_\_\_, September \_\_\_\_, 2015  
25 Matthew J. Goldman  
Attorney for Respondent State Water Resources Control Board

1 \_\_\_\_\_, September \_\_\_\_, 2015

Theresa A. Dunham

2 Attorney for Respondent-Intervenors Grower-Shipper Association of Central California, Grower-  
3 Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers  
4 Association

5 \_\_\_\_\_, September \_\_\_\_, 2015

William J. Thomas

6 Attorney for Respondent-Intervenors Ocean Mist Farms and RC Farms

7 \_\_\_\_\_, September \_\_\_\_, 2015

Kari E. Fisher

8 Attorney for Respondent-Intervenor California Farm Bureau Federation  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
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ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

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CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

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Case No. 34-2012-80001324

**[PROPOSED] PEREMPTORY  
WRIT OF MANDATE PURSUANT  
TO CODE OF CIVIL PROCEDURE  
§ 1094.5**

Case No. 34-2012-80001324

[PROPOSED] PEREMPTORY WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 To CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, RESPONDENT:

2 Judgment having been entered in this action, ordering that a peremptory writ of mandate  
3 (“Writ”) be issued from this Court, RESPONDENT IS HEREBY COMMANDED set aside its Order  
4 No. WQ 2013-0101, which proceedings are hereby remanded to Respondent, to reconsider the  
5 Conditional Waiver of Waste Discharge Requirements (Order No. R3-2012-0011) and related  
6 Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-  
7 0011-03), and to take those additional actions that are within Respondent’s discretion and are  
8 sufficient to formulate a new or modified waiver under Water Code § 13269 or another program that  
9 satisfies the waste discharge requirements of the Water Code, such as those set forth in Water Code  
10 § 13263, consistent with the Court’s August 10, 2015, “Ruling on Submitted Matter,” which is  
11 attached hereto as Exhibit A. RESPONDENT IS FURTHER COMMANDED to ensure that the new  
12 waiver or other program is in place and effective on or before March 15, 2017; to file and serve an  
13 interim return to this Writ on or before December 1, 2015, specifying what actions Respondent has  
14 taken or will take to satisfy the Court’s Judgment and Writ; and to file and serve a return to this Writ  
15 in satisfaction of the Court’s ruling on or before April 15, 2017.

16  
17 WITNESS the Honorable Timothy M. Frawley, Judge of the Superior Court.

18  
19 Dated: \_\_\_\_\_  
20 \_\_\_\_\_  
21 CLERK OF THE SUPERIOR COURT

22 LET THE FOREGOING WRIT ISSUE.  
23  
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# **Exhibit B**

**(Declaration of Steve Shimek in support of Petitioners'  
proposed judgment and writ)**



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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**DECLARATION OF STEVEN  
SHIMEK IN SUPPORT OF  
[PROPOSED] JUDGMENT  
GRANTING WRIT OF MANDATE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE § 1094.5**

Case No. 34-2012-80001324

DECLARATION OF STEVEN SHIMEK IN SUPPORT OF PETITIONERS'  
[PROPOSED] JUDGMENT AND [PROPOSED] WRIT PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 I, Steven Shimek, declare:

2 1. I am the Program Director for Petitioner Monterey Coastkeeper, a program of The Otter  
3 Project, and I am also Executive Director of The Otter Project. The matters set forth herein are based  
4 on my personal knowledge, and, if called upon to testify, I could and would testify competently to  
5 them.

6 2. I have come to be aware that the State Water Resources Control Board (“State Board”)  
7 is insisting on a proposed judgment and writ that would, as a means of complying with the Court’s  
8 August 10, 2015, Ruling on Submitted Matter (“Ruling”), allow the State Board to simply deny the  
9 administrative petitions for review of the Central Coast Regional Water Quality Control Board’s  
10 (“Regional Board”) Order No. R3-2012-0011 (“2012 Waiver”) and associated monitoring and  
11 reporting program. I also understand that this action, if permitted, would, in the State Board’s view,  
12 have the effect of reinstating the 2012 Waiver.

13 3. The State Board’s Order WQ 2013-0101 (“Modified Waiver”) has been in effect since  
14 October 24, 2013, before which the 2012 Waiver was in effect since March 2012. Apart from this  
15 litigation, including the Court’s judgment and whatever action(s) the State Board takes to satisfy the  
16 judgment, the Modified Waiver would expire on its own terms on March 15, 2017.

17 4. The 2012 Waiver shares many of the features of the Modified Waiver, which the Court,  
18 in its Ruling, found violated applicable laws and was inconsistent with applicable case law. Those  
19 features are failing to measurably improve and protect water quality in the Central Coast Region, for at  
20 least the four reasons discussed below.

21 5. The Modified Waiver and the 2012 Waiver have the same inadequate tiering structure,  
22 in that they unwisely subject dischargers to the most stringent requirements based primarily on which  
23 pesticides they use.

24 a. The Modified Waiver and 2012 Waiver employ tiers with different requirements  
25 for dischargers. Tier 3, the most restrictive tier, is defined to include any discharger that “grows crop  
26 types with high potential to discharge nitrogen to groundwater at the farm/ranch . . . , and farm/ranch  
27 total irrigated acreage is greater than or equal to 500 acres,” or that “applies chlorpyrifos or diazinon at  
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- 2 -

Case No. 34-2012-80001324  
DECLARATION OF STEVEN SHIMEK IN SUPPORT OF PETITIONERS’  
[PROPOSED] JUDGMENT AND [PROPOSED] WRIT PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 the farm/ranch, and the farm/ranch discharges irrigation or stormwater runoff to a waterbody listed for  
 2 toxicity or pesticides on the 2010 List of Impaired Waterbodies.” RB 8481; SB 7346. Because there  
 3 are few irrigated agricultural operations in the Central Coast larger than 500 acres, Tier 3 generally  
 4 applies to dischargers based on the second condition, the use of diazinon and chlorpyrifos, two  
 5 organophosphate pesticides.

6 b. The use of diazinon and chlorpyrifos has been declining for many years, and  
 7 dischargers are rapidly replacing them with more toxic (pyrethroids) and more persistent  
 8 (neonicotinoids) alternatives. The following table, which I have created using data from the source  
 9 identified below the table, shows this marked shift over the most recent six-year period for which data  
 10 are publicly available:

Chemical	Class	Agricultural pounds applied					
		2008	2009	2010	2011	2012	2013
Chlorpyrifos	organophosphate	69,616	50,009	49,870	38,314	24,084	13,894
Diazinon	organophosphate	117,923	51,256	38,367	19,791	11,874	2,815
Imidicloprid	neonicotinoid	15,358	15,639	18,568	20,174	22,052	20,071
Permethrin	pyrethroid	18,009	20,133	22,290	31,666	33,470	37,652

11 **Figure 1.**  
 12 Agricultural use of select pesticides in Monterey County by year. Source: California Department of Pesticide  
 13 Regulation, Pesticide Use Annual Summaries, available at <http://www.cdpr.ca.gov/docs/pur/purmain.htm>.

14 c. Pyrethroid pesticides, such as permethrin, are far less soluble in water than  
 15 organophosphates, such as diazinon and chlorpyrifos. This characteristic makes them especially toxic  
 16 to bees, fish and aquatic insects. See, e.g., <http://npic.orst.edu/factsheets/Permttech.html>.  
 17 Neonicotinoids, meanwhile, are believed to contribute to honey bee colony collapse disorder. See  
 18 Renee Johnson, “Honey Bee Colony Collapse Disorder,” Congressional Research Service Review  
 19 (July 7, 2010), available at <http://www.fas.org/sgp/crs/misc/RL33938.pdf>. Indeed, a recent study  
 20 published by the National Institutes of Health explains that neonicotinoids are becoming ever more  
 21 popular “largely due to their high toxicity to invertebrates, the ease and flexibility with which they can  
 22 be applied, their long persistence, and their systemic nature, which ensures that they spread to all parts  
 23 of the target crop.” J.M. Bonmatin, et al., “Environmental fate and exposure; neonicotinoids and  
 24 fipronil,” Environ. Sci. Pollut. Res. Int. 2015; 22: 35–67 (Aug. 7, 2014), available at  
 25 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4284396/>. “However,” the study explains, “these  
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1 properties also increase the probability of environmental contamination and exposure of nontarget  
2 organisms . . . Persistence in soils, waterways, and nontarget plants is variable but can be prolonged;  
3 for example, the half-lives of neonicotinoids in soils can exceed 1,000 days, so they can accumulate  
4 when used repeatedly . . . Breakdown results in toxic metabolites, though concentrations of these in  
5 the environment are rarely measured.” Id.; see also National Pesticide Information Center,  
6 “Imidacloprid (Neonicotinoid) Technical Fact Sheet, available at  
7 <http://npic.orst.edu/factsheets/imidacloprid.pdf>.

8           6.       The Modified Waiver and 2012 Waiver employ a tiering structure that requires too little  
9 of too few to be effective.

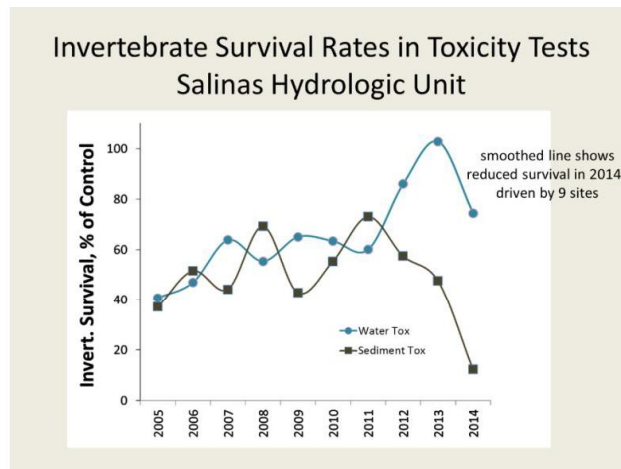
10               a.       Like the Modified Waiver, the 2012 Waiver uses a tiering structure in an  
11 attempt to focus regulatory effort on those farming operations that pose the most risk to human health  
12 and the environment. Tier 3 is the more restrictive tier and requires more care and monitoring than the  
13 previous 2004 Waiver, which failed to meaningfully improve water quality. Tier 1 is less restrictive  
14 than the 2004 Waiver and Tier 2 is about the same.

15               b.       When it was developing the 2012 Waiver, Regional Board staff estimated that  
16 early proposed waivers would have placed 11% of dischargers and 54% of irrigated acreage in Tier 3.  
17 RB 4863-64. Staff significantly reduced those numbers for the 2012 Waiver, estimating that  
18 approximately 100 farm operations and 14% of irrigated acreage would be in Tier 3. RB 7760, 7779.

19               c.       Things are even worse in practice; perhaps as the result of switching pesticides  
20 discussed above, far fewer farms and far less acreage are in Tier 3. As of May 2015, roughly 49 farm  
21 operations totaling approximately 21,000 acres, only 4.6% of the total irrigated acreage in the Region,  
22 are in Tier 3. Of those 49 operations, 35 (71%) self-report that they have no discharge, which means  
23 they have no discharge monitoring requirements. See  
24 [http://www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2015/may/item15/item15\\_presentatio](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/may/item15/item15_presentatio)  
25 [n%20Compliance ACF.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/may/item15/item15_presentatio). Requiring undefined improved management practices for less than 5% of  
26 irrigated acreage, as the 2012 Waiver would do, will not result in improved water quality in the  
27 Central Coast.  
28

1           7.       Water quality conditions have deteriorated, not improved, under the Modified Waiver  
2 and the 2012 Waiver.

3           a.       The 2012 Waiver’s emphasis on pesticides no longer in widespread use,  
4 combined with the low number of growers enrolled in Tier 3, have resulted in surface water conditions  
5 deteriorating since the 2012 Waiver was adopted. According to a presentation given by the  
6 dischargers’ water quality testing program, conditions at monitoring sites in some of the most  
7 cultivated areas are deteriorating, as seen in the two figures below. For pesticides, the trends are  
8 exactly what would be expected if dischargers were switching away from diazinon and chlorpyrifos  
9 (which cause toxicity in water) to pyrethroid pesticides (which cause toxicity in sediment) (Figure 2).  
10 For nitrates, in the contiguous lower Salinas and Pajaro systems, two sites show improving trends  
11 while six sites show worsening trends (Figure 3).



21           **Figure 2.**

22           Slide from presentation by dischargers’ water quality monitoring program to the Regional Board (July 30,  
23           2015), available at  
24           [www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2015/july/item15/item15\\_presentation.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/july/item15/item15_presentation.pdf).  
25           Survival less than 80% is considered toxic.

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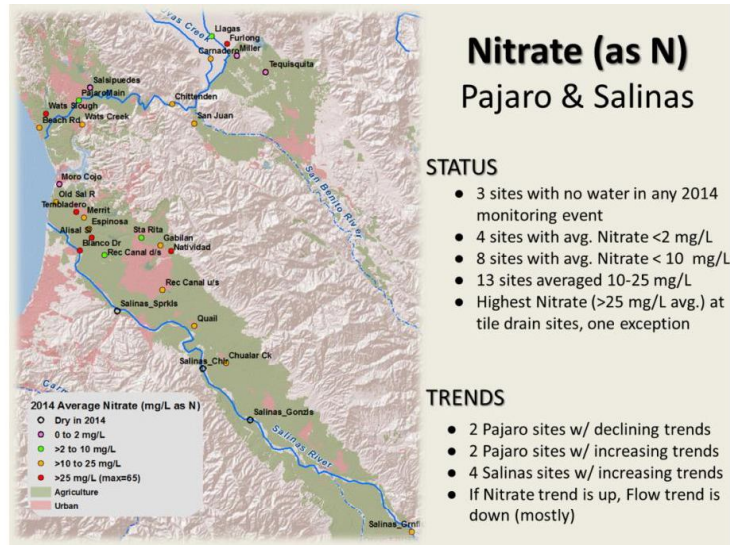


Figure 3.

Slide from presentation by dischargers' water quality monitoring program to the Regional Board (July 30, 2015), available at [www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2015/july/item15/item15\\_presentation.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/july/item15/item15_presentation.pdf). The drinking water standard is 10 mg/L; the aquatic life standard is 1 mg/L.

8. The Modified Waiver and 2012 Waiver employ inadequate and outdated monitoring.
  - a. Whether by coincidence or design, the dischargers' monitoring program, which the Regional Board relies on for water quality data and to determine regulatory compliance, uses a tiny crustacean for toxicity testing: *Ceriodaphnia dubia*, commonly known as a water flea. *Ceriodaphnia*, which is not native to the Central Coast Region, is most sensitive to organophosphate pesticides such as chlorpyrifos and diazinon.
  - b. Another EPA-approved test crustacean, *Hyalella azteca*, is native to the Region and is an important food for native fishes, including the federally endangered South Central Coast steelhead trout. *Hyalella* are sensitive to pyrethroid pesticides, and are often used in combination with *Chironomus* (a midge, or small fly), which are sensitive to neonicotinoid pesticides.
  - c. When non-native *Ceriodaphnia* and native *Hyalella* were tested side-by-side in Quail Creek in the Salinas Valley, the results were noticeably different: samples using *Ceriodaphnia* more often met toxicity standards, while samples using *Hyalella* more often failed them. See Figure 4 (next page).

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Sample	Ceriodaphnia Survival Percentage	Hyalabella Survival Percentage
untreated	80	86
untreated	100	54
untreated	96	98
untreated	96	0
untreated	0	0
untreated	96	50
<b>Samples meeting toxicity standards</b>	<b>5 of 6</b>	<b>2 of 6</b>

**Figure 4.**  
Table comparing toxicity rates based on the 2012 Waiver’s testing method and more comprehensive methods. Extracted from B.M. Phillips, et al., “The Effects of the Landguard A900 Enzyme on the Macroinvertebrate Community in the Salinas River, California,” 69 Arch. Environ. Contam. and Toxicol. 1, 5 (June 29, 2015), available at <http://www.ncbi.nlm.nih.gov/pubmed/26118992>.

d. A follow-up test was conducted to determine the accuracy of the toxicity test the growers were using. The results of that test are reported in the May 2015 Executive Officer’s Report to the Regional Board, *available at* [www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2015/may/item23/item23\\_stfrpt.pdf](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/may/item23/item23_stfrpt.pdf), and are represented in a table copied from the report (Figure 5, on the next page). Like Figure 4, Figure 5 shows that dischargers’ testing under the 2012 Waiver, using *Ceriodaphnia*, found no toxicity at any of the listed sites, while independent testing, using *Hyalabella* and *Chironomus*, found 89% of the same sites to be toxic.

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FALL 2014: DPR/SWAMP/CMP Region 3			
Salinas and Santa Maria Valley Sites	<i>Hyalella</i> 10d water	<i>Chironomus</i> 10d water	EPA 3 species chronic
Water Sample	SWAMP		CMP
Alisal Slough @ Hartnell Rd	T	T	-
Chualar Creek @ Chualar River Road*	T	NT	NT
Main St. Ditch @ Main St.	NT	NT	NT
Orcutt Creek @ West Main	T	T	NT
Oso Flaco Creek @ OF Lake Rd	T	T	NT
Quail Creek @ SR-101	T	T	NT
Rec Ditch III (Near Airport Blvd)	T	T	NT
Solomon Creek @ SR-1	NT	T	NT
Tembladero Slough @ Hero	T	NT	NT
Percent Toxic	78%	67%	0%
Combined Percent Toxic	89%		

**Figure 5.**

Another table comparing toxicity rates based on the 2012 Waiver’s testing method and more comprehensive methods. In this table, “T” means “toxic” and “NT” means “not toxic.” The fourth column (EPA /CMP) lists the results of the dischargers’ toxicity test, while the second and third columns represent the results of other EPA-approved tests methods.

e. These data suggest two things. First, as growers substitute some organophosphate pesticides in favor of more toxic and persistent pyrethroids and neonicotinoids, toxicity is increasing, or at least not improving, in the Central Coast Region. Second, the 2012 Waiver’s monitoring program, which tests for toxicity caused by organophosphate pesticides but not pyrethroid and neonicotinoid pesticides, may be vastly underestimating the toxicity of the Central Coast Region’s waters.

9. To summarize, as a consequence of focusing on only two pesticides that are no longer in widespread use, the 2012 Waiver, like the Modified Waiver, fails to cover enough growers or acreage to make meaningful improvements in water quality. The 2012 Waiver incentivizes growers to switch to new classes of pesticides that are more toxic and more persistent than existing pesticides, and growers are in fact switching to these new pesticides. New testing protocols have not kept pace with this switch; as a consequence, the toxicity of Central Coast waters may be seriously underestimated. And data collected by growers themselves in fact demonstrates worsening conditions, both in terms of nitrate pollution and toxicity.



1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct and that this Declaration was executed on September 9, 2015, in Monterey, California.

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6 STEVEN SHIMEK  
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# **Exhibit C**

**(State Water Resources Control Board's  
proposed judgment and writ)**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
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Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF MANDATE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE § 1094.5**

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 This matter came on for hearing on May 15, 2015, in Department 29. All parties were  
2 represented through their respective attorneys. The matter was argued and taken under submission. On  
3 August 10, 2015, the Court entered its Ruling on Submitted Matter, attached hereto as Exhibit A and  
4 hereby incorporated into this Judgment. In accordance with that Ruling on Submitted Matter,  
5 IT IS ORDERED, ADJUDGED AND DECREED:

6 1. Judgment is entered in favor of Petitioners in this proceeding.

7 2. A peremptory writ of mandate (“Writ”) shall issue under seal of this Court commanding  
8 Respondent State Water Resources Control Board (“Respondent”) to set aside its Order No. WQ 2013-  
9 0101.

10 3. The Writ shall further command Respondent to reconsider the Conditional Waiver of  
11 Waste Discharge Requirements (Order No. R3-2012-0011) and related Monitoring and Reporting  
12 Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03) consistent with the  
13 Ruling on Submitted Matter. Nothing in this Judgment or in the Writ is intended to limit or control the  
14 discretion legally vested in Respondent.

15 4. Pursuant to this Court’s Ruling on Submitted Matter, Respondent shall:

16 a. Reconsider the Conditional Waiver of Waste Discharge Requirements (Order  
17 No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-  
18 2012-0011-02, and R3-2012-0011-03);

19 b. Take those additional actions that are within Respondent’s discretion: either  
20 decline to review the administrative petitions, or formulate a new or modified waiver under Water  
21 Code § 13269 or another program that satisfies the waste discharge requirements of the Water Code  
22 such as those set forth in Water Code § 13263 that is consistent with this Court’s Ruling on Submitted  
23 Matter;

24 c. Ensure that the new or modified waiver or other program referred to in paragraph  
25 4(b) is in place and effective on or before March 15, 2017; and

26 d. File and serve an interim return to this Writ on or before December 1, 2015,  
27 specifying what actions Respondent has taken or will take to satisfy the Court’s Judgment and Writ.

28 - 2 -

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 In addition, Respondent shall file and serve a return to the Writ in satisfaction of this Judgment  
2 and Writ, on or before April 15, 2017.

3 5. Respondent may allow the Conditional Waiver of Waste Discharge Requirements  
4 (Order No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-  
5 01, R3-2012-0011-02, and R3-2012-0011-03), as modified by Respondent's Order WQ 2013-0101, to  
6 remain in effect on an interim basis, but only until March 15, 2017, while Respondent takes action to  
7 satisfy this Judgment and return the Writ.

8 6. This Court shall retain jurisdiction for purposes including, but not limited to, issuing any  
9 orders that are necessary to enforce the Judgment and to facilitate its satisfaction.

10 7. Petitioners are awarded their costs of suit in the amount of \$\_\_\_\_\_  
11 This Court retains jurisdiction to determine the matter of entitlement to attorney fees and the amount of  
12 any award pursuant to a timely filed motion by Petitioners.

13  
14 IT IS SO ORDERED, ADJUDGED, AND DECREED.

15  
16 Date: August \_\_\_\_\_, 2015

\_\_\_\_\_  
17 Hon. Timothy M. Frawley  
18 California Superior Court Judge  
County of Sacramento

19 **Submitted by:**

20  
21 \_\_\_\_\_, August \_\_\_\_\_, 2015

22 Deborah A. Sivas  
Attorney for Petitioners

23 **Approved as to form by:**

24  
25 \_\_\_\_\_, August \_\_\_\_\_, 2015

26 Matthew J. Goldman  
Attorney for Respondent State Water Resources Control Board

27  
28 - 3 -

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

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\_\_\_\_\_, August \_\_\_\_, 2015  
Theresa A. Dunham  
Attorney for Respondent-Intervenors Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers Association

\_\_\_\_\_, August \_\_\_\_, 2015  
William J. Thomas  
Attorney for Respondent-Intervenors Ocean Mist Farms and RC Farms

\_\_\_\_\_, August \_\_\_\_, 2015  
Kari E. Fisher  
Attorney for Respondent-Intervenor California Farm Bureau Federation

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**SUPERIOR COURT OF CALIFORNIA  
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FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
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Respondent-Intervenors.

Case No. 34-2012-80001324

**[PROPOSED] PEREMPTORY  
WRIT OF MANDATE PURSUANT  
TO CODE OF CIVIL PROCEDURE  
§ 1094.5**

Case No. 34-2012-80001324

[PROPOSED] PEREMPTORY WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 To CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, RESPONDENT:

2 Judgment having been entered in this action, ordering that a peremptory writ of mandate  
3 (“Writ”) be issued from this Court, RESPONDENT IS HEREBY COMMANDED set aside its Order  
4 No. WQ 2013-0101, which proceedings are hereby remanded to Respondent, to reconsider the  
5 Conditional Waiver of Waste Discharge Requirements (Order No. R3-2012-0011) and related  
6 Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-  
7 0011-03), and to take those additional actions that are within Respondent’s discretion, including either  
8 declining to review the administrative petitions, or formulating a new or modified waiver under Water  
9 Code § 13269 or another program that satisfies the waste discharge requirements of the Water Code  
10 such as those set forth in Water Code § 13263 that is consistent with the Court’s August 10, 2015  
11 “Ruling on Submitted Matter,” which is attached hereto as Exhibit A. RESPONDENT IS FURTHER  
12 COMMANDED to ensure that the new waiver or other program is in place and effective on or before  
13 March 15, 2017; to file and serve an interim return to this Writ on or before December 1, 2015,  
14 specifying what actions Respondent has taken or will take to satisfy the Court’s Judgment and Writ,  
15 and to file and serve a return to this Writ in satisfaction of the Court’s ruling on or before April 15,  
16 2017.

17

18 WITNESS the Honorable Timothy M. Frawley, Judge of the Superior Court.

19

20 Dated: \_\_\_\_\_

\_\_\_\_\_  
CLERK OF THE SUPERIOR COURT

21 LET THE FOREGOING WRIT ISSUE.

22

23

24

25

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28



# **Exhibit D**

**(Email message of Matthew Goldman in support of  
State Board's proposed judgment and writ)**

## Matthew J. Sanders

---

**From:** Matthew Goldman <Matthew.Goldman@doj.ca.gov>  
**Sent:** Thursday, September 03, 2015 4:01 PM  
**To:** Matthew J. Sanders; Kari Fisher; Tess Dunham (tdunham@somachlaw.com); Jason Resnick (jresnick@wga.com); William Thomas (william.thomas@bbklaw.com); Philip Wyels (philip.wyels@waterboards.ca.gov); Emel Wadhvani (Emel.Wadhvani@waterboards.ca.gov)  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter (mmeuter@crla.org); Helen Kang (hkang@ggu.edu); Andrew Graf (agraf@ggu.edu)  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ  
**Attachments:** 2015-08-28 Proposed Judgment (clean)\_swrcb.docx; 2015-08-28 Proposed Writ (clean)\_swrcb.docx; 2015-08-28 Proposed Judgment (redline)\_swrcb.docx; 2015-08-28 Proposed Writ (redline)\_swrcb.docx

Dear Counsel:

Thank you for the meet and confer efforts, which have narrowed the scope of issues regarding the proposed judgment and writ. Attached for your convenient review are redlined versions of the proposed judgment and order, as well as “clean” versions for transmission to the court, if those are acceptable. A single issue remains outstanding, a clause in paragraph 4b of the proposed judgment:

- **Clause permitting reinstatement of the 2012 Waiver:**

The State Water Board appreciates Petitioners’ position on the proposed language in paragraph 4b regarding reinstatement of the 2012 Waiver. At this point the State Water Board has made no decisions as to the manner in which it will respond to the court’s ruling, and is not necessarily anticipating declining further review of the petitions, which would have the effect of automatically reinstating the 2012 Waiver. However, the State Water Board continues to be concerned with agreeing to a judgment that would eliminate that option.

The State Water Board recognizes that there is clear authority for the judgment to “set aside” the State Water Board’s Order WQ 2013-0101. However, to the extent the ruling’s mandate to “reconsider” the regional water board order is expressed in the judgment in a manner that precludes the State Water Board from exercising its discretion to decline further review of the administrative petitions, the State Water Board believes that the judgment, and arguably the ruling, are contrary to established precedent. A petition to the State Water Board to review a regional water board’s action is brought under section 13320 of the Water Code. Section 13320 of the Water Code has been held by the courts to allow the State Water Board full and unreviewable discretion to decline to review petitions that are filed under that section. (See *Johnson v. State Water Resources Control Board* (2004) 123 Cal.App.4<sup>th</sup> 1107; *People v. Barry* (1987) 194 Cal.App.3d 158, 170-177.) Further, California Code of Regulations title 23 section 2052, subdivision (a)(1) states that the State Water Board may “[a]t any time, refuse to review the action or failure to act of the regional board if the petition fails to raise substantial issues that are appropriate for review.” The court in *People v. Barry* held that the regulatory provision does not narrow the State Water Board’s discretion in any way, but that the State Water Board additionally has “unreviewable discretion to determine what issues are ‘substantial’ and whether they are ‘appropriate for review.’” (194 Cal.App.3d at 175-176.) It is the State Water Board’s position that, upon setting aside its order to satisfy the court’s judgment, it may proceed in any manner consistent with the discretion granted to it by law in the first instance with regard to petition proceedings.

In light of the above, the State Water Board has revised the language in paragraph 4b of the proposed judgment to emphasize the State Water Board’s discretion to decline to review the petitions rather than to focus on any particular

outcome that follows from the action. However, the effect of vacating the State Water Board's order and declining further review of the petitions, as allowed under this proposed version of the clause in the judgment, would be dismissal of the petitions and reinstatement of the 2012 Waiver. If the State Water Board were to decline review of the petitions, Water Code section 13330 subdivision (b) would provide a remedy if the Petitioners chose to avail themselves of it.

Regarding the other issues raised by Matthew Sanders' August 28 email, the State Water Board concurs:

- **The deadline for the interim return to the writ:** Recognizing Petitioners' need to know as soon as possible if the State Water Board intends to take the path of declining review in response to the court's judgment, the State Water Board is willing to agree to file the interim report by December 1, 2015, as Petitioners proposed.
- **Reference to costs for Petitioners:** The approach is consistent with the Sacramento County Superior Court Local Rules.

The State Water Board requests that Petitioners agree to incorporate into paragraph 4b of the proposed judgment (and corresponding reference into the proposed writ) the clause permitting reinstatement of the regional board's 2012 waiver. At this point, if Petitioners are not amenable to the State Water Board's proposal, please submit the two versions of the proposed judgment and writ, as well as the State Water Board's grounds for the proposed revisions as explained in this e-mail, to the court for review and consideration. (CA Rules of Court, rule 3.1312(b).)

Many thanks for all parties' commitment of time to narrow down the range of issues of disagreement regarding the proposed judgment and writ. The State Water Board remains committed to achieving full agreement on the substance, so if any of you would like to discuss paragraph 4b further, please let us know.

Matthew J. Goldman  
Deputy Attorney General  
California Department of Justice  
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P.O. Box 944255  
Sacramento, CA 94244-2550  
Phone (916) 324-4223  
Fax (916) 327-2319

---

**From:** Matthew J. Sanders [mailto:mjlaw@stanford.edu]  
**Sent:** Wednesday, September 02, 2015 2:52 PM  
**To:** Matthew Goldman; Kari Fisher; Tess Dunham (tdunham@somachlaw.com); Jason Resnick (jresnick@wga.com); William Thomas (william.thomas@bbklaw.com); Philip Wyels (philip.wyels@waterboards.ca.gov); Emel Wadhvani (Emel.Wadhvani@waterboards.ca.gov)  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter (mmeuter@crla.org); Helen Kang (hkang@ggu.edu); Andrew Graf (agraf@ggu.edu)  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Thanks, Matt. We look forward to your response. Hope your son is all the wiser for his pain!

Matthew J. Sanders  
Stanford Environmental Law Clinic  
(650) 725-4217  
[msanders@law.stanford.edu](mailto:msanders@law.stanford.edu)

---

**From:** Matthew Goldman [mailto:Matthew.Goldman@doj.ca.gov]  
**Sent:** Wednesday, September 02, 2015 2:06 PM

**To:** Matthew J. Sanders; Kari Fisher; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Matthew (and all counsel):

The State Board respectfully requests your indulgence to allow us to respond to your revised proposed judgment and writ by close of business tomorrow. We've had some absences this week, including me (I did nursing duty yesterday for my son, whose wisdom teeth were extracted). Our collaborative efforts have narrowed down the range of issues where verbiage is still at issue. We intend to be able to provide you with the State Board's final comments/suggestions tomorrow. Thanks for your ongoing courtesies. I will send you the State Board's responses as soon as possible tomorrow.

Matthew J. Goldman  
Deputy Attorney General  
California Department of Justice  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Phone (916) 324-4223  
Fax (916) 327-2319

---

**From:** Matthew J. Sanders [<mailto:mjlaw@stanford.edu>]  
**Sent:** Friday, August 28, 2015 11:44 AM  
**To:** Matthew Goldman; Kari Fisher; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Counsel:

Petitioners very much appreciate your continuing efforts to reach a mutually agreeable judgment and writ in this case.

Regarding your proposed changes:

- **Clause permitting reinstatement of the 2012 Waiver:** We appreciate that the State Board wants to ensure the judgment does not constrain the Board's discretion. However, we do not believe that the State Board can simply "reinstate" the 2012 Waiver, with no modifications, and comply with the court's August 10, 2015, decision, and including the proposed clause (allowing mere reinstatement) could be interpreted as our and/or the court's agreement with that proposition. For this reason the proposed clause is unacceptable to us.

We also think the proposed clause is unnecessary. The parties may disagree on the extent of changes required to the 2012 Waiver by the court's decision, but at least some modifications seem necessary (e.g., updated compliance deadlines, further antidegradation analysis, etc.). Including the word "modified" (i.e., the State Board can "formulate a new or modified

waiver”) allows the Board, in its discretion, to reinstate the 2012 Waiver after appropriate reconsideration and modification.

- **Including the word “modified,” i.e., allowing the State Board to adopt a “new or modified” waiver:** Per the above, we are fine with this change.
- **Changing “Water Code section 13260 or 13263(i)” to simply “section 13263”:** Petitioners are fine with this change.
- **Changing the deadline for the interim return to the writ:** It seems that three months is a reasonable period of time for the State Board to decide what course of action it will take to comply with the court’s decision and judgment. Accordingly, we prefer to leave the deadline as December 1, 2015, for filing the interim return to the writ.
- **Allowing the Modified Waiver to remain in place until March 15, 2017 (instead of March 14, 2017):** Per the Intervenor’s request, we are fine with this change.
- **Deleting the reference to costs for Petitioners:** We prefer to leave in this language. It is standard in writ judgments and it is the mechanism by which the court can award costs to Petitioners if it wishes to do so. If Intervenor’s are correct that the court does not intend to award Petitioners their costs, the court can cross out the sentence or write “0 (zero)” in the blank line.

We have attached revised documents reflecting the above. We look forward to hearing back from you.

Matthew

Matthew J. Sanders  
Stanford Environmental Law Clinic  
(650) 725-4217  
[msanders@law.stanford.edu](mailto:msanders@law.stanford.edu)

---

**From:** Matthew J. Sanders [<mailto:mjlaw@stanford.edu>]  
**Sent:** Thursday, August 27, 2015 4:15 PM  
**To:** Matthew Goldman; Kari Fisher; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Matt:

Thanks for checking in. We have been conferring on our side and will get back to all of you tomorrow.

Matthew

Matthew J. Sanders  
Stanford Environmental Law Clinic

(650) 725-4217  
[msanders@law.stanford.edu](mailto:msanders@law.stanford.edu)

---

**From:** Matthew Goldman [<mailto:Matthew.Goldman@doj.ca.gov>]  
**Sent:** Thursday, August 27, 2015 3:57 PM  
**To:** Kari Fisher; Matthew J. Sanders; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbkllaw.com](mailto:william.thomas@bbkllaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Matthew and all Petitioners' counsel,

Where are we on the process of attempting to arrive at a mutually agreeable proposed judgment and writ for the Court? Please advise. Thanks.

Matthew J. Goldman  
Deputy Attorney General  
California Department of Justice  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Phone (916) 324-4223  
Fax (916) 327-2319

---

**From:** Kari Fisher [<mailto:kfisher@CFBF.com>]  
**Sent:** Wednesday, August 26, 2015 1:36 PM  
**To:** Matthew Goldman; Matthew J. Sanders; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbkllaw.com](mailto:william.thomas@bbkllaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Matthew and all Petitioners' counsel,

The Intervenor concurs with the revisions suggested by the State Board. Additionally, Intervenor suggests two other revisions on the proposed judgment as follows (page and line numbers reflect the version sent by Petitioners last Friday):

- 1) Page 3, paragraph 5, line 5: The interim effect of the existing Conditional Waiver should continue until the Respondent takes action, which must occur by March 15, 2017. Thus, the interim effect needs to run concurrently until the Respondent takes action by March 15, 2017, and not expire the day before.
- 2) Page 3, paragraph 7, line 9: The court's Ruling did not award Petitioners costs of suit.

Please let us know if you have any questions or would like to discuss the revisions.

Thanks,  
Kari

---

Kari E. Fisher

Associate Counsel  
Legal Division  
California Farm Bureau Federation  
2300 River Plaza Drive Sacramento, CA 95833  
916-561-5666 phone  
916-561-5691 fax  
[kfisher@cfbf.com](mailto:kfisher@cfbf.com)  
[www.cfbf.com](http://www.cfbf.com)

---

**From:** Matthew Goldman [<mailto:Matthew.Goldman@doj.ca.gov>]  
**Sent:** Wednesday, August 26, 2015 11:33 AM  
**To:** Matthew J. Sanders <[mjlaw@stanford.edu](mailto:mjlaw@stanford.edu)>; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)) <[tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)>; Kari Fisher <[kfisher@CFBF.com](mailto:kfisher@CFBF.com)>; Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)) <[jresnick@wga.com](mailto:jresnick@wga.com)>; William Thomas ([william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)) <[william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)>; Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)) <[philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)>; Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov)) <[Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov)>  
**Cc:** Deborah Ann Sivas <[dsivas@stanford.edu](mailto:dsivas@stanford.edu)>; Alicia Ellen Thesing <[athesing@stanford.edu](mailto:athesing@stanford.edu)>; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)) <[mmeuter@crla.org](mailto:mmeuter@crla.org)>; Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)) <[hkang@ggu.edu](mailto:hkang@ggu.edu)>; Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu)) <[agraf@ggu.edu](mailto:agraf@ggu.edu)>  
**Subject:** RE: Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Matthew (and all Petitioners' counsel):

We have reviewed the revised proposed judgment and writ, and offer some additional revisions for your review and consideration. (Please see attachments.) The inclusion in paragraph 4b of an option to reinstate the Regional Board's 2012 Waiver reflects the State Board's discretion pursuant to Water Code section 13320 and CA Code of Regulations, title 23, section 2052. The rest of the revisions should be self-explanatory, but if you would like to discuss, please let us know. Emel and I will make ourselves available for a quick conference call, if you think that would be useful.

Thanks for your ongoing courtesy.

Matthew J. Goldman  
Deputy Attorney General  
California Department of Justice  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Phone (916) 324-4223  
Fax (916) 327-2319

---

**From:** Matthew J. Sanders [<mailto:mjlaw@stanford.edu>]  
**Sent:** Friday, August 21, 2015 11:12 AM  
**To:** Matthew Goldman; Tess Dunham ([tdunham@somachlaw.com](mailto:tdunham@somachlaw.com)); Kari Fisher ([kfisher@cfbf.com](mailto:kfisher@cfbf.com)); Jason Resnick ([jresnick@wga.com](mailto:jresnick@wga.com)); William Thomas ([william.thomas@bbklaw.com](mailto:william.thomas@bbklaw.com)); Philip Wyels ([philip.wyels@waterboards.ca.gov](mailto:philip.wyels@waterboards.ca.gov)); Emel Wadhvani ([Emel.Wadhvani@waterboards.ca.gov](mailto:Emel.Wadhvani@waterboards.ca.gov))  
**Cc:** Deborah Ann Sivas; Alicia Ellen Thesing; Michael Meuter ([mmeuter@crla.org](mailto:mmeuter@crla.org)); Helen Kang ([hkang@ggu.edu](mailto:hkang@ggu.edu)); Andrew Graf ([agraf@ggu.edu](mailto:agraf@ggu.edu))  
**Subject:** Monterey Coastkeeper v. SWRCB, Sac. Sup. Ct. 34-2012-80001324: revised proposed judgment and writ

Counsel:

Attached please find a revised proposed judgment and writ. A few points:

- We have tried to add language making clear that the State Board can and will take only those actions that are within its discretion.
- At the same time, we stand by our view that those actions must yield a new waiver or other regulatory program that is consistent with the court's August 10, 2015, decision and is in place by a date certain. We think the court expects the same thing. See, e.g., August 10, 2015, Ruling on Submitted Matter at 44 (directing the State Board to "reconsider" the 2012 Waiver and "take[] action to formulate a new waiver consistent with this ruling"). Indeed, we have used the court's language in the proposed judgment and writ.
- We think that March 15, 2017—eighteen months—is a reasonable period of time in which to develop a new waiver or other regulatory program that is consistent with the court's decision.
- Finally, we thought it would be helpful to all parties to have an interim report indicating what the State Board has done or will do to comply with the court's decision (i.e., if the State Board is of the view that dismissing the administrative petitions for review and leaving in place the 2012 Waiver satisfies the court's decision, it would be good for all parties to know that early on).

We look forward to hearing your thoughts. We do hope we can agree, but in the event we cannot, we will have to ask the court to decide on a judgment and writ that best implements its decision.

Thank you,

Matthew

Matthew J. Sanders  
Clinical Supervising Attorney & Lecturer in Law  
Environmental Law Clinic  
Mills Legal Clinic at Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
(650) 725-4217  
[msanders@law.stanford.edu](mailto:msanders@law.stanford.edu)  
<http://www.law.stanford.edu/organizations/clinics/environmental-law-clinic>

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Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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# **Exhibit E**

**(Redlines showing differences between Petitioners' and State Board's proposed judgments and writs)**

1 Deborah A. Sivas, CA Bar No. 135446  
2 Alicia E. Thesing, CA Bar No. 211751  
3 Matthew J. Sanders, CA Bar No. 222757  
4 ENVIRONMENTAL LAW CLINIC  
5 Mills Legal Clinic at Stanford Law School  
6 559 Nathan Abbott Way  
7 Stanford, CA 94305-8610  
8 Telephone: (650) 723-0325  
9 Facsimile: (650) 723-4426  
10 E-mail: dsivas@stanford.edu

11 Attorneys for All Petitioners

12 Michael L. Meuter, CA Bar No. 161554  
13 CALIFORNIA RURAL LEGAL ASSISTANCE  
14 3 Williams Road  
15 Salinas, CA 93905-2835  
16 Telephone: (831) 757-5221  
17 Facsimile: (831) 757-6212  
18 E-mail: mmeuter@crla.org

19 Attorneys for Petitioner Antonia Manzo

Helen H. Kang, CA Bar No. 124730  
Andrew J. Graf, CA Bar No. 300169  
ENVIRONMENTAL LAW AND JUSTICE CLINIC  
Golden Gate University School of Law  
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San Francisco, CA 94105-2968  
Telephone: (415) 442-6647  
Facsimile: (415) 442-2450  
E-mail: hkang@ggu.edu

Attorneys for All Petitioners

20  
21  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF MANDATE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE § 1094.5**

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 This matter came on for hearing on May 15, 2015, in Department 29. All parties were  
2 represented through their respective attorneys. The matter was argued and taken under submission. On  
3 August 10, 2015, the Court entered its Ruling on Submitted Matter, attached hereto as Exhibit A and  
4 hereby incorporated into this Judgment. In accordance with that Ruling on Submitted Matter,  
5 IT IS ORDERED, ADJUDGED AND DECREED:

6 1. Judgment is entered in favor of Petitioners in this proceeding.

7 2. A peremptory writ of mandate (“Writ”) shall issue under seal of this Court commanding  
8 Respondent State Water Resources Control Board (“Respondent”) to set aside its Order No. WQ 2013-  
9 0101.

10 3. The Writ shall further command Respondent to reconsider the Conditional Waiver of  
11 Waste Discharge Requirements (Order No. R3-2012-0011) and related Monitoring and Reporting  
12 Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03) consistent with the  
13 Ruling on Submitted Matter. Nothing in this Judgment or in the Writ is intended to limit or control the  
14 discretion legally vested in Respondent.

15 4. Pursuant to this Court’s Ruling on Submitted Matter, Respondent shall:

16 a. Reconsider the Conditional Waiver of Waste Discharge Requirements (Order  
17 No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-  
18 2012-0011-02, and R3-2012-0011-03);

19 b. Take those additional actions that are within Respondent’s discretion: either  
20 decline to review the administrative petitions, or and are sufficient to formulate a new or modified  
21 waiver under Water Code § 13269; or another program that satisfies the waste discharge requirements  
22 of the Water Code such as those set forth in Water Code § 13263 that, which is consistent with this  
23 Court’s Ruling on Submitted Matter;

24 c. Ensure that the new or modified waiver or other program referred to in paragraph  
25 4(b) is in place and effective on or before March 15, 2017; and

26 d. File and serve an interim return to this Writ on or before December 1, 2015,  
27 specifying what actions Respondent has taken or will take to satisfy the Court’s Judgment and Writ.

1 In addition, Respondent shall file and serve a return to the Writ in satisfaction of this Judgment  
2 and Writ, on or before April 15, 2017.

3 5. Respondent may allow the Conditional Waiver of Waste Discharge Requirements  
4 (Order No. R3-2012-0011) and related Monitoring and Reporting Program (Order Nos. R3-2012-0011-  
5 01, R3-2012-0011-02, and R3-2012-0011-03), as modified by Respondent's Order WQ 2013-0101, to  
6 remain in effect on an interim basis, but only until March 15, 2017, while Respondent takes action to  
7 satisfy this Judgment and return the Writ.

8 6. This Court shall retain jurisdiction for purposes including, but not limited to, issuing any  
9 orders that are necessary to enforce the Judgment and to facilitate its satisfaction.

10 7. Petitioners are awarded their costs of suit in the amount of \$\_\_\_\_\_  
11 This Court retains jurisdiction to determine the matter of entitlement to attorney fees and the amount of  
12 any award pursuant to a timely filed motion by Petitioners.

13  
14 IT IS SO ORDERED, ADJUDGED, AND DECREED.

15  
16 Date: August \_\_\_\_\_, 2015

\_\_\_\_\_  
17 Hon. Timothy M. Frawley  
18 California Superior Court Judge  
County of Sacramento

19 **Submitted by:**

20   
21 \_\_\_\_\_, August 28<sup>th</sup>, 2015

22 Deborah A. Sivas  
Attorney for Petitioners

23 **Approved as to form by:**

24 \_\_\_\_\_, August \_\_\_\_\_, 2015

25 Matthew J. Goldman  
26 Attorney for Respondent State Water Resources Control Board

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28 - 3 -

Case No. 34-2012-80001324

[PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

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\_\_\_\_\_, August \_\_\_\_, 2015  
Theresa A. Dunham  
Attorney for Respondent-Intervenors Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, and Western Growers Association

\_\_\_\_\_, August \_\_\_\_, 2015  
William J. Thomas  
Attorney for Respondent-Intervenors Ocean Mist Farms and RC Farms

\_\_\_\_\_, August \_\_\_\_, 2015  
Kari E. Fisher  
Attorney for Respondent-Intervenor California Farm Bureau Federation

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Attorneys for All Petitioners

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**[PROPOSED] PEREMPTORY  
WRIT OF MANDATE PURSUANT  
TO CODE OF CIVIL PROCEDURE  
§ 1094.5**

Case No. 34-2012-80001324

[PROPOSED] PEREMPTORY WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5

1 To CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, RESPONDENT:

2 Judgment having been entered in this action, ordering that a peremptory writ of mandate  
3 (“Writ”) be issued from this Court, RESPONDENT IS HEREBY COMMANDED set aside its Order  
4 No. WQ 2013-0101, which proceedings are hereby remanded to Respondent, to reconsider the  
5 Conditional Waiver of Waste Discharge Requirements (Order No. R3-2012-0011) and related  
6 Monitoring and Reporting Program (Order Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-  
7 0011-03), and to take those additional actions that are within Respondent’s discretion, including either  
8 declining to review the administrative petitions, or ~~and are sufficient to~~ formulating a new or  
9 modified waiver under Water Code § 13269 or another program that satisfies the waste discharge  
10 requirements of the Water Code, such as those set forth in Water Code § 13263, that is consistent with  
11 the Court’s August 10, 2015, “Ruling on Submitted Matter,” which is attached hereto as Exhibit A.  
12 RESPONDENT IS FURTHER COMMANDED to ensure that the new waiver or other program is in  
13 place and effective on or before March 15, 2017; to file and serve an interim return to this Writ on or  
14 before December 1, 2015, specifying what actions Respondent has taken or will take to satisfy the  
15 Court’s Judgment and Writ; and to file and serve a return to this Writ in satisfaction of the Court’s  
16 ruling on or before April 15, 2017.

17

18 WITNESS the Honorable Timothy M. Frawley, Judge of the Superior Court.

19

20 Dated: \_\_\_\_\_

\_\_\_\_\_  
CLERK OF THE SUPERIOR COURT

21 LET THE FOREGOING WRIT ISSUE.

22

23

24

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1 Deborah A. Sivas, CA Bar No. 135446  
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Attorneys for All Petitioners

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
ANTONIA MANZO, an individual;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE, a  
non-profit organization; PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, a non-profit trade association;  
and SANTA BARBARA CHANNELKEEPER, a  
non-profit organization,

Petitioners,

v.

CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondent,

OCEAN MIST FARMS, et al.,

Respondent-Intervenors.

Case No. 34-2012-80001324

**PROOF OF SERVICE**

Case No. 34-2012-80001324  
PROOF OF SERVICE

**PROOF OF SERVICE**

LYNDA F. JOHNSTON declares:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California, 94305.

On September 9, 2015, I served the attached **cover letter and attachments, including:**

- **Exhibit A: Petitioners’ [PROPOSED] JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5 and [PROPOSED] PEREMPTORY WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1094.5;**
- **Exhibit B: Declaration of Steven Shimek in support of Petitioners’ [PROPOSED] JUDGMENT and [PROPOSED] WRIT;**
- **Exhibit C: State Board’s [PROPOSED] JUDGMENT and [PROPOSED] WRIT;**
- **Exhibit D: State Board’s September 3, 2015, email message in support of [PROPOSED] JUDGMENT and [PROPOSED] WRIT; and**
- **Exhibit E: redlines showing differences between Exhibits A and C,**

on all persons named below by placing true and correct copies thereof for Federal Express next-business-day delivery at Stanford, California, addressed as follows:

Kamala D. Harris  
 Attorney General of California  
 Tracy L. Winsor  
 Supervising Deputy Attorney General  
 Matthew J. Goldman  
 Deputy Attorney General  
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 Mist Farms and RC Farms*

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I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed September 9, 2015, at Stanford, California.

  
LYNDA F. JOHNSTON