

1 THERESA A. DUNHAM (SBN 187644)
2 KAHN, SOARES & CONWAY, LLP
3 1415 L Street, Suite 400
4 Sacramento, CA 95814
5 Telephone: (916) 448-3826
6 Facsimile: (916) 448-3850
7 tdunham@kscsacramento.com

8 Attorneys for Grower-Shipper Association of Central
9 California, Grower-Shipper Association of
10 Santa Barbara and San Luis Obispo Counties,
11 Western Growers Association and
12 Western Plant Health Association

13 JENNIFER L. SPALETTA (SBN 200032)
14 SPALETTA LAW PC
15 Post Office Box 2660
16 Lodi, CA 95241
17 Telephone: (209)224-5568
18 Facsimile: (209)224-5589
19 jennifer@spallettalaw.com

20 Attorneys for California Strawberry Commission

KARI E. FISHER (SBN 245447)
CALIFORNIA FARM BUREAU
FEDERATION
2600 River Plaza Drive
Sacramento, CA 95833
Telephone: (916) 561-5665
Facsimile: (916) 561-5691
kfisher@cbbf.com

Attorneys for California Farm Bureau Federation,
Monterey County Farm Bureau, San Benito County
Farm Bureau, San Luis Obispo County Farm Bureau,
San Mateo County Farm Bureau, Santa Barbara
County Farm Bureau, Santa Clara County Farm
Bureau and Santa Cruz County Farm Bureau

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Grower-Shipper)
Association of Central California, Grower-)
Shipper Association of Santa Barbara and San)
Luis Obispo Counties, Western Growers)
Association, Western Plant Health Association,)
California Farm Bureau Federation, Monterey)
County Farm Bureau and California)
Strawberry Commission for Review of Action)
and Failure to Act by the Central Coast)
Regional Water Quality Control Board.)

SWRCB/OCC File No. _____

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

1 The Grower-Shipper Association of Central California, Grower-Shipper Association of Santa
2 Barbara and San Luis Obispo Counties, Western Growers Association, Western Plant Health
3 Association, Monterey County Farm Bureau, California Strawberry Commission and California Farm
4 Bureau Federation on behalf of San Benito County Farm Bureau, San Luis Obispo County Farm
5 Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County
6 Farm Bureau and Santa Cruz County Farm Bureau (collectively, Petitioners) submit this Petition for
7 Review (Petition) and Statement of Points and Authorities to the State Water Resources Control
8 Board (State Board) in accordance with Water Code section 13320. Petitioners respectfully request
9 that the State Water Board review the Central Coast Regional Water Quality Control Board's (Central
10 Coast Water Board) actions and inactions related to its adoption of Order R3-2021-0040, General
11 Waste Discharge Requirements for Discharges from Irrigated Lands (General Order) and its
12 associated attachments and documents: Attachment A – Findings; Attachment B – Monitoring and
13 Reporting Program; Attachment C – Acronyms, Abbreviations, and Definitions; and, certification,
14 pursuant to the California Environmental Quality Act (“CEQA”), of Resolution No. R3-2021-0039,
15 Certification of Environmental Impact Report for the General Waste Discharge Requirements for
16 Discharges from Irrigated Lands in the Central Coast Region (“FEIR”) (collectively referred to as Ag
17 Order 4.0).

18 This Petition satisfies the requirements of title 23, section 2050 of the California Code of
19 Regulations. Petitioners request the opportunity to file supplemental points and authorities in support
20 of this Petition once the administrative record becomes available. Petitioners also reserve the right to
21 submit additional argument and evidence in reply to the Central Coast Water Board or other
22 interested parties' responses to this Petition. Petitioners also reserve the right to Request a Stay of
23 certain actions and inactions pursuant to title 23, section 2053 of the California Code of Regulations
24 in the event that State Board review is not timely and results in certain actions or inactions that cause
25 or threaten to cause harm to those subject to Ag Order 4.0.

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1 **1. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE**
2 **PETITIONERS**

3 Petitioners are: Grower-Shipper Association of Central California, Grower-Shipper
4 Association of Santa Barbara and San Luis Obispo Counties, Monterey County Farm Bureau,
5 Western Growers Association, Western Plant Health Association, California Strawberry Commission
6 and California Farm Bureau Federation on behalf of San Benito County Farm Bureau, San Luis
7 Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau,
8 Santa Clara County Farm Bureau, and Santa Cruz County Farm Bureau.

9 Petitioners' addresses are as follows:

10 Chris Valadez, President
11 Grower-Shipper Association of Central California
12 512 Pajaro Street
13 Salinas, CA 93901
14 Phone: (831) 422-8844
15 Email: chris@growershipper.com

16 Claire Wineman, President
17 Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties
18 534 E. Chapel Street
19 Santa Maria, CA 93454
20 Phone: (805) 343-2215
21 Email: claire.wineman@grower-shipper.com

22 Dave Puglia, President & CEO
23 Western Grower Association
24 1415 L Street, Suite 1060
25 Sacramento, CA 95814
26 Email: gdelihant@wga.com

27 Renee Pinel, President & CEO
28 Western Plant Health Association
4460 Duckhorn Dr., Suite A
Sacramento, CA 95834
Email: reneep@healthyplants.org

Norman C. Groot, Executive Director
Monterey County Farm Bureau
1140 Abbott St., Suite C, Salinas, CA 93901
P.O. Box 1449, Salinas, CA 93902-1449
Phone: (831) 751-3100
Email: norm@montereycfb.com

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Kari Fisher
California Farm Bureau Federation
2600 River Plaza Drive
Sacramento, CA 95833
Phone: (916) 561-5666
Email: kfisher@cfbf.com

Rick Tomlinson, President
California Strawberry Commission
180 Westridge Dr., #104
Watsonville, CA 95076
rick@calstrawberry.org

In addition, Petitioners request that all materials in connection with the Petition and administrative record be provided to Petitioners' counsel:

Theresa A. Dunham
Kahn, Soares & Conway, LLP
1415 L Street, Suite 400
Sacramento, CA 95814
Phone: (916) 448-3826
Email: tdunham@kscsacramento.com

Kari Fisher
California Farm Bureau Federation
2600 River Plaza Drive
Sacramento, CA 95833
Telephone: (916) 561-5666
Facsimile: (916) 561-5691
Email: kfisher@cfbf.com

Jennifer Spaletta
Spaletta Law, PC
Post Office Box 2660
Lodi, CA 95241
Telephone: (209) 224-5568
Facsimile: (209) 224-5589
Email: jennifer@spalettalaw.com

1 **2. PETITIONERS**

2 A. Grower-Shipper Association of Central California

3 The Grower Shipper Association of Central California is a trade association that includes
4 growers of vegetables, strawberries, mushrooms, and wine grapes operating in Monterey, Santa Cruz,
5 San Benito, and Santa Clara Counties. Grower Shipper Association of Central California's grower
6 members are directly impacted by the Central Coast Water Board's adoption of Ag Order 4.0 and the
7 requirements therein.

8 B. Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties

9 Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties is a trade
10 association representing 65 producers of vegetables and strawberries with farm locations located in
11 Santa Maria, Lompoc, and Arroyo Grande Valleys along California's Central Coast. Grower-Shipper
12 Association of Santa Barbara and San Luis Obispo Counties grower members produce on over
13 100,000 acres and are directly impacted by the Central Coast Water Board's adoption of Ag Order 4.0
14 and the requirements therein.

15 C. Western Growers Association

16 Western Growers Association is an agricultural trade association whose members from
17 California, Arizona, Colorado and New Mexico grow, pack and ship over 200 commodities which is
18 90 percent of the fresh fruits, nuts, and vegetables grown in California and 75 percent of those
19 commodities in Arizona. This totals about half of the nation's fresh produce. Of its more than 3,000
20 members, approximately 500 are located in the Central Coast of California and are directly impacted
21 by the Central Coast Water Board's adoption of Ag Order 4.0 and the requirements therein.

22 D. Western Plant Health Association

23 The Western Plant Health Association is a trade association that represents fertilizer and
24 pesticide manufacturers and distributors and agricultural retailers who provide inputs and technical
25 assistance to growers in California including growers located throughout the Central Coast of
26 California. Western Plant Health Association member's ability to provide agronomically appropriate
27 products are directly impacted by the Central Coast Water Board's adoption of Ag Order 4.0 and the
28 requirements therein.

1 E. Monterey County Farm Bureau

2 Monterey County Farm Bureau is a private, nonprofit association of farmers and ranchers
3 throughout Monterey County, located on the Central Coast. Founded in 1917, Monterey County
4 Farm Bureau serves as a collective voice for farmers and ranchers and provides information, benefits
5 and services to its members. Monterey County Farm Bureau collaborates with other agricultural
6 organizations to fulfill its purpose of working for the solutions to the problems of the farm, farm
7 home, the environment, and the rural community. Monterey County Farm Bureau is one of 53 county
8 Farm Bureaus currently representing a combined membership of 380 family farm members in
9 Monterey County that are directly impacted by the Central Coast Water Board’s adoption of Ag
10 Order 4.0 and the requirements therein.

11 F. California Farm Bureau Federation

12 The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit,
13 voluntary membership California corporation whose purpose is to protect and promote agricultural
14 interests throughout the State of California and to find solutions to the problems of the farm, the farm
15 home and the rural community. Farm Bureau is California’s largest farm organization, comprised of
16 53 county Farm Bureaus currently representing approximately 37,000 agricultural, associate, and
17 collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers
18 and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through
19 responsible stewardship of California’s resources. Farm Bureau also aims to improve the ability of
20 individuals engaged in production agriculture to utilize California resources to produce food and fiber
21 in the most profitable, efficient, and responsible manner possible guaranteeing our nation a domestic
22 food supply. To that end, Farm Bureau actively participates in state and federal legislative, regulatory,
23 and legal advocacy relating to water quality, water use efficiency, and pesticide regulation,
24 registration, labeling, and use on behalf of Farm Bureau members.

25 Farm Bureau’s membership includes a substantial number of farmers and ranchers who grow
26 food and fiber within the Central Coast Water Board’s jurisdiction, including members of Monterey
27 County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San
28 Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau,

1 and Santa Cruz County Farm Bureau that are directly regulated by Ag Order 4.0 and the requirements
2 contained therein.

3 G. California Strawberry Commission

4 The California Strawberry Commission is a Marketing Order that represents all strawberry
5 farmers, shippers, and processors in the State of California. Established in 1993, the Commission
6 represents nearly 400 strawberry farmers, shippers, and processors operating in California. The
7 Commission performs research, marketing, and public policy in support of California strawberry
8 farming.

9 **3. THE SPECIFIC ACTION OR INACTION OF THE CENTRAL COAST WATER**
10 **BOARD WHICH THE PETITIONERS REQUEST THE STATE WATER BOARD TO**
11 **REVIEW**

12 The Petitioners request that the State Water Board review the Central Coast Water Board's
13 adoption of Order R3-2021-0040, General Waste Discharge Requirements for Discharges from
14 Irrigated Lands (Ag Order 4.0) and its associated attachments and documents: Attachment A –
15 Findings; Attachment B – Monitoring and Reporting Program; Attachment C – Acronyms,
16 Abbreviations, and Definitions; and, certification, pursuant to the California Environmental Quality Act
17 (“CEQA”), of Resolution No. R3-2021-0039, Certification of Environmental Impact Report for the
18 General Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Coast
19 Region (“FEIR”) (collectively referred to as Ag Order 4.0).

20 The specific actions and inactions of the Central Coast Water Board, and requirements of the
21 Ag Order 4.0 that Petitioners request the State Water Board to review are:

- 22 1. The Central Coast Water Board's failure to proceed in a manner required by law or
23 policy with respect to the adoption of the following in Ag Order 4.0:
- 24 • Part 2, Section B. paragraph 3 (Ag Order 4.0, p. 19), in that it requires ranch-level
25 groundwater or surface water discharge monitoring for failure to meet numeric targets,
26 numeric interim quantifiable milestones, or numeric limits if required by the Executive
27 Officer;

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- Part 2, Section B. paragraph 8 (Ag Order 4.0, p. 20), in that it requires dischargers to implement management practices and assessment to achieve compliance with numeric interim quantifiable milestones;
- Part 2, Section B. paragraph 9 (Ag Order 4.0, p. 21), because it incorporates certain CEQA mitigation measures as identified in Appendix D of the FEIR;
- Part 2, Section C.1, paragraph 6.d (Ag Order 4.0, p. 22) and partial definition of Qualified Professional in Attachment C, paragraph 102 (Ag Order 4.0, Attachment C, p. 19) that combined require Irrigation and Nutrient Management Plan (INMP) certification by a qualified professional that is defined to mean only an individual that is a Certified Crop Advisor (CCA) that has the California Nitrogen Management Specialty through the California Department of Food and Agriculture;
- Part 2, Section C.1, paragraphs 7 and 9 (Ag Order 4.0, p. 23) that collectively require compliance with fertilizer nitrogen application limits as shown in Table C.1-2 (see Ag Order 4.0, p. 51);
- Part 2, Section C.1, paragraphs 8 and 10 (Ag Order 4.0, p. 23-25) that collectively require compliance with nitrogen discharge limits as shown in Table C.1-3 (see Ag Order 4.0, p. 52);
- Part 2, Section C.1, paragraph 20 (Ag Order 4.0, p. 27) in that it incorporates reference to nitrogen discharge limits as a trigger for additional requirements;
- Part 2, Section C.1, paragraph 21 (Ag Order 4.0, p. 27) in that it incorporates reference to fertilizer nitrogen application limits and final nitrogen discharge limits;
- Part 2, Section C.1, paragraph 23 (Ag Order 4.0, p. 28) in that it incorporates reference to final nitrogen discharge limits;
- Part 2, Section C.1, paragraph 24 (Ag Order 4.0, p. 28) in that it incorporates reference to nitrogen discharge limits;
- Part 2, Section C.1, paragraph 25 (Ag Order 4.0, p. 29) in that it incorporates reference to nitrogen discharge limits as shown in Table C.1-3;

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- Part 2, Section C.1, paragraph 28 (Ag Order 4.0, p. 29) because it requires dischargers to track and record discharge volumes as part of the INMP Summary Report;
- Part 2, Section C.1, paragraph 33 (Ag Order 4.0, p. 30) in that it incorporates reference to nitrogen discharge limits and requires dischargers to complete ranch-level groundwater discharge monitoring and reporting if required by the Executive Officer;
- Part 2, Section C.2, paragraph 1.e (Ag Order 4.0, p. 31) in that it incorporates fertilizer nitrogen application targets;
- Part 2, Section C.2, paragraph 3.e (Ag Order 4.0, p. 32) in that it incorporates fertilizer nitrogen application targets in Table C.2-1 (Ag Order 4.0, p. 54);
- Part 2, Section C.2, paragraphs 4, 6, 7, and 8 (Ag Order 4.0, p. 32) that collectively require compliance with fertilizer nitrogen application targets as shown in Table C.2-1 (see Ag Order 4.0, p. 54);
- Part 2, Section C.2, paragraph 12 (Ag Order 4.0, p. 33) in that it requires INMP certification by a qualified professional that is defined to mean only an individual that is a Certified Crop Advisory (CCA) that has the California Nitrogen Management Specialty through the California Department of Food and Agriculture (see Ag Order 4.0, Attachment C, p. 19);
- Part 2, Section C.2, paragraph 13 (Ag Order 4.0, p. 33) because it makes dischargers ineligible to participate in the third-party alternative compliance pathway program if the discharger fails to meet nitrogen discharge targets in Table C.2-2 (Ag Order 4.0, p. 54) for a 3-year running average;
- Part 2, Section C.2, paragraph 20 (Ag Order 4.0, p. 35) because it makes dischargers in a groundwater protection area ineligible to participate in the third-party alternative compliance pathway program if they collectively exceed numeric interim or final groundwater protection targets by 20% or more for a 3-year running average after the compliance date;

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- Part 2, Section C.3, paragraph 11 (Ag Order 4.0, p. 37) because it applies certain requirements to practically all ranches with impermeable surfaces, regardless of the risk to surface waters from stormwater runoff;
- Part 2, Section C.3, paragraph 39 (Ag Order 4.0, p. 39) in that it includes ranch-level surface discharge monitoring and reporting as a follow up action if a ranch causes or contributes to an exceedance of an applicable receiving water limit after the compliance dates included in Tables C.3-2, C.3-3, C.3-4, C.3-5, C.3-6 and C.3-7;
- Part 2, Section C.3, paragraph 19.c (Ag Order 4.0, p. 40) in that it requires individual dischargers and third-party programs to develop work plans that must include numeric interim quantifiable milestones;
- Part 2, Section C.3, paragraph 19.e (Ag Order 4.0, pp. 40-41) in that it requires identification of follow-up actions that are necessary to be taken to meet numeric interim quantifiable milestones;
- Part 2, Section C.3, paragraph 20 (Ag Order 4.0, p. 41) because it requires ranch-level surface discharge monitoring and reporting as described in Attachment B, and because it requires continuation of ranch-level surface discharge monitoring until the discharger can demonstrate compliance with surface water receiving water limits or has ceased to otherwise discharge;
- Attachment B, Section C, paragraph 7 (Ag Order 4.0, Attachment B, p. 13) in that it requires dischargers to monitor for 1,2,3-trichloropropane (1,2,3-TCP) in on-farm domestic wells;
- Attachment B, Section C, paragraph 13 (Ag Order 4.0, Attachment B, p. 14-15) in that it requires dischargers to update an electronic Notice of Intent within 30 days of receiving a laboratory result for 1,2,3-TCP that confirms that well users have an alternative source of water for domestic purposes if the sampled well contains 1,2,3-TCP in excess of the respective maximum contaminant level;

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- Attachment B, Section C, paragraph 19 (Ag Order 4.0, Attachment B, pp. 19-20) in that it ranch-level groundwater discharge monitoring and reporting, as described, is may be required for dischargers that exceed nitrogen discharge targets or limits;
- Attachment B, Section E, paragraph 15.b (Ag Order 4.0, Attachment B, p. 26) because it requires follow-up surface receiving water work plans to include numeric interim quantifiable milestones; and,
- Attachment B, Section E, paragraphs 22-29 (Ag Order 4.0, Attachment B, pp. 29-31) in that it prescribes the ranch-level surface discharge monitoring requirements if required by the Executive Officer.

2. The Central Coast Water Board’s failure to proceed in a manner required by law or policy in its certification of the FEIR for the following reasons:

- The FEIR fails to properly response to public comments;
- The FEIR fails to include an adequate project description for Ag Order 4.0;
- The FEIR fails to evaluate the entire Project;
- The FEIR inadequately analyzes the environmental impacts associated with the Project;
- The FEIR fails to adequately analyze the economic impacts associated with the Project;
- The FEIR fails to properly identify and analyze alternatives;
- The FEIR fails to adequately address cumulative impacts;
- The FEIR fails to analyze the Project’s potential inconsistencies with general plans, regional plans, regulations, and zoning ordinances to protect agricultural uses; and
- The FEIR fails to support several of its conclusions and thresholds with substantial evidence.

4. THE DATE ON WHICH THE CENTRAL COAST WATER BOARD ACTED OR REFUSED TO ACT

The Central Coast Water Board adopted the Ag Order 4.0 and certified the FEIR on April 15, 2021.

1 **5. A STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT IS**
2 **INAPPROPRIATE OR IMPROPER**

3 A full and complete statement of the reasons why the Central Coast Water Board's actions
4 were inappropriate or improper is provided in the accompanying Statement of Points and Authorities.

5 **6. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED**

6 The Petitioners are filing this Petition on behalf of their members that are subject to the terms
7 and conditions of Ag Order 4.0. Petitioners' members are aggrieved by the actions or inactions of the
8 Central Coast Water Board because they will bear the costs of, economic impacts thereon, and risks
9 of potential liability arising from the Central Coast Water Board's actions and inactions that are the
10 subjects of this Petition.

11 **7. THE SPECIFIC ACTION REQUESTED BY THE PETITIONERS**

12 The Petitioners request that the State Board review the record, Ag Order 4.0 and this Petition,
13 certification of the FEIR, and that the State Board issue an order or orders accomplishing the
14 following:

15 A. Revise Ag Order 4.0 to ensure that it includes a true and viable Third-Party Alternative
16 Compliance Pathway for Groundwater Protection;

17 B. Revise Ag Order 4.0 to remove nitrogen fertilizer application limits and targets;

18 C. Revise Ag Order 4.0 to remove nitrogen discharge limits and replace said limits with
19 realistic targets that trigger appropriate follow-up actions;

20 D. Revise Ag Order 4.0 to remove ranch-level groundwater and surface water discharge
21 monitoring that can be required by the Executive Officer for failure to comply with numeric interim
22 quantifiable milestones, limits, and other requirements;

23 E. Revise Ag Order 4.0 to remove references to numeric interim quantifiable milestones
24 being defined as load or concentration based numeric milestones;

25 F. Revise Ag Order 4.0 to better define when ranches with impermeable surfaces must
26 manage stormwater discharge duration, rate, and volume;

27 G. Revise Ag Order 4.0, Attachment B to encourage but not require monitoring and
28 reporting for 1,2,3-TCP in on farm domestic wells;

1 H. Revise Ag Order 4.0, Attachment C and the definition of qualified professional to
2 include other categories of individuals that are qualified to certify Irrigation and Nitrogen
3 Management Plans, including but not limited to, self-certified individuals that attend a California
4 Department of Food and Agriculture or other approved training program;

5 I. Evaluate and consider the economic impacts associated with implementation of Ag
6 Order 4.0 in its entirety and revise findings in Attachment A accordingly;

7 J. Revise Ag Order 4.0 and its Attachments as necessary to ensure consistency with the
8 revisions identified in paragraphs A-I immediately above; and,

9 K. Amend and/or revise the FEIR as necessary based on the revisions identified in
10 paragraphs A-I immediately above.

11 **8. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
12 **ISSUES RAISED IN THIS PETITION**

13 As required by title 23, section 2050(a)(7) of the California Code of Regulations, Petitioners
14 include a statement of points and authorities in support of this Petition beginning on page 16.

15 **9. A STATEMENT THAT THIS PETITION WAS SENT TO THE CENTRAL COAST**
16 **WATER BOARD**

17 A true and correct copy of this Petition was mailed by First Class mail to the Central Coast
18 Water Board and a courtesy copy of this Petition was sent electronically to the Central Coast
19 Water Board. The address to which Petitioners mailed and sent an electronic copy of the Petition to
20 the Central Coast Water Board is:

21 Matthew Keeling, Executive Officer
22 Central Coast Regional Water Quality Control Board
23 895 Aerovista Place, Suite 101
24 San Luis Obispo, CA 93401-7906
25 Matt.Keeling@waterboards.ca.gov

26 Further, a courtesy copy of this Petition was sent electronically to attorneys for the Central
27 Coast Water Board at: Stephanie.Yu@waterboards.ca.gov and Emel.Wadhvani@waterboards.ca.gov.

28 Petitioners are filing this Petition on behalf of their members, who are the dischargers subject
to the terms and conditions of Ag Order 4.0.

1 **10. A STATEMENT AS TO WHETHER THE PETITIONERS RAISED THE ISSUES OR**
2 **OBJECTIONS IN THE PETITION TO THE CENTRAL COAST WATER BOARD**

3 Petitioners timely raised the substantive issues and objections in this Petition before the
4 Central Coast Water Board in written comments and in testimony provided between September 2018
5 and April 15, 2021. Further, pursuant to section 13330(c) of the Water Code, Petitioners are required
6 to submit a challenge to the Central Coast Water Board's actions with respect to CEQA to the State
7 Board for review prior to filing a writ of mandate pursuant to Public Resources Code section 21167.
8 Petitioners are authorized to represent their respective members, some or all of which are subject to
9 regulation under Ag Order 4.0 and will in the future be subject to any future iteration of this Ag Order
10 4.0.

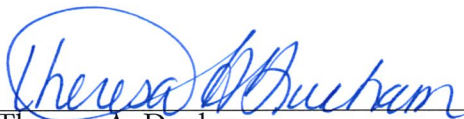
11 This Petition was submitted timely pursuant to Water Code section 13320 and Title 23,
12 section 2050(b) of the California Code of Regulations whereby the thirtieth day following the action
13 or inaction of the Central Coast Water Board fell on Saturday, May 15, 2021, thereby making the first
14 business day following the thirtieth day the final date for submittal of this Petition.

15 Dated: May 17, 2021

16 Respectfully submitted,

17 KAHN, SOARES & CONWAY, LLP

18 By:



19 Theresa A. Dunham

20 Attorneys for Grower-Shipper Association of
21 Central California, Grower-Shipper Association
22 of Santa Barbara and San Luis Obispo Counties,
23 Western Growers Association and Western
24 Plant Health Association

25 CALIFORNIA FARM BUREAU
26 FEDERATION

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28 Kari Fisher

Attorneys for California Farm Bureau
Federation, Monterey County Farm Bureau, San
Benito County Farm Bureau, San Luis Obispo
County Farm Bureau, San Mateo County Farm
Bureau, Santa Barbara County Farm Bureau,
Santa Clara County Farm Bureau, and Santa
Cruz County Farm Bureau

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SPALETTA LAW PC

By: 
Jennifer L. Spaletta
Attorneys for California Strawberry
Commission

1 **STATEMENT OF POINTS AND AUTHORITIES**

2 Petitioners file this Statement of Points and Authorities in support of the Petition in
3 accordance with title 23, section 2050(a) of the California Code of Regulations. Part 1 of this
4 Statement of Points and Authorities applies to the specific actions and inactions for which Petitioners
5 have requested State Water Resources Control Board (State Board) review, as identified in section 3
6 of the above Petition. Part 2 of this Statement of Points and Authorities applies the Central Coast
7 Regional Water Quality Control Board’s (Central Coast Water Board) certification of the Final
8 Environmental Impact Report (FEIR). Petitioners request the opportunity to file a supplemental or
9 reply memorandum after receipt of the administrative record and the Central Coast Water Board's
10 response.

11 **INTRODUCTION**

12 The development of waste discharge requirements for irrigated agriculture is complex.
13 Regional boards must balance protection of water quality against maintaining our state and nation’s
14 food supply and local economies. Further complicating the issue is the fact that discharges of waste
15 from irrigated agriculture results from the legal and beneficial use of products that are necessary to
16 produce food (e.g., fertilizers, crop protection products). Importantly, the use of products themselves
17 is not a discharge of waste, but product residuals may become waste if discharged into waters of the
18 state. Similarly, irrigation return flows and stormwater from agricultural properties is not a discharge
19 of waste unless it contains residual contaminants above relative water quality standards. When
20 “waste” is discharged from irrigated agricultural properties, it is properly referred to as nonpoint
21 source pollution – meaning that it is diffuse and best addressed through implementation of
22 management practices.

23 Unfortunately, Ag Order 4.0 treats irrigated agriculture as a point source and expects that
24 water quality protection can be achieved by imposing limits on the amount of fertilizer used as well as
25 the amount of fertilizer that might be available to leach to groundwater after harvest. It also imposes
26 stringent, numeric receiving water limits on numerous contaminants, including sediment, nutrients,
27 pesticides and toxicity. These provisions are largely imposed on growers individually, although there
28 are some limited options for cooperative compliance efforts. The adoption of many of these

1 provisions well exceeds the Central Coast Water Board’s legal authority under the Porter-Cologne
2 Water Quality Control Act (Porter Cologne). Others are directly contrary to State Board direction in
3 the East San Joaquin Order.¹

4 At a larger policy level, Ag Order 4.0 fails to reach a balance between water quality protection
5 and maintaining our state and nation’s food supply. The order seriously threatens the local economy
6 that depends on vegetable and berry production in the Central Coast. If Ag Order 4.0 remains
7 unchanged, Central Coast growers will be left with illusory options to comply with the order’s strict
8 mandates.

9 **BACKGROUND**

10 The history of the Central Coast Water Board's development of Ag Order 4.0 follows
11 development of prior orders spanning a decade that have included administrative and legal challenges
12 at almost all levels. These efforts have been further shaped by the State Board’s precedential East San
13 Joaquin Order. Specific to development and adoption of Ag Order 4.0, the Central Coast Water Board
14 started holding public workshops and subject matter related briefings in 2017. Then, in September of
15 2018, the Central Coast Water Board commenced focused development of Ag Order 4.0.

16 In November 2018, Central Coast Water Board staff introduced a conceptual outline that
17 focused on numeric limits, time schedules and monitoring and reporting. In response to the
18 conceptual outline and associated staff report, Petitioners, individually and collectively, submitted
19 written comments, provided public testimony, and put forward various optional approaches in lieu of
20 the approach proposed in the conceptual outline. Following a multi-day March 2019 public workshop
21 on the conceptual outline, Central Coast Water Board staff began the process of developing a draft
22 general order along with its associated attachments. Then, on February 21, 2020, the Central Coast
23 Water Board published the draft order and draft environmental impact report (DEIR) and provided for
24 a public comment period. After several extensions, the public comment period on the draft order
25 closed on June 2020. In response to the draft order and DEIR, Petitioners (individually and
26 collectively) submitted extensive policy and legal comments, a track change version of the draft order

27 ¹ *In the Matter of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San*
28 *Joaquin River Watershed that are Members of the Third-Party Group* (2018), Order WQ 2018-0002 (East San Joaquin
Order).

1 with suggested revisions, proposed alternative approaches, supporting technical reports from expert
2 consultants and extensive legal comments on the DEIR.²

3 Several months later, the Central Coast Water Board started holding virtual board meetings.
4 The first set of board meetings were held on September 10, 11, 23 and 24, which were then followed
5 by board meetings on October 22 and 23, and December 9 and 10, 2020. Two more days of board
6 discussion occurred on January 7 and 8, 2021. Out of these 10 days of board meetings, interested
7 stakeholders and the public were allowed to provide comment on the draft order and DEIR only at the
8 first three September 2020 board meetings. Petitioners were provided, and took advantage of, the
9 opportunity to provide public testimony on the draft order and the alternative approaches put forward
10 by Petitioners in their June 2020 submittal. After September 23, the remaining seven days of board
11 meeting were limited to discussion and deliberation between Central Coast Water Board members
12 and Central Coast Water Board staff. The public, including Petitioners, could only observe the
13 discussion remotely and were provided no opportunity to comment directly during these seven days
14 of deliberation.

15 During the course of these board member and staff only discussions, Central Coast Water
16 Board staff would put forward individual issues for discussion, which included their rebuttal response
17 to comments and alternative approaches recommended by interested stakeholders and the public.
18 Then Central Coast Water Board staff would look to the board members for input regarding staff's
19 proposed recommendation for either making a revision to the draft order or maintaining provisions as
20 originally proposed.

21 Also during this intervening time period, and directly in response to board members
22 requesting more detail on Petitioners' alternative compliance approach to Groundwater Protection
23 provisions, Petitioners prepared alternative language for the draft order. The alternative language was
24 provided to each board member separately as a disclosed Ex Parte Communication³ in mid-October
25 2020.

26 ² See Agricultural Association Partners' Comprehensive Submittal, Including Redline Revisions to the General Order in
27 Response to Draft Environmental Impact Report (DEIR) and Draft General Waste Discharge Requirements for Discharges
28 from Irrigated Lands within the Central Coast Region dated June 22, 2020 (Ag Partner's June 2020 Submittal).

³ See Ex Parte Communications of A. Taylor Silva, dated October 20, 2020 located at
waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/ag_order4_exparte_disclosures.html.

1 At the January 7 and 8, 2021 board meetings, the Central Coast Water Board focused its
2 discussions on the alternative approaches to the draft order as proposed by Petitioners (and
3 alternatives proposed by others as well). At these meetings, neither proponents of the alternative
4 approaches or the public were given the opportunity to present or provide comment. Board members
5 were allowed to ask proponents a clarifying question if they so wished, but other than that, no
6 opportunity was provided for public comment. No board member asked a clarifying question to any
7 proponent of an alternative approach.

8 Based on the discussions and deliberation between board members and staff that occurred
9 over the seven days of meetings between September 2020 and early January 2021, Central Coast
10 Water Board staff prepared a revised draft order. The revised draft order was released on January 26,
11 2021, and was subject to a 30-day public comment period. Notably, the January 26, 2021 revised draft
12 order included components of Petitioners' alternative compliance program for Groundwater
13 Protection. Once again, Petitioners (individually and collectively) prepared and submitted comments
14 on the revised draft order.⁴ Ag Partner's February 2021 Submittal included recommendations for
15 specific language revisions in an attempt to make the Groundwater Protection alternative compliance
16 provisions as incorporated into Ag Order 4.0 by staff workable and consistent with the State Board's
17 East San Joaquin Order.

18 On April 2, 2021, the Central Coast Water Board released a proposed draft order, which did
19 include some additional revisions as requested by Petitioners. The Central Coast Water Board held a
20 virtual public hearing on April 14 and 15, 2021. Petitioners and all members of the public were given
21 the opportunity to provide testimony on the proposed draft order. During Central Coast Water Board
22 deliberations, some limited additional revisions were made. At the close of deliberations on April 15,
23 2021, the Central Coast Water Board adopted Ag Order 4.0 and certified the FEIR.

24 Although the public process associated with Ag Order 4.0 was long, Ag Order 4.0 as adopted
25 on April 15, 2021, still maintained the key elements of significant concern that were included on the
26 November 2018 conceptual outline. It imposes fertilizer application limits, nitrogen discharge limits,
27

28 ⁴ See Agricultural Association Partners' Comments on Revised Draft Ag Order dated February 25, 2021 (Ag Partner's February 2021 Submittal).

1 surface water limits for dozens of individual contaminants, and ranch level monitoring for both
2 surface and groundwater. Alternative compliance pathways are largely illusory as failure to comply
3 with targets results in being subject to limits. Thus, targets are no more than limits, except that they
4 may allow some additional time.

5 Despite Petitioners' extensive efforts to put forward alternatives and suggestions in
6 compromise that were consistent with the East San Joaquin Order, the state's Nonpoint Source Policy
7 and all other applicable policies, the Central Coast Water Board had largely pre-determined its desire
8 to adopt stringent and rigid numeric limitations and impose a point source program on nonpoint
9 source irrigated agriculture – leaving Petitioners with no choice but to file this Petition for Review.

10 **PART 1 – STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF ACTIONS**
11 **AND INACTIONS**

12 **I. PETITIONERS RESERVE THE RIGHT TO FILE A REQUEST FOR STAY OF**
13 **AG ORDER 4.0 IN WHOLE OR PART DEPENDING ON STATE WATER**
14 **TIMING OF REVIEW OF THIS PETITION**

15 Water Code section 13321(a) provides: "In the case of a review by the state board under
16 Section 13320, the state board, upon notice and hearing, if a hearing is requested, may stay in whole
17 or in part the effect of the decision and order of a regional board or of the state board."

18 The State Water Board's regulations further provide that it may grant a stay if the petitioner
19 demonstrates:

20 (1) [S]ubstantial harm to petitioner or to the public interest if a stay is not granted;

21 (2) [A] lack of substantial harm to other interested persons and to the public interest if a stay is
22 granted, and

23 (3) [S]ubstantial questions of fact or law regarding the disputed action.

24 The request for stay must be supported by a declaration under penalty of perjury of a person or
25 persons with knowledge of the facts alleged.⁵

26 The State Board has stated that "..., the issue of whether a stay is appropriate must be judged
27 in the temporal sense – [Petitioner] must prove that it will suffer substantial harm if a stay is not

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⁵ Cal. Code Regs., tit. 23, § 2053(a).

1 granted for the period of time pending resolution of the petition on the merits.”⁶ Thus, key to
2 determining harm is if the harm would occur during the time that the underlying petition is pending
3 before the State Board – something that is outside of Petitioners’ control.

4 Ag Order 4.0 and the accompanying Monitoring and Reporting Program (Attachment B) are a
5 complex web of requirements, deadlines, and time schedules. Due dates vary through the order and
6 Attachment B based on the priority of the surface water and groundwater, and if the grower is
7 planning to join a cooperative effort or comply independently. Many order requirements are
8 purposefully staggered to allow for phasing in of the varied requirements. For other provisions, the
9 potential harm to growers is currently unknown because interpretation or implementation is delegated
10 to future decisions of the Central Coast Water Board’s Executive Officer. In general, Petitioners do
11 not oppose the phasing of the order’s varied requirements but it makes it difficult to know if and when
12 harm may occur. Further, Petitioners understand that it is common to delegate interpretation and
13 approval of future deliverables to the Board’s Executive Officer.

14 With respect to timing of State Board review of the underlying Petition, as indicated, this is
15 outside of Petitioners control. Based on recent historical practice for petitions that pertain to
16 significant issues such as the irrigated lands program, the State Board process could span multiple
17 years. For example, it took the State Board three years to issue an order on the merits of Ag Order 2.0
18 (the precursor to Ag Order 4.0) and five years from petition date to order adoption for the East San
19 Joaquin Order. Considering this variable and unknown length of time, provisions challenged in this
20 Petition may not currently meet the State Board’s thresholds for granting a Request for Stay because
21 of delayed due dates or unknown interpretations. However, it is possible that with the passage of time
22 that circumstances may change. Accordingly, Petitioners reserve the right to file a Request for Stay of
23 all or certain provisions of Ag Order 4.0 in the event that growers subject to the order are threatened
24 with substantial harm prior to State Board review of the Petition on its merits.

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⁶ *In the Matter of the Petitions of Boeing Company for Review of Waste Discharge Requirements (WDR) Orders* (2006)
Order WQ 2006-0007, p. 4.

1 **II. AG ORDER 4.0 NEEDS TO BE REVISED TO INCLUDE A VIABLE THIRD-**
2 **PARTY COOPERATIVE ALTERNATIVE COMPLIANCE PATHWAY FOR**
3 **GROUNDWATER PROTECTION**

4 Petitioners appreciate and support the inclusion of a Third-Party Cooperative Alternative
5 Compliance Pathway for Groundwater Protection (Third-Party Alternative). Petitioners put forward
6 this initial concept in the Ag Partners June 2020 Submittal, and then further refined and developed the
7 alternative after receiving Central Coast Water Board member feedback at the September board
8 meetings. In October 2020, Petitioners conveyed the refined Third-Party Alternative approach to all
9 board members through a disclosed Ex Parte communication. Critical to the Petitioners' Third-Party
10 Alternative was relief from rigid and stringent fertilizer application and nitrogen discharge limits in
11 exchange for participating in a third-party program that included direct and enhanced follow-up from
12 the third-party as well as the need to be part of the groundwater protection program that included
13 groundwater protection (GWP) values and targets. Ag Order 4.0 reflects, in part, the alternative
14 compliance pathway developed by Petitioners. However, the Third-Party Alternative as adopted
15 includes provisions that undermine the viability and usefulness of this compliance pathway.

16 Fundamentally, third-party programs have advantages in being able to work directly and more
17 effectively with growers than regional water boards. These advantages have been long supported and
18 recognized by the State Board. In 2013, the State Board explicitly directed the Central Coast Water
19 Board to consider third-party structures in future iterations of the Central Coast's Ag Order.⁷ In 2018,
20 the State Board further expounded on the benefits of third-party programs: "Because third parties
21 build on relationships already in place with growers, third parties can engender a high level of trust
22 and more effectively reach out to growers to increase understanding of the permit provisions and to
23 facilitate management practice development and deployment, especially in cases where improved
24 management practices are required of particular growers."⁸

25 Taking previous State Board direction as a given, the primary usefulness of a Third-Party
26 Alternative is the third-party and the role it plays in reaching out to and educating growers by
27 providing information on various agricultural management practices that may help to protect

28 ⁷ See State Board Order WQ 2018-0002, p. 20, citing to Order WQ 2013-0101.

⁸ Order WQ 2018-0002, p. 20.

1 groundwater beneficial uses. Through direct outreach and follow-up efforts of a third-party, growers
2 will have timely information to make changes for the better. Without this, Central Coast Water Board
3 staff will be left with the overwhelming (and resource intensive) task of determining grower
4 compliance with multiple groundwater protection requirements and limits for approximately 3,000
5 agricultural operations on over 500,000 acres of irrigated agricultural land. Undoubtedly, with a
6 program of this size, water board staff would be forced to prioritize enforcement on non-compliers,
7 which would mean that growers would not receive the education and information they need to
8 implement Ag Order 4.0. Ultimately, this would undermine the Central Coast Water Board's purposes
9 for adopting certain requirements.

10 To be successful, a third-party alternative must include the following: incentivize grower
11 participation; optimize the third-party's role in direct grower education, outreach and follow-up;
12 include reporting from the grower to the third-party and from the third-party to the Central Coast
13 Water Board; identify milestones and schedules for determining success; be reasonable and realistic
14 in its implementation; include clearly defined triggers for further action and/or follow-up; and,
15 include consequences for those that fail to respond to education, outreach and follow-up conducted by
16 the third-party.

17 Unfortunately, the Third-Party Alternative in Ag Order 4.0 includes rigid backstops that will
18 disincentivize and hinder long-term grower participation in this third-party program. The Third-Party
19 Alternative includes four independent triggers that could make a grower ineligible to participate in the
20 third-party program, three of which are mistakenly called "targets": 1) good faith participation in the
21 third-party; 2) fertilizer application targets; 3) nitrogen discharge targets; and, 4) collective numeric
22 interim and final groundwater protection (GWP) targets. Petitioners fully support the need for
23 eligibility requirements to ensure grower full participation and accountability as part of a third-party
24 cooperative program. Accordingly, Petitioners agree that growers that fail to participate in the third-
25 party program in good faith should no longer be eligible to receive the cooperative program's
26 benefits, i.e., relief from rigid nitrogen discharge limits. However, with respect to the other three
27 triggers for ineligibility, Petitioners question their legality, consistency with State Board policy and
28 utility. With respect to the fertilizer application targets, which we discuss in detail in section III

1 below, Petitioners oppose any fertilizer application limit or target because the Central Coast Water
2 Board has no authority to regulate the use of fertilizers. Accordingly, the fertilizer application targets
3 need to be deleted in their entirety from Ag Order 4.0 and the Third-Party Alternative.

4 **A. The Nitrogen Discharge and GWP Targets in the Third-Party Alternative Are**
5 **Actually Limits**

6 Ag Order 4.0 attempts to characterize Third-Party Alternative eligibility requirements as
7 targets. However, this characterization misconstrues the term “target” as used in the East San Joaquin
8 Order. Rather, these targets are in fact limits in that failure to meet any one of the targets results in
9 removal from the Third-Party Alternative and results in growers being subject to the individual
10 groundwater protection requirements, including fertilizer nitrogen application limits and nitrogen
11 discharge limits.⁹ Use of targets as limits, or in this case de facto limits as eligibility requirements,
12 directly contradicts State Board policy.

13 The East San Joaquin Order discusses at length the use and value of applied over removed
14 (A/R) ratios and applied minus removed (A-R) difference values.¹⁰ The usefulness of this is to “allow
15 the Third Party and regional water board to better focus follow-up and management practice
16 implementation as well as research and modeling on groundwater loading.”¹¹ In the East San Joaquin
17 Order, the State Board specifically rejected the use of target values as regulatory tools at this point in
18 time: “It is premature at this point to project the manner in which the multi-year A/R ratio target
19 values might serve as regulatory tools. That determination will be informed by the data collected and
20 the research conducted in the next several years. If we move forward with a new regulatory approach
21 in the future, we expect to do so only after convening an expert panel that can help evaluate and
22 consider use of the acceptable ranges for multi-year A/R ratio target values in irrigated lands
23 regulatory programs statewide.”¹² Although the East San Joaquin Order refers specifically to the A/R
24 ratio target, the sentiment would apply to A-R difference values as well since the A-R difference
25 values were added as data to be reported to be paired with the A/R ratio for additional information.¹³

26 ⁹ See Ag Order 4.0 at pp. 32, 33, and 35.

27 ¹⁰ See, e.g., East San Joaquin Order, pp. 36-39.

28 ¹¹ East San Joaquin Order, p. 39.

¹² East San Joaquin Order, p. 74.

¹³ East San Joaquin Order, p. 39.

1 The GWP targets in the East San Joaquin Order serve a different purpose. Specifically, “[t]he
2 purpose of the Groundwater Protection Targets is to set a desired target that is intended for all
3 growers (including growers that are Members of the Third Party and growers regulated under an
4 individual order) within the township collectively to achieve compliance with the Receiving Water
5 Limitations for groundwater within the tie schedule for compliance specified in the General
6 WDRs.”¹⁴ Further, the Groundwater Protection Targets are designed to determine targets for nitrogen
7 loading within high priority townships or other geographic areas, and it is expected that the
8 methodology used will evolve over time.¹⁵

9 Ag Order 4.0’s inclusion of nitrogen discharge and GWP targets in the Third-Party Alternative
10 serves a different purpose than the type of targets referred to in the East San Joaquin Order.
11 Compliance with nitrogen discharge and GWP targets is mandated, and discharges in excess of any
12 one of the targets over a specified time period results in the grower being ineligible to participate in
13 the Third-Party Alternative. The only exception to this mandate is if non-compliance is the result of
14 unforeseen or uncontrollable circumstances.¹⁶ There is no flexibility for growers that are doing all that
15 is possible but are still unable to meet the specified nitrogen discharge targets or interim or final GWP
16 targets. Further, once a grower is ineligible, they automatically are subject to the individual
17 groundwater protection requirements, which are regulatory limits. Accordingly, the targets are in fact
18 de facto limits. Ag Order 4.0’s inclusion of numeric targets that determine eligibility for the Third-
19 Party Alternative cooperative program are improper and need to be deleted.

20 **B. Rigid Numeric Eligibility Requirements Will Undermine the Viability of the Third-**
21 **Party Alternative**

22 As indicated above, the State Board supports third-party approaches to regulating agricultural
23 discharges, as permitted by the state’s Nonpoint Source Policy. The State Board has previously
24 encouraged the Central Coast Water Board to consider a third-party structure.¹⁷ A significant value of
25 a third party is that it builds on relationships already in place, and third parties are able to more
26

27 ¹⁴ East San Joaquin Order, p. 66.

¹⁵ East San Joaquin Order, p. 66.

¹⁶ Ag Order 4.0, pp. 33 and 35.

¹⁷ East San Joaquin Order, p. 20.

1 effectively outreach to growers to "... increase understanding of the permit provisions and to facilitate
2 management practice development and deployment,"¹⁸ Ag Order 4.0 is a hybrid approach in that it
3 includes both - requirements for individuals, and differing requirements for growers that opt into the
4 Third-Party Alternative compliance pathway program for groundwater protection. The value of the
5 Third-Party Alternative is that it will be administered by an approved third-party that has the ability to
6 connect and communicate directly with growers. As advocated by Petitioners, the third-party under
7 this alternative would have a comprehensive follow up program to assist growers that are unable to
8 meet targets but that are making good faith efforts to do so.¹⁹

9 In the Ag Partners February 2021 Submittal, alternative language was proposed that would
10 have minimized the rigidity of the nitrogen discharge and groundwater protection targets and their
11 impact on third-party program eligibility. Specifically, Ag Partners recommended that growers
12 potentially be ineligible for the Third-Party Alternative "if the third-party or Central Coast Water
13 Board finds that the Participating Discharger is not working with the third-party in good faith to make
14 reasonable and practicable improvements necessary to meet final nitrogen discharge targets." If such
15 a finding was made, the grower would no longer be eligible for the Third-Party Alternative and would
16 then need to comply with the individual groundwater protection requirements.²⁰ Unfortunately, the
17 Central Coast Water Board rejected these proposed changes that would have put the nitrogen
18 discharge and interim and final GWP targets into their appropriate context.

19 By rejecting these revisions, Petitioners are concerned that the rigidity of eligibility provisions
20 will undermine the viability of the Third-Party Alternative. Third-party programs are funded directly
21 by growers. To pay these additional fees, growers need to have incentives to select the alternative. In
22 exchange, regional boards and the public are assured that growers are receiving direct follow up from
23 the third party when data and information reported to the third party and the regional board indicates
24 that the grower is at risk of over-applying of nitrogen fertilizer. If a grower becomes ineligible for the
25 Third-Party Alternative, they will not receive the needed follow up regarding over application of
26 fertilizer. Or, alternatively, the follow up will need to be conducted by Central Coast Water Board

27 ¹⁸ East San Joaquin Order, p. 20.

28 ¹⁹ Ag Partners October 2020 Ex Parte Communication.

²⁰ Ag Partners February 2021 Submittal, pp. 7 and 9.

1 staff. In all likelihood, the Central Coast Water Board staff will not have the staff resources available
2 to conduct such follow up on a large scale. This leaves growers that need education, outreach and
3 follow-up information the most (i.e., those unable to meet targets) with little in the way of resources.
4 Moreover, it does not help to improve groundwater quality in the long term.

5 Central Coast Water Quality Preservation, Inc. (Preservation, Inc.) is the most likely, and
6 leading, entity to be the third-party that would administer the Third-Party Alternative.²¹ In its review
7 of the revised draft order, Preservation, Inc. expressed concerns about the viability of the Third-Party
8 Alternative due to the rigidity of eligibility requirements. "..., there are several foreseeable pathways
9 by which a third-party will be unable to generate or retain the level of membership or cost-allocation
10 necessary to remain viable; This is because the RAO as written appears to obligate the third-party
11 to cannibalize itself, mandating revocation of membership for the very growers who most need the
12 third-party programs to reduce their footprint on water quality, and resulting in increased program
13 fees for the remaining (compliant) growers and an ever-increasing individual enforcement case-load
14 for Water Board staff.”²²

15 This concern is amplified by the fact that there are significant technical concerns with the
16 Third-Party Alternative nitrogen discharge targets, and in particular the nitrogen discharge target of
17 300 pounds per acer per year for all crops grown and harvested on an entire ranch by 2028.²³ During
18 the September 2020 public meeting, several University of California Cooperative Extension
19 specialists testified regarding the challenges that vegetable growers will face in reaching 300 pounds
20 or below as the difference between A-R on a per acre per year basis for all crops grown and harvested
21 on an entire ranch. Based on the results of a pilot project, Preservation, Inc. further demonstrated the
22 challenges that a subset of growers will have in meeting the nitrogen discharge targets.²⁴

23 As a practical matter, this means that informed growers that are attempting to comply will
24 become ineligible for the Third-Party Alternative because of their technical inability to achieve
25 nitrogen discharge targets or interim or final GWP targets – not because of recalcitrant behavior. This

26 ²¹ See Central Coast Water Quality Preservation, Inc. Comments on Revised Ag Order 4.0 dated February 25, 2021.

27 ²² Id. at p. 5.

28 ²³ Ag Order 4.0, Table C.2-2, p. 54

²⁴ See Preservation, Inc. Power Point Presentation for Groundwater Compliance Considerations for Third-Parties (April 14-16, 2021).

1 ultimately may mean that only growers that can comply with the individual groundwater protection
2 requirements are eligible for the Third-Party Alternative, which would undermine the usefulness and
3 purpose of the Third-Party Alternative. Thus, unless the rigid eligibility requirements are removed for
4 those that are willing but unable to meet nitrogen discharge and GWP targets, the Third-Party
5 Alternative is not a true alternative compliance pathway.

6 **III. RESTRICTIONS ON THE USE OF FERTILIZERS AND REQUIREMENTS TO**
7 **MONITOR FOR 1,2,3-TCP EXCEED CENTRAL COAST WATER BOARD**
8 **AUTHORITY**

9 **A. The Central Coast Water Board Does Not Have the Legal Authority to Adopt Fertilizer**
10 **Nitrogen Application Limits or Targets**

11 The Central Coast Water Board is limited to regulating the discharge of waste, not the
12 application or use of a lawful, useful substance. (Wat. Code, § 13263.) Waste is defined as “sewage
13 and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human
14 habitation, or of human or animal origin, or from any producing, manufacturing, or processing
15 operation.” (Wat. Code, § 13050(d).) The term “discharge” is not defined in Porter-Cologne. A
16 recent appellate court applies the common sense meaning of “discharge,” which is stated to mean
17 “[t]o allow (a liquid, gas, or other substance) to flow out from where it has been confined,” “to give
18 outlet or vent to,” and [to] emit”: discharge does not include removal.²⁵ The appellate court
19 determined that what constitutes a discharge is a factual question – not a legal question. The appellate
20 court further found that “it is not the character of a material that makes a substance, organic or
21 otherwise, waste under Porter-Cologne, it is the uses to which the material is employed[,]” and “the
22 harmed caused to the environment.”²⁶

23 The Clean Water Act also defines “pollutant” as, among other things, chemical or agricultural
24 waste, and does not broadly define the term to include all agricultural chemicals, especially those
25 applied for a beneficial purpose. (33 U.S.C. § 1362(6) [The Clean Water Act uses the term

26 ²⁵ *Sweeney v. California Regional Water Quality Control Bd.* (2021) 61 Cal.App.5th 1093, 1120 (citations omitted).
27 Notably, at the time of filing this Petition to the State Board, a Petition for Review of the *Sweeney* decision was pending
28 before the California Supreme Court. The Petition for Review was filed by *Sweeney*, challenging among other things, the
appellate court’s determination of what constitutes a waste under Porter-Cologne.

²⁶ *Sweeney* at 1119-1120.

1 “pollutant” in a similar fashion to how Porter-Cologne uses the term “waste”].) The usage in the
2 Clean Water Act acknowledges the difference between a useful substance and a waste substance, with
3 only the latter being the focus.

4 Attachment A to Ag Order 4.0 purports to contain “additional findings that further describe
5 the Water Board’s legal and regulatory authority; ... and the rationale for this Order.” Attachment A
6 claims that fertilizer application limits are being adopted to address the over-application of synthetic
7 fertilizer nitrogen.²⁷ Attachment A further explains how the Central Coast Water Board derived the
8 nitrogen fertilizer application limits and targets. For example, paragraph 23 on page 145 explains that
9 the approach follows the East San Joaquin Order by making comparisons among dischargers to
10 determine outliers. Using data reported by a limited subset of growers, Ag Order 4.0 sets crop specific
11 nitrogen fertilizer application limits and targets at the 90th and 85th percentile of fertilizer nitrogen
12 use reported.²⁸ To determine compliance with the nitrogen fertilizer application limits and targets,
13 growers must sum the amount of fertilizer nitrogen (AFER) that includes the following: nitrogen
14 applied from fertilizers and all other materials or products containing nitrogen excepting compost and
15 organic fertilizer nitrogen (both tracked and reported separately), including but not limited to,
16 inorganic fertilizers, fertilizers applied through the irrigation water (i.e., fertigation), foliar fertilizers,
17 slow release products, compost teas, manure, and compost or manure extracts.²⁹

18 In response to comments submitted by the Ag Partners in their June 2020 Submittal, the
19 Central Coast Water Board alleges that “[a]pplication limits are effectively limits regulating the
20 amount of overapplied or residual fertilizer that is discharged.”³⁰ To support this allegation, the
21 Central Coast Water Board cites to an opinion of the California Attorney General claiming that that it
22 supports the adoption of fertilizer nitrogen application limits.³¹

23 The Central Coast Water Board’s reliance on the California Attorney General opinion to
24 support the adoption of fertilizer nitrogen application limits and targets is misplaced. In the opinion,
25 the Attorney General first finds that insecticides, pesticides, herbicides, and other chemicals that find

26 ²⁷ Ag Order 4.0, Attachment A, p. 141, ¶ 12.a.

27 ²⁸ See Attachment A, pp. 145-147, Table A.C.1-3.A and Table A.C.1-3.B.

28 ²⁹ Ag Order 4.0, Attachment B, p. xx, ¶ 7.

³⁰ See Final Environmental Impact Report, Volume 3, page 3-593.

³¹ See 43 Ops. Cal. Atty. Gen. 302 (1964).

1 their way into waters of the state *after* their use for agricultural purposes would then be considered
2 industrial waste. (Emphasis added.) The opinion then states that if the chemicals in question were
3 introduced directly to a water of the state as a result of improper application or by natural force such
4 as wind that this activity would likewise constitute an industrial waste discharge subject regional
5 water board authority.³² The application of fertilizer nitrogen is not equivalent the circumstances as
6 described in 43 Ops. Cal. Atty. Gen. 304. Fertilizers are applied directly to crops. The findings in
7 Attachment A fail to support the premise that fertilizer nitrogen applied above the rates specified
8 results in a direct discharge to waters of the state. For example, paragraph 19 of Attachment A (page
9 144) states that it is the application of nitrogen in excess of what is removed from the field that results
10 in a potential nitrogen waste discharge – not the application of fertilizer nitrogen.

11 Further, the findings in Attachment A fail to make the connection that fertilizer nitrogen
12 applied at rates above the limits and targets in Ag Order 4.0 results in nitrogen becoming a waste that
13 is discharged at levels that are harmful to the environment. Paragraph 19 states that it is possible for
14 some crops to uptake excess nitrogen and that it is the over application of synthetic fertilizer nitrogen
15 that creates a risk that excess nitrogen will become a waste. Paragraphs 19 through 24 of Attachment
16 A fail to include factual information that demonstrate that the application of fertilizer nitrogen to
17 crops above the limits and targets as expressed in Tables C.1-2 and C.2-1 of Ag Order 4.0 is in fact an
18 over application of synthetic fertilizer nitrogen that actually results in excess nitrogen becoming a
19 discharge of waste.

20 Because the application of nitrogen fertilizers cannot be considered “waste,” the application of
21 such inputs to fields cannot then be considered a discharge of a waste and the Central Coast Water
22 Board cannot impose fertilizer nitrogen application limits. Accordingly, the Central Coast Water
23 Board’s adoption of nitrogen fertilizer application limits and targets exceeds the Central Coast Water
24 Board’s legal authority under Porter-Cologne and must be removed from Ag Order 4.0.

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³² 43 Ops. Cal. Atty. Gen. 302, 304.

1 **B. The Central Coast Water Board does not have the Legal Authority to Require Growers**
2 **to Monitor for 1,2,3-Trichloropropane (1,2,3-TCP)**

3 Attachment B to Ag Order 4.0 requires the monitoring of on-farm domestic supply wells for
4 1,2,3-TCP.³³ In addition, growers subject to Ag Order 4.0 must notify well users of on-farm domestic
5 supply wells of the health risks associated with consuming and/or showering with well water
6 containing 1,2,3-TCP in excess of the maximum contaminant level (MCL) (0.005 µg/L).³⁴ Growers
7 must also update their electronic Notice of Intent (eNOI) within 30 days of receiving laboratory
8 results for 1,2,3-TCP to confirm all of the following: well users have been provided a summary of
9 laboratory analytical results; well users have been provided information regarding health risks
10 associated with well water containing 1,2,3-TCP in excess of the MCL; well users have an alternate
11 source of water for domestic purposes if the sampled well contains 1,2,3-TCP in excess of the MCL;
12 and, if there has been a change in population using the well in the past year, confirm that new well
13 users have been provided the information and resources described.³⁵

14 Petitioners understand and respect the human health concerns associated with domestic
15 drinking water that exceeds the MCL for 1,2,3-TCP. Petitioners challenge to Ag Order 4.0's inclusion
16 of 1,2,3-TCP monitoring and reporting requirements is not intended to minimize the risks to residents
17 that rely on domestic wells where well water exceeds the applicable MCL. Voluntary testing of the on-
18 site domestic wells for 1,2,3-TCP should be encouraged, and if such wells exceeded the MCL,
19 alternative sources of domestic water for the home should be provided through private or public
20 efforts. For example, several of the Petitioners were actively involved in the development and passage
21 of Senate Bill 200 (SB 200) in 2019, which established a fund of \$130 million annually to provide
22 solutions for water systems and domestic well owners to address short and long-term drinking water
23 needs (otherwise referred to as the Safe and Affordable Drinking Water Fund or "SAFER"). Funds
24 from SAFER are available through technical service providers and other grantees to provide
25 assistance to well owners that have contaminated water. Petitioners fully support using SAFER funds
26 to ensure that all domestic well users have access to safe drinking water.

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28 ³³ Attachment B, paragraph 7, page 13

³⁴ Attachment B, paragraph 11.b, page 14

³⁵ Attachment B, paragraph 13, pages 14-15

1 Petitioners’ legal challenge here pertains directly to the Central Coast Water Board’s improper
2 and unsubstantiated findings that those subject to Ag Order 4.0 are dischargers of 1,2,3-TCP.
3 Manufacturers of soil fumigants included the compound 1,2,3-TCP as an ingredient with knowledge
4 its risks to groundwater. These fumigants were last used in the 1990s by growers who were unaware
5 of the inclusion of 1,2,3-TCP or its risks.³⁶ Bolstered by the success of the City of Clovis and others,
6 several water districts have sued the fumigant manufacturers and the consolidated cases are currently
7 pending in San Bernardino Superior Court.

8 The Central Coast Water Board alleges that they have the authority to require growers that are
9 subject to Ag Order 4.0 to sample and analyze on-farm domestic wells for 1,2,3-TCP because current
10 landowners and growers subject to Ag Order 4.0 are dischargers of 1,2,3-TCP. Their theory of
11 discharge is based on the argument that 1,2,3-TCP continues to be discharged into waters of the state
12 even though the soil fumigants have not been used since the 1990s.³⁷ The Central Coast Water Board
13 further claims that “the term ‘discharge’ includes passive migration of waste from soils to
14 groundwater or from contaminated groundwater to uncontaminated groundwater.”³⁸ The finding also
15 states that “[c]urrent landowners are dischargers when wastes continue to be discharged into waters of
16 the state.”³⁹ The Central Coast Water Board cites to *In the Matter of Zoecon Corporation, State*
17 *Board Order WQ 86-2* as the authority for this legal interpretation of the term “discharge.”⁴⁰ Another
18 case relevant to this discussion is *Tesoro Refining & Marketing Co. LLC. v. Los Angeles Regional*
19 *Water Quality Control Board* (2019) 42 Cal.App.5th 453.

20 The Central Coast Water Board’s application and reliance of the legal principles in *Zoecon*
21 and *Tesoro Refining* to require monitoring of 1,2,3-TCP by growers in the Central Coast is
22 unfounded. The Central Coast Water Board’s finding fails to recognize several critical distinctions
23 between growers and landowners subject to Ag Order 4.0, and the circumstances that led to *Zoecon*
24 and *Tesoro Refining* being deemed dischargers.

25 ³⁶ Petitioners request that the State Board pursuant to Title 23, section 648.2 of the California Code of Regulations take
26 Official Notice of the December 21, 2016 Fresno Bee article titled Clovis wins \$22 million against Shell Oil over toxic
drinking water, attached hereto as Exhibit 1.

27 ³⁷ Attachment A, paragraph 104, page 168.

28 ³⁸ Attachment A, paragraph 104, page 168.

³⁹ Id.

⁴⁰ Id.

1 The critical distinctions are as follows:

2 • Agricultural discharges are nonpoint sources of pollution, meaning that the discharges are
3 broad and diffuse over many acres throughout the Central Coast (see, e.g., Attachment A, paragraphs
4 126 – 134, pages 39-43).

5 • The chemical at issue, 1,2,3-TCP, was added to soil fumigants by the manufacturers – not the
6 landowners and growers that used the soil fumigant. 1,2,3-TCP was removed from the soil fumigants
7 by the manufacturers decades ago.

8 • The Central Coast Water Board finds that current landowners or growers are dischargers of
9 1,2,3-TCP based merely on the fact that they are landowners or growers where an on-site domestic
10 well is located. No other evidence is provided that links current landowners or growers subject to Ag
11 Order 4.0 to use of the soil fumigants that may have contained 1,2,3-TCP and that has now found its
12 way into on-site domestic wells.

13 • In *Zoecon*, waste was disposed of in a shallow pond that found its way into soil and
14 groundwater onsite and on adjacent properties. Contaminants were concentrated on the site owned by
15 *Zoecon* and the regional board found the property in question to be the probable source of
16 contaminants found in the soil and groundwater. The regional board had evidence that activities that
17 occurred at the site owned by *Zoecon* were directly related to the contamination found at a five-acre
18 industrial site.⁴¹

19 • In *Tesoro Refining*, the court found that there was overwhelming circumstantial evidence that
20 supported the regional board’s conclusion that Tesoro’s pipelines were in fact the source of gasoline
21 contamination.⁴²

22 Considering these critical differences, the Central Coast Water Board’s finding that current
23 landowners and growers subject to Ag Order 4.0 are dischargers of 1,2,3-TCP is not supported by the
24 State Board’s decision in *Zoecon* or the court’s decision in *Tesoro*. Both of those cases involved
25 evidence of plumes of a contaminant that could be readily traced to a pipeline source or specific
26 property whereby there was a pond discharge of waste to soil and groundwater. Here, the Central
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28 ⁴¹ Order 86-2, p. 1-2.

⁴² *Tesoro v. LA Water Board* (2019) 42 Cal.App.5th 453, 467

1 Coast Water Board makes no demonstration that those subject to Ag Order 4.0 applied the soil
2 fumigant in question and there is no evidence that readily traces 1,2,3-TCP in on-site domestic wells
3 to the discharge or disposal of 1,2,3-TCP from specific properties that are subject to Ag Order 4.0.

4 Accordingly, growers and landowners subject to Ag Order 4.0 are not dischargers of 1,2,3-
5 TCP and thus the monitoring and reporting requirements as imposed in Ag Order 4.0 are improper
6 and must be removed. However, as Petitioners stated above, other efforts should be made to test all
7 domestic wells for 1,2,3-TCP and provide alternative sources of domestic water for those whose wells
8 are contaminated.

9 **IV. NITROGEN DISCHARGE LIMITS DIRECTLY CONTRADICT STATE BOARD**
10 **PRECEDENT AND ARE A MISUSE OF RISK EQUATIONS**

11 In Section II above, Petitioners challenge the nitrogen discharge targets as they are used in the
12 Third-Party Alternative as a rigid eligibility requirement and the problems and concerns associated
13 with their use in that context. Here, Petitioners challenge the inclusion of nitrogen discharge limits per
14 se, and the use of the A-R equation as that limit.

15 First, A-R was added to the East San Joaquin Order to compliment A/R and to help a third-
16 party or regional water board “to better focus follow-up and management practice implementation as
17 well as research and modeling on groundwater loading.”⁴³ Then, the INMP Summary Report was
18 modified to include reporting of AR data that would support calculation of both the A/R ratio as well
19 as A-R difference.⁴⁴ Using this data, the State Board directed the Central Valley Water Board to
20 develop multi-year A/R ratio target values and acceptable ranges, as recommended by the
21 Agricultural Expert Panel.⁴⁵ These multi-year A/R ratio target values are “expected to provide a
22 valuable tool in irrigated lands regulatory programs for fair and even-handed consideration of
23 nitrogen application practices.”⁴⁶ As noted in Section II above, the State Board declined to use A/R
24 target values as a regulatory tool or end point at this point in time.⁴⁷ Since the A-R difference was
25 added to support the A/R ratio, the State Board’s decision to not allow or impose A/R target values as

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⁴³ East San Joaquin Order, p. 39.

27 ⁴⁴ East San Joaquin Order, pp. 39-40.

28 ⁴⁵ East San Joaquin Order, p. 43.

⁴⁶ East San Joaquin Order, p. 44.

⁴⁷ East San Joaquin Order, p. 74.

1 a regulatory tool would extend to A-R differences as well. Notably, the State Board determined that
2 any new regulatory approach (e.g., using A-R differences as a discharge limit) would only happen
3 after convening an expert panel to help evaluate and consider the appropriate use of acceptable
4 ranges.⁴⁸

5 Second, the A-R equation as expressed in all three compliance pathway options is complicated
6 and brings forward multiple different categories of nitrogen that is to be added to the A part of the
7 equation as well as categories of R to be added to the R part of the equation.⁴⁹ During the public
8 comment period, sophisticated consultants that serve multiple agricultural clients throughout the
9 Central Coast developed educational calculators to evaluate preliminary estimates of grower A-R
10 values.⁵⁰ The calculator was not designed to determine compliance but to be an educational tool to
11 inform growers and encourage discussion about irrigation and nutrient management.⁵¹ Multiple
12 lessons were learned from this project, including encountering varying challenges amongst the
13 operations.⁵² “The most important lesson learned from this exercise is that A-R calculations contain
14 countless layers of uncertainty, ambiguity, averaging and estimation.”⁵³

15 Third, the East San Joaquin Order refers to A and R, and in particular the ratio of A/R as a
16 “new metric for nitrogen application management.”⁵⁴ Relying on the Agricultural Expert Panel, the
17 ESJ Order sets forth the multi-year A/R ratio (or alternatively a multi-cropping cycle) as a
18 performance metric for measuring nitrogen left in the field. A high multi-year or multi-cropping
19 cycle ratio is then to be used, in this case by the regional board, to conduct education and outreach to
20 outliers. Use of such information for purposes beyond education and outreach to outliers is not
21 anticipated or directed in the East San Joaquin Order.⁵⁵ Rather, the State Board clearly states that it is
22 premature to use the A/R ratio target values as a regulatory tool: “It is premature at this point to
23 project the manner in which the multi-year A/R ratio target values might serve as regulatory tools.

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25 ⁴⁸ East San Joaquin Order, p. 74.

26 ⁴⁹ Ag Order 4.0, p. 24.

27 ⁵⁰ Provost & Pritchard Comments on Revised Draft Ag Order 4.0 dated February 25, 2021, p. 2.

28 ⁵¹ Id.

⁵² Id.

⁵³ Id. at p. 6.

⁵⁴ East San Joaquin Order, p. 36.

⁵⁵ Id. at 73.

1 That determination will be informed by the data collected and the research conducted in the next
2 several years. If we move forward with a new regulatory approach in the future, we expect to do so
3 only after convening an expert panel that can help evaluate and consider the appropriate use of the
4 acceptable ranges for multi-year A/R ratio target values in irrigated lands regulatory programs
5 statewide.”⁵⁶

6 Fourth, use of a nitrogen discharge limit goes beyond what the experts who testified before the
7 State Board thought was scientifically supportable. For example, during the East San Joaquin Order
8 proceedings, Dr. Thomas Harter from the University of California, Davis stated that “the A over R
9 ratio is completely sufficient to do an assessment of how much crops contribute relative to each other,
10 to nitrate and groundwater, how farmers are doing relative to each other, and to give us a tool to do
11 trend assessment and larger regional establishments.”⁵⁷ Other experts opining on the A/R ratio
12 acknowledged its limitations, particularly that insufficient information regarding A/R ratios in
13 California crops currently exist and such ratios and targets must be developed and refined as data is
14 gathered.⁵⁸

15 Nowhere in the East San Joaquin Order, or during the State Board’s proceedings, did the State
16 Board or its staff suggest, recommend, or advocate for use of A-R as a numeric discharge limit.
17 Accordingly, use of A-R as a discharge limit conflicts directly and is in violation of established state
18 policy.

19 Finally, use of a discharge limit based on A-R for an amount that is designed to ensure that no
20 residual nitrogen is available for potential leaching to groundwater would surely cripple the economic
21 sustainability of Central Coast agriculture.⁵⁹ The Central Coast region is unique in that it has weather
22 and topography to support specialty crops, which rely on multi-cropping cycles to maintain the
23 economics of farming. This is due to a combination of factors, including high land values, high labor
24 costs, labor-intensive crops, and costs related to food safety, in addition to a plethora of other
25 regulatory restraints put on Central Coast farming. Applying a nitrate discharge limit that essentially

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27 ⁵⁶ Id. at 74.

⁵⁷ See Ag Partners June 2020 Submittal, Exhibit 8, ESJ Proceedings Transcript at SWBESJ005206.

⁵⁸ See Ag Partners June 2020 Submittal, Exhibit 8, ESJ Proceedings Transcript at SWBESJ005238-5242.

⁵⁹ See Ag Partners June 2020 Submittal, Exhibit 6, ERA TM 2.

1 limits the number of pounds of nitrate that can be applied per acre per ranch per year would more than
2 likely eliminate multi-cropping cycles, which would in return eliminate the economic viability of
3 many crops along the Central Coast.⁶⁰ As discussed further in section VI below, consequences such as
4 this run afoul of the Legislature’s directives with respect to implementation of Porter-Cologne, which
5 is to regulate to the highest level that is reasonable – considering all the demands placed on the
6 waters.

7 For these reasons, the Central Coast Water Board’s adoption of nitrogen discharge limits is
8 improper. Further, the limits as expressed in Table C.1-3 are technically problematic and may be near
9 impossible to meet for many vegetable and strawberry operations, especially as the limits ratchet
10 down over time. Accordingly, the State Board needs to remove the nitrogen discharge limits from Ag
11 Order 4.0.

12 **V. OTHER REQUIREMENTS ARE UNREASONABLE, INCONSISTENT WITH**
13 **STATE LAW AND PRECEDENT OR UNRELATED TO THREAT OF**
14 **DISCHARGE OF WASTE**

15 Porter-Cologne mandates that activities and factors that may affect the quality of waters of the
16 state, “shall be regulated to attain the highest water quality which is reasonable, considering all
17 demands being made and to be made on those waters and the total values involved, beneficial and
18 detrimental, economic and social, tangible and intangible.”⁶¹ When it adopts waste discharge
19 requirements such as Ag Order 4.0, regional boards are to establish requirements that implement
20 relevant water quality control plans, taking into consideration beneficial uses to be protected and
21 water quality objectives reasonably required for that purpose.⁶² Unfortunately, in addition to the
22 provisions discussed in sections II through IV above, Ag Order 4.0 includes other provisions that are
unreasonable, inconsistent with state law and precedent or unrelated to a threat of discharge of waste.

23 **A. Impermeable Surfaces**

24 Ag Order 4.0 includes expensive and broad reaching new requirements for fields with
25 impermeable surfaces.⁶³ “Impermeable surfaces” include “[p]lastic-covered surfaces that do not
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27 ⁶⁰ See, e.g., Ag Partners June 2020 Submittal, Exhibits 5 and 6, ERA TMs 1 and 2.

28 ⁶¹ Wat. Code section 13000.

⁶² Wat. Code section 13263(a).

⁶³ Order at 37; Part 2, Section C.3, ¶ 11

1 allow fluid to pass through, including polyethylene mulch and hoop houses.” Impermeable surfaces
2 are commonly used to farm berries. Petitioners do not object, in general, to the inclusion of terms in
3 the order that address the threat of discharge from fields with impermeable surfaces. However, the
4 terms included in this order are too broad to be reasonable or effective.

5 Ag Order 4.0 requires any field with either .5 acre or more than 50% of the field covered by
6 impermeable surface to manage stormwater duration, rate and volume so that the conditions leaving
7 the field are the same as they would be if the entire field was a permeable surface. Ag Order 4.0
8 references urban stormwater run-off methods to compute stormwater discharge intensity and
9 volume.⁶⁴ Growers must both (1) affirmatively manage stormwater run-off so that it does not occur
10 in any increased intensity/duration/volume; and (2) explain their management practices and how their
11 effectiveness was determined in their Farm Plans.⁶⁵

12 This new regulation:

- 13 • Applies to any size field with impermeable surface. Thus, a strawberry field of 1/4 acre,
14 where 1/8 of an acre is covered with impermeable surface, must comply with the new requirements.
- 15 • Requires the grower to “manage” stormwater so as to prevent any increase in run-off due to
16 the impermeable surface, regardless of whether or not that runoff would result in a threat to water
17 quality given the field site conditions (such as slope).
- 18 • Applies to any field with impermeable surface, regardless of slope.

19 Findings 128- 143 of Attachment A⁶⁶ provide the Central Coast Water Board’s only rationale
20 for the Impermeable Surface requirements. The findings reference a 2014 Hillslope Farming Runoff
21 Management Practices Guide prepared by the Monterey County Resources Conservation District
22 (RCD Guide) and past complaints regarding sediment discharge from certain berry farms as
23 justification for the new regulations.

24 The RCD Guide was expressly “intended to serve as a tool for voluntary, self-implementation
25 of soil and water conservation and should not be misapplied as recommendations for regulatory
26

27 ⁶⁴ Ag Order 4.0, p. 37.

28 ⁶⁵ Id.

⁶⁶ Ag Order 4.0, Attachment A, pp. 197-200.

1 requirements or recommendations.”⁶⁷ Further, the focus of the RCD Guide was hillslope farming in
2 general, not farming with impermeable surfaces on all land.

3 The findings also rely on past complaints regarding sediment discharge as documented in a
4 2018 staff memo regarding two berry farms⁶⁸ The 2018 staff memo explains that one complaint
5 related to a berry farm on steep slopes with no Farm Plan and site conditions presented a high threat
6 to water quality. The second complaint was related to a berry farm where the operator had a farm
7 plan, worked to improve the plan after the complaint, the discharge at issue had potential other
8 sources and the site conditions and presented a low threat to water quality.

9 Findings 128-143 and the cited references do not support the broad and expensive new
10 regulatory requirements for all fields with impermeable surfaces. All enrolled farms are already
11 required to implement farm management practices to prevent erosion and sediment discharge from
12 their lands in Sediment and Erosion Control Plans. This new requirement for farms with impermeable
13 surfaces adds further layers of expense and complication for all berry farmers, regardless of size, with
14 no direct connection to a threat to water quality in most cases. The regulation is also infeasible to
15 implement. The average small berry farmer is not able to compute stormwater duration, rate and
16 volume using urban stormwater management formulas or methods as part of their Farm Plan without
17 expensive professional assistance.

18 The California Strawberry Commission proposed in its written comments on the draft order
19 that to the extent the board wanted berry growers with impermeable surfaces to have more rigorous
20 plans, these requirements should be initially limited to farms with impermeable surfaces that have
21 10% slopes on at least 30% of the farm, or 10 acres, whichever is greater, and are located on land
22 with erodible soil that discharges to a stream or wetland (not a ditch). The order could also allow the
23 executive director to require certified plans for additional acres when circumstances suggest it is
24 needed, such as when the surface water monitoring program identifies sediment discharges traceable
25 to a ranch with impermeable surfaces.⁶⁹ The Central Coast Water Board rejected this

27 ⁶⁷ RCD Guide, p. 3.

28 ⁶⁸ See Attachment A page 199 citing CCRWQCB, 2018a

⁶⁹ California Strawberry Commission June 2020 Submittal.

1 recommendation, which would have made the new regulation both reasonable, implementable, and
2 tied to an actual threat to water quality.

3 To rectify the Central Coast Water Board’s error, Petitioners request that the State Board
4 revise Ag Order 4.0 to incorporate the revisions as recommended by the California Strawberry
5 Commission.

6 **B. Pesticide Surface Receiving Water Limits**

7 Ag Order 4.0 imposes specific surface water receiving water limits on dischargers for a
8 number of pesticides that are listed in Table C.3-5.⁷⁰ For most, if not all, of the pesticides listed in
9 Table C.3-5, these are improper limits, as the Central Coast Water Board has not adopted any numeric
10 pesticide water quality objectives (WQOs) for these listed pesticides pursuant to law.⁷¹ Porter-
11 Cologne requires WQOs be adopted to ensure reasonable protection of beneficial uses. As outlined in
12 Water Code section 13241, “each regional board shall establish water quality objectives in water
13 quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the
14 prevention of nuisance.” Within its Water Quality Control Plan for the Central Coast Region (Basin
15 Plan), the Central Coast Water Board has established numerous general narrative and numeric WQOs,
16 including a narrative WQO for pesticides.⁷² However, there are no specific WQOs for the 35
17 pesticides listed in Table C.3-5. Thus, the Central Coast Water Board has not considered or applied
18 section 13241 to the limits expressed in Table C.3-5, and therefore has no way of knowing if
19 compliance with such limits is reasonable to achieve considering all controllable factors.⁷³

20 Further, before being used as a numeric limit, a pesticide WQO must be adopted properly,
21 pursuant to Water Code sections 13240 et seq., and must be based on proper evidence.⁷⁴ At the very
22 least, the Central Coast Water Board cannot incorporate by reference or rely on analytical numeric
23 values to interpret and apply the narrative pesticide WQOs within its Basin Plan without at least
24 having an adopted policy for such interpretations. No such policy exists in the Basin Plan.

26 ⁷⁰ Ag Order 4.0, p. 72.

27 ⁷¹ Wat. Code section 13241.

28 ⁷² Bains Plan, pp. 29-31.

⁷³ Wat. Code, section 13241(c).

⁷⁴ See Ag Partners June 2020 Submittal, Exhibit 7, Exponent TM, Section 3.1.2.

1 Accordingly, the State Board should remove Table C-3.5 as actual receiving water limits for
2 pesticides and toxicity.

3 **C. Ranch Level Groundwater And Surface Discharge Monitoring and Reporting**

4 Besides nitrogen discharge limits, use restrictions and surface receiving water limits, Ag Order
5 4.0 states that individuals may be required to conduct ranch level groundwater or surface discharge
6 monitoring and reporting if limits are exceeded and if required by the Executive Officer.⁷⁵ This
7 approach is inappropriate because the effort associated with ranch level monitoring would exceed the
8 usefulness of the information gathered.

9 With respect to ranch level groundwater discharge monitoring and reporting, the use of
10 irrigation water on agricultural fields is not a discharge of a waste. In fact, regulations state that no
11 discharger “shall be required to file a report of waste discharge pursuant to section 13260 of the
12 Water Code for percolation to the groundwater of water resulting from the irrigation of crops.”⁷⁶ On
13 this basis, the Central Coast Water Board has no authority to regulate the amount of irrigation water
14 that percolates to groundwater, because this percolation is not a discharge of a waste. Yet, despite
15 this regulation, Attachment B of Ag Order 4.0 would require growers as part of ranch level
16 monitoring to measure the volume of water that percolates below the root zone.⁷⁷ Combining the
17 monitoring of the volume of water with nitrate concentrations in the water does not get around the
18 fundamental issue that Ag Order 4.0 looks to treat volume of irrigation water as a discharge of waste.

19 Next, Attachment B of Ag Order 4.0 includes minimum criteria for work plans for ranch-level
20 groundwater and surface discharge monitoring.⁷⁸ The requirements are significant and not easily
21 applied to irrigated agriculture. The State Board recognized this limitation in the East San Joaquin
22 Order. “..., in a landscape-based, nonpoint source program such as the irrigated lands regulatory
23 program, monitoring the numerous and sometimes indeterminate set of all farm discharge points to
24 surface water and groundwater is an impractical, prohibitively costly, and often ineffective method
25 for compliance determination and the Nonpoint Source Policy accordingly does not mandate such

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27 ⁷⁵ Ag Order 4.0, paragraph 33, p. 30.

28 ⁷⁶ Cal. Code Regs., tit. 23, § 783.

⁷⁷ Ag Order 4.0, Attachment B, p. 20.

⁷⁸ Ag Order 4.0, Attachment B, pp. 29-30.

1 monitoring.”⁷⁹ In sum, monitoring the amount of nitrate in irrigation water that goes beyond the root
2 zone would be impractical, and the burden of monitoring such discharges would come at a cost that is
3 well beyond the usefulness of the information. Similarly, monitoring irrigation and stormwater
4 discharges for the listed parameters is impractical and costly, and the usefulness of such information
5 is questionable considering the relative impact, or lack thereof, that one farm would have on receiving
6 water quality. Accordingly, ranch level monitoring violates Water Code section 13267, which places
7 reasonableness and practical constraints on the regional board’s authority to require technical reports
8 and monitoring.⁸⁰

9 For these reasons, the Ranch-level discharge monitoring requirement must be removed from
10 the Ag Order 4.0 and Attachment B.

11 **D. Numeric Interim Quantifiable Milestones**

12 On April 2, 2021, the Central Coast Water Board released its Proposed Draft Order, which
13 included multiple revisions to incorporate reference to Interim Numeric Quantifiable Milestones
14 throughout the order. As explained by Central Coast Water Board staff at the April 14-15, 2021
15 adoption hearing, this term was purposefully included to require new concentration or load based
16 numeric interim quantifiable milestones.⁸¹ During the course of the adoption hearing, the term was
17 expanded to include other numeric interim quantifiable milestones related to management practices
18 that can confirm progress towards reducing the discharge of relevant constituents.⁸² The requirement
19 for specific numeric interim quantifiable milestones as part of the surface water follow up workplan is
20 inconsistent with the state’s Nonpoint Source Policy.

21 Key element 3 of the Nonpoint Source Policy states: “Where a [regional board] determines it
22 is necessary to allow time to achieve water quality requirements, the Nonpoint Source control
23 implementation program shall include a specific time schedule and corresponding quantifiable
24 milestones designed to measure progress toward reaching the specified requirements.”⁸³ Nothing

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26 ⁷⁹ East San Joaquin Order, p. 18.

27 ⁸⁰ Water Code section 13267, [“The burden, including costs, of these reports shall bear a reasonable relationship to the
28 need for the report and the benefits to be obtained from the reports.”].

⁸¹ See, e.g., Ag Order 4.0, p. 40.

⁸² See, Ag Order 4.0, p. 40.

⁸³ Nonpoint Point Source Policy, p. x.

1 within the Nonpoint Source Policy or subsequent court decisions interpreting the policy, indicate that
2 such milestones need to be numeric in nature, or tied directly to concentrations or loads of
3 pollutants.⁸⁴

4 Accordingly, the term “quantifiable milestones” in Key element 3 is intended to be flexible
5 and encompass a wide variety of performance goals and measures. By limiting quantifiable
6 milestones to something numeric and directly tied to concentrations or loads of pollutants, Ag Order
7 4.0 is inconsistent with the Nonpoint Source Policy. The State Board needs to revise Ag Order 4.0 to
8 re-define what can be considered a quantifiable milestone that is consistent with the Nonpoint Source
9 Policy.

10 **E. LONG-TERM CUMULATIVE IMPACT OF AG ORDER 4.0 ON CENRAL COAST**
11 **AGRICULTURE WILL MAKE AGRICULTURAL PRODUCTION INFEASIBLE**

12 Petitioners support the fundamental goal and purpose of Ag Order 4.0 to protect water quality.
13 However, it is critical that in adopting Ag Order 4.0 that the Central Coast Water Board does not
14 devastate the Central Coast Region and its inhabitants economically. Thus, a true and comprehensive
15 economic impacts analysis should have been prepared so that the Central Coast Water Board was
16 fully informed as to the short-term and long-term economic impacts that may occur from adoption
17 and implementation of Ag Order 4.0 in its totality.

18 During the 2020 public review period, Petitioners engaged ERA Economics to evaluate the
19 adequacy of economic analysis contained in the Draft Order and the DEIR collectively.⁸⁵ The team
20 from ERA that conducted the analysis are known experts in conducting economic analysis of
21 environmental regulations and have particular expertise as it relates to agricultural economics.⁸⁶ The
22 results of their initial review are documented in ERA TM 1. In summary, ERA found that “[t]he
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25 ⁸⁴ See *Monterey Coastkeeper v. State Water Resources Control Bd.* (2018) 28 Cal.App.5th 342, 369, [“... the State Board
26 has discretion to determine how much time is reasonable as well as appropriate milestones ...”]; see also *Environmental*
27 *Law Foundation v. State Water Resources Control Board et al.*, (2020) Superior Court of California, County of
28 Sacramento, Case Nos. 34-2018-80002851, 34-2018-80002852, 34-2018-80002853, Ruling on Submitted Matters and
Order: Petitions for Writ of Mandate, finding the State Board’s adoption of the East San Joaquin Order consistent with
Key Element 3, which includes measure performance goals and other criteria as appropriate quantifiable milestones.

⁸⁵ Ag Partners June 2020 Submittal, Exhibit 5, ERA TM 1.

⁸⁶ Ag Partners June 2020 Submittal, Exhibit 5, ERA TM 1, Attachment 1, ERA Team resumes.

1 economic analysis developed by the [Central Coast Water Board] and its consultants is limited and
2 fails to capture important, quantifiable economic and associated impacts of the proposed Order.”⁸⁷

3 As a follow up to ERA’s initial analysis, the Petitioners then engaged ERA to conduct an
4 example analysis that illustrates the likely cost and economic impacts resulting from the nitrogen
5 discharge limits alone. For this analysis, ERA developed an economic impact analysis for iceberg
6 lettuce in Monterey County as an example crop. The results of this analysis are staggering! For lettuce
7 in Monterey County alone, the total gross cost of nitrogen discharge limits will range between \$119.4
8 million at the 200 lb/ac limit to \$683 million per year at the 50 lb/ac limit.⁸⁸ The results of ERA’s
9 illustrative analysis for lettuce in Monterey County clearly shows that the Ag Order 4.0 will have
10 devastating economic impacts.

11 Unfortunately, Ag Order 4.0 essentially ignores the economic impacts of Ag Order 4.0 and
12 instead substitutes economic considerations and analysis with cost considerations. When adopting
13 waste discharge requirements, Porter-Cologne requires regional boards to take into consideration “the
14 beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other
15 waste discharges, the need to prevent nuisance, and the provisions of Section 13241.”⁸⁹ These
16 provisions that are required to be considered include, in part, water quality conditions that can
17 reasonably be achieved through the coordinated control of all factors affecting water quality as well
18 as *economic considerations*.⁹⁰ In other words, in its development of waste discharge requirements,
19 the Central Coast Water Board is mandated to consider the reasonableness of meeting the water
20 quality objectives (WQOs) in question, as well as economic considerations. Such considerations
21 must be more than conclusory findings, and findings must be supported by substantial evidence in the
22 record.⁹¹

23 Economic considerations and cost considerations are not one and the same. Economics is the
24 study of how individuals and businesses make decisions about allocation of resources in response to

25 ⁸⁷ Ag Partners June 2020 Submittal, Exhibit 5, ERA TM 1, p. 5.

26 ⁸⁸ Ag Partners June 2020 Submittal, Exhibit 6, ERA TM 2, p. 2.

27 ⁸⁹ Water Code section 13263(a).

28 ⁹⁰ Water Code section 13241, emphasis added.

⁹¹ See *Environmental Protection Information Center v. California Department of California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 516-517; see also *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* (2012) 210 Cal.App.4th 1255, 1268.

1 changing conditions. Thus, economic considerations would be looking at how agriculture will make
2 decisions in response to requirements in Ag Order 4.0. The fundamental question that the Central
3 Coast Water Board needed to ask was “[w]hat happens to agriculture and the communities in the
4 Central Coast under Ag Order 4.0?”⁹²

5 The findings in Attachment A are “cost considerations,” as clearly articulated by the section
6 heading. Examination of the 100 paragraphs dedicated to costs do not evaluate or consider the issue
7 of economics.⁹³ Instead, they collectively attempt to quantify reporting costs over the course of the
8 next five years. No consideration is given to potential community impacts that will occur when
9 vegetable and berry growers are unable to meet nitrogen discharge limits.

10 For example, as explained by ERA, the cost of regulatory compliance with the Ag Order 4.0
11 falls across 5 general categories: “1. Direct costs of fees, assessments, and paperwork 2. Changing
12 management practices, inputs, rotations, and land use to comply with discharge targets/limits
13 (additional direct costs), and potential loss of commercially marketable yield 3. Changing land use to
14 comply with riparian and operational set back requirements and developing a RAMP 4. Opportunity
15 costs of management time for compliance paperwork, training and other administration 5.
16 Opportunity costs of land out of production (e.g. riparian setbacks).”⁹⁴ While Attachment A includes
17 a number of findings that are purported to ensure compliance with Water Code section 13241, only
18 example costs for category 1 are included.⁹⁵ With respect to category 5, riparian setbacks were
19 removed from Ag Order 4.0 and thus are not directly relevant at this time. Regardless, the findings
20 collectively are inadequate as they fail to consider economics as articulated in categories 2, 3 and 4.

21 Additional concerns with Attachment A findings regarding its “Cost Considerations” are as
22 follows:

- 23 • The findings discuss changes in regulatory costs between the 2017 agricultural order (i.e.,
24 Ag Order 3.0) and Ag Order 4.0. Such a focus is too narrow and ignores the fact that
25 regulatory costs are cumulative. “Any economic assessment should acknowledge the
26

27 ⁹² Ag Partners’ April 14, 2021 Power Point Presentation to the Central Coast Water Board.

⁹³ Ag Order 4.0, Attachment A, pp. 7-33.

28 ⁹⁴ Ag Partners’ June 2020 Submittal, Exhibit 5, ERA TM 1, p. 12.

⁹⁵ Ag Order 4.0, Attachment A, p. 7-33.

1 current regulatory environment and how that is changing so that the incremental cost of
2 additional regulations can be assessed *in addition* to the cumulative effect on the
3 industry.”⁹⁶

- 4 • The finding contained in paragraph 7 of Attachment A, Section B cannot be supported by
5 evidence in the record. The paragraph claims that when the Central Coast Water Board
6 adopted water quality objectives that “it took economic considerations into account...”⁹⁷
7 First, it is well known that when many water quality objectives were first adopted into
8 water quality control plans in the early 70’s that little to no economic consideration was
9 given towards the adoption and economic impact of the water quality objectives in
10 question, and more specifically how they would apply to irrigated agriculture.⁹⁸ Second,
11 the Central Coast Water Board has not included the administrative records for adoption of
12 the Basin Plan into this administrative record. Thus, there is no evidence in this record to
13 support this blanket statement. Third, previously considered costs are not directly relevant
14 to an assessment of the economic impact of the Ag Order 4.0. To the extent the Central
15 Coast Water Board intends to rely on previous economic considerations, the findings need
16 to identify with specificity such economic considerations and explain their applicability to
17 Ag Order 4.0.
- 18 • The findings in Attachment A are misleading in that, as identified by ERA, Attachment A
19 only considers direct costs associated with fees, assessments and paperwork.⁹⁹ No
20 consideration is given to economics and impacts of surface water limits, or nitrogen
21 discharge limits.
- 22 • Attachment A explains that some cost estimates represent estimated costs over a five-year
23 project period, and in fact is limited to the first five years of Ag Order 4.0 implementation
24 (2021-2025). Limiting the cost analysis to the first five years is arbitrary and not reflective
25 of the longer-term nature of a General WDR versus a five-year Conditional Waiver.

26 ⁹⁶ Ag Partners’ June 2020 Submittal, Exhibit 5, ERA TM 1, p. 19.

27 ⁹⁷ Ag Order 4.0, Attachment A, p. 9.

28 ⁹⁸ Ag Partners’ June 2020 Submittal, Exhibit 8, LWA and FlowScience reviews of LA and Central Valley Water Board Basin Plans.

⁹⁹ Ag Partners’ June 2020 Submittal, Exhibit 5, EAR TM 1, p. 3.

- 1 • Attachment A assumes that all Dischargers subject to Ag Order 4.0 would perform
2 compliance tasks with in-house employees. The assumption is not supported by evidence
3 in the record, nor is it supported by practical experience and knowledge based on
4 implementation of Ag Order 3.0. To estimate costs, Attachment A uses an average hourly
5 rate of \$45. This rate is significantly under-estimated, and is more than likely closer to
6 \$120 per hour.

7 Additionally, Attachment fails to include any economic considerations that are related to the
8 economic impact of the nitrate discharge limits in Ag Order 4.0. Exhibit 6 of the Ag Partners’ June
9 2020 Submittal (ERA TM 2) illustrates just how large of an impact these limits are likely to have on
10 the Central Coast economy. ERA TM 2 takes lettuce in Monterey County to estimate the potential
11 economic impacts associated with these limits, including annual job losses, loss in labor wages and
12 net local economic activity.¹⁰⁰ Looking at lettuce alone in Monterey County, the economic impact of
13 a nitrogen discharge limit set at 200 lbs/ac per year is likely to result in an economic impact of \$119.4
14 million per year. At 50 lbs/ac per year, the estimated impact climbs to \$683 million per year.¹⁰¹ Using
15 the Impacts for Planning and Analysis (IMPLAN) model, ERA estimates that job losses would be
16 between 1,985 jobs at 200 lbs to 11,340 jobs lost at 50 lbs. Unaccountable in the impact summary is
17 the socioeconomic and social justice impacts that would occur as many of these jobs would be lost for
18 by those that reside in economically disadvantaged communities.¹⁰²

19 Attachment A fails to recognize and consider any of the long-term economic impacts that may
20 result from adoption and implementation Ag Order 4.0. By failing to include economic
21 considerations, the Central Coast Water Board has violated Water Code section 13263 in its adoption
22 of Ag Order 4.0.

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¹⁰⁰ Ag Partners’ June 2020 Submittal, Exhibit 6, ERA TM 2, p. 2.

¹⁰¹ Id.

¹⁰² Ag Partners’ June 2020 Submittal, Exhibit 6, ERA TM 2, p. 7.

1 **PART 2 STATEMENT AND POINTS OF AUTHORITIES IN SUPPORT OF FAILURE TO**
2 **COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

3 **I. INTRODUCTION**

4 The Central Coast Water Board’s certification of the Final Environmental Impact Report
5 (FEIR) for Ag Order 4.0 constitutes a prejudicial abuse of discretion in that the Central Coast Water
6 Board failed to proceed in a manner required by law and its decision is not supported by substantial
7 evidence, contrary to the California Environmental Quality Act¹⁰³ (“CEQA”). As the state agency
8 tasked to ensure the *reasonable* regulation of the Central Coast’s water quality given all the demands
9 made upon the water, it is imperative that the Central Coast Water Board comply with all laws,
10 including CEQA, and act appropriately and reasonably when it adopts Ag Order 4.0.¹⁰⁴

11 CEQA requires that an agency analyze the potential environmental impacts of its proposed
12 actions in an environmental impact report (except in certain limited circumstances).¹⁰⁵ CEQA is
13 designed to inform decision-makers and the public about potential, significant environmental effects
14 of a project.¹⁰⁶ “Its purpose is to inform the public and its responsible officials of the environmental
15 consequences of their decisions before they are made. Thus, the EIR ‘protects not only the
16 environment, but also informed self-government.’”¹⁰⁷

17 In general, the Central Coast Water Board failed to properly follow and comply with CEQA in
18 that the analysis in the FEIR is superficial, fails to adequately respond to public comments, fails to
19 include an adequate project description for Ag Order 4.0, fails to evaluate the entire Project and its
20 significant impacts, inadequately analyzes the environmental impacts associated with the Project, fails
21 to analyze the economic impacts associated with the Project, fails to properly identify and analyze
22 project alternatives, fails to adequately address certain cumulative impacts, fails to analyze the
23 Project’s potential inconsistencies with general plans, regional plans, regulations and zoning
24 ordinances to protect agricultural uses, and fails to support several of its conclusions and thresholds
25 with substantial evidence. Due to these inadequacies, the FEIR is not a legally adequate document.

26 _____
27 ¹⁰³ Pub. Resources Code, §§ 21000 et seq.

28 ¹⁰⁴ Wat. Code, §§ 13241; 13260(a); 13263; 13267; 13269; Pub. Resources Code, § 21001.

¹⁰⁵ See, e.g., Pub. Resources Code, § 21100.

¹⁰⁶ Cal. Code Regs., tit. 14, § 15002(a)(1), (“CEQA Guidelines”)

¹⁰⁷ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1 Accordingly, Petitioners respectfully request that the State Board order vacate certification of the
2 FEIR, until such time that either the State Board or the Central Coast Water Board revise the FEIR to
3 address these deficiencies.

4 **II. THE FEIR FAILS TO COMPLY WITH CEQA**

5 CEQA was enacted to address concerns about environmental quality in the state of California.
6 CEQA establishes processes and procedures to ensure that California agencies complete an
7 environmental analysis and consider and disclose to the public the environmental impacts of a
8 proposed project.¹⁰⁸ CEQA’s statutory framework clearly sets forth a series of analytical steps
9 intended to promote the fundamental goals and purposes of environmental review—information,
10 public participation, mitigation, and governmental agency accountability.¹⁰⁹ CEQA’s intent and
11 purpose foster informed public participation and decision-making.¹¹⁰ As the lead agency for Ag
12 Order 4.0, the Central Coast Water Board must comply with CEQA’s overall objectives, which are to:
13 1) inform the decision-makers and public about the potentially significant environmental effects of a
14 proposed project; 2) identify ways that environmental damage may be mitigated; 3) prevent
15 significant, avoidable damage to the environment by requiring changes in projects, through the use of
16 alternatives or mitigation measures when feasible; and 4) disclose to the public why an agency
17 approved a project if significant effects are involved.¹¹¹

18 An attempt to review the environmental impacts of the Ag Order 4.0 was included within the
19 FEIR. Unfortunately, a full CEQA review and environmental analysis has been avoided due to the
20 FEIR’s improper conclusions of “speculative” and “less than significant” when analyzing impacts and
21 responding to comments. Without preparing a proper and adequate environmental document, the
22 public has been precluded from gaining a full understanding of the environmental impacts and
23 consequences of the Ag Order 4.0 as well as gaining assurance that all consequences have been
24 analyzed to the fullest extent required by law.¹¹²

25
26 ¹⁰⁸ Pub. Resources Code, §§ 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq.

27 ¹⁰⁹ Cal. Code Regs., tit. 14, § 15002; see also Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.

28 ¹¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 (“*Laurel Heights P*”); *Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 564.

¹¹¹ Pub. Resources Code, § 21080.5(a).

¹¹² See *Vineyard Area Citizens for Responsible Growth, Inc., supra*, (2007) 40 Cal.4th at pp. 449–450.

1 As described herein, the Central Coast Water Board has failed to comply with the provisions
2 of CEQA as the FEIR prepared for the Project fails to satisfy the requirements of CEQA and the
3 CEQA Guidelines, title 14, California Code of Regulations, section 15000 et seq.¹¹³ Ag Order 4.0
4 consists of requirements that are more stringent or onerous than required by or provided for under
5 current law. These requirements will threaten the economic survival of agricultural lands owned or
6 operated by farmers and ranchers in the region, will reduce land and lease rates, affect agricultural
7 businesses and local economies, affect food prices, and disproportionately impact disadvantaged or
8 severely disadvantaged communities.¹¹⁴

9 **A. The FEIR’s Responses to Comments Are Inadequate**

10 The FEIR’s responses to comments are improper. The Master Responses, as well as responses
11 to individual comment letters, contain erroneous conclusions dismissing substantial evidence raised
12 by commenters, contain improper conclusions of speculation, and fail to contain a “good faith,
13 reasoned analysis in response.”¹¹⁵ The purpose of the FEIR’s response to comments is to address the
14 significant environmental issue(s) raised by each comment.¹¹⁶ Response to comments must be
15 addressed in sufficient detail and give reasons why the specific comments and suggestions are not
16 accepted.¹¹⁷ Further, a good faith, reasoned analysis should reference source materials to support the
17 lead agency’s conclusions made in the responses.¹¹⁸

18 Determining whether a project may have a significant effect on the environment is based on
19 substantial evidence in light of the whole record.¹¹⁹ When responding to a comment raising an

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22 ¹¹³ All future references to Guidelines are to the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) developed
23 by the Governor’s Office of Planning and Research and adopted by California’s Natural Resources Agency. (Pub.
24 Resources Code, § 21083.) “[C]ourts should afford great weight to the Guidelines except when a provision is clearly
25 unauthorized or erroneous under CEQA. [Citation.]” (*Laurel Heights I, supra*, (1988) 47 Cal.3d 376, 391, fn. 2.)

26 ¹¹⁴ ERA Economics LLC, Economic Review of Central Coast Water Board Ag Order 4.0 and Draft Environmental Impact
27 Report, Technical Memorandum No. 1 (May 11, 2020), pp. 7, 16-17, 18, (hereinafter ERA Economics, Technical
28 Memorandum No. 1) (FEIR, Volume 3, 3-490, 3-499—500, 3-501)

¹¹⁵ Cal. Code Regs. tit. 14, § 15088(c), [“There must be a good faith, reasoned analysis in response. Conclusory
statements unsupported by factual information will not suffice.”]

¹¹⁶ Cal. Code Regs., tit. 14, § 15088.

¹¹⁷ *Id.* at § 15088(c).

¹¹⁸ *Towards Responsibility In Planning v. City Council* (1988) 200 Cal.App.3d 671, 683.)

¹¹⁹ Pub. Resources Code, § 21082.2(a); Cal. Code Regs., tit. 14, §§ 15064(c), 15383, [“Whether a fair argument can be
made that the project may have a significant effect on the environment is to be determined by examining the whole record
before the lead agency.”].

1 impact, the lead agency, here the Central Coast Water Board, must conduct a thorough investigation
2 in light of the substantial evidence within the whole record.¹²⁰

3 As a whole, the Responses to Comments do not show that thorough investigations took place
4 prior to dismissing a comment or deeming a particular impact too speculative, nor were potential
5 impacts raised in individual comment letters viewed in light of the substantial evidence within the
6 whole record. Rather, the Responses to Comments improperly conclude comment letters contain no
7 substantial evidence based on individual paragraphs within a letter rather than looking at the letter as
8 a whole, along with collective evidence in light of the whole record.^{121 122}

9 The FEIR disregards personal on farm evidence of significant impacts that will occur due to
10 the Project, simply concluding that these comments do “not provide substantial evidence that the
11 Proposed Project would result in a new previously undisclosed significant impact or a substantially
12 worse impact than that disclosed in the DEIR.”¹²³ Personal comments regarding the impact of the
13 Project’s requirements will have on a particular farm are substantial evidence, warranting review of
14 the impact within the FEIR.¹²⁴

15 In response to agricultural stakeholder comments that the FEIR uses terms such as
16 “uncertainty,” “speculative,” “could be,” “insufficient,” “not possible,” “unknown,” and “may be,”
17 the FEIR’s Response to Comments affirms the use of these conclusions “because sufficient
18 information does not exist and therefore the agency will not provide a speculative conclusion.”¹²⁵
19 Comments raised by agricultural parties did not ask for analysis based on speculative issues.¹²⁶

20 ¹²⁰ Pub. Resources Code, § 21082.2(a); Cal. Code Regs., tit. 14, §§ 15064(c), 15383, 15145.

21 ¹²¹ See Letter from Norman C. Groot, Monterey County Farm Bureau (June 19, 2020) regarding actual reporting,
22 monitoring, and compliance costs, food safety impacts, general plan conflicts (FEIR, Volume 3, 3-217—248); Letter from
23 Kay Mercer (June 22, 2020) (FEIR, Volume 3, 3-1023—1085); Letter from Ryan R. Waterman, Brownstein Hyatt Farber
24 Schreck, LLP, on behalf of Costa Farms Inc., Costa Family Farms, and Anthony Costa & Sons (June 22, 2020) (FEIR,
25 Volume 3, 3-873—896); Letter by Jynel Gularte, Rincon Farms (June 22, 2020) (Comment CY, FEIR, Volume 3, 3-
26 998—1005); Letter from Agricultural Association Partners (June 22, 2020) (FEIR, Volume 3, 3-397—591); Letter from
27 Grower-Shipper Association of Central California (June 22, 2020) (FEIR, Volume 3, 3-978—989); Letter from Ag
28 Partners (February 25, 2021).

¹²² *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 571, citing, Pub. Res. Code, § 21080(c) & (d),
21082.2(a) & (d)F

¹²³ FEIR, Volume 3, 609—611, [Response to Comments BN-127 through BN-1136].

¹²⁴ *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 363, [“[L]ay opinions can
27 provide substantial evidence to support a fair argument that a project may have a significant aesthetic impact on the
28 environment.”]

¹²⁵ FEIR, Volume 3, 3-614.

¹²⁶ See Letters in footnote 121.

1 Rather, commenters raised issues specific to their farming operations and/or on behalf of members
2 belonging to their organizations. These concerns constitute substantial evidence of impacts from the
3 Program, especially when taken as a whole in light of the entire record. Additionally, although the
4 response to comment correctly states that it may terminate a discussion of an impact if it finds the
5 impact too speculative, a “thorough investigation” must take place first.¹²⁷ The Responses to
6 Comments do not contain a “thorough investigation” prior to dismissing the comment, nor is there a
7 “good faith, reasoned analysis in response.”¹²⁸

8 For example, Response to Comment BN-138 states that the FEIR took public concerns into
9 account, but, “[t]he comment does not provide substantial evidence that the DEIR would find a new
10 previously undisclosed significant impact or a substantially worse impact based on the personal
11 observations of commentors.”¹²⁹ This response is conclusory, fails to contain a reasoned analysis in
12 support for its conclusions, ignores how this comment adds to the substantial evidence in light of the
13 whole of the record, and ignores farm specific evidence and testimony from the very people who will
14 be regulated under the Project.¹³⁰

15 Regarding the Master Response 9 to Cost Considerations, the response is limited to three
16 paragraphs taking up less than half a page.¹³¹ Further, the first paragraph merely states that costs
17 were considered, and the second paragraph discusses Water Code section 13241.¹³² The actual
18 “response” to cost considerations is limited to:

19 In comments submitted on the February 2020 draft order, stakeholders stated they believed
20 there would be significant economic impacts from adopting this Order. However, leading up
21 to and after the release of the DAO, agricultural stakeholders did not provide detailed cost
22 analyses to substantiate these statements, even following pointed requests by staff.
23 Notwithstanding, the CCWB has considered the cost information submitted through these
24 comments and other available sources. Where appropriate, RAO 4.0, Attachment A, Findings,
25 have been revised to reflect revised cost information. However, two significant proposed
revisions to the draft order from the February 2020 to January 2021 versions make portions of
the analyses submitted by stakeholders inapplicable. First, changes to the riparian area
management requirements eliminates many of the costs associated with operational setbacks
and riparian-area management. Second, a third-party alternative compliance pathway has been

26 ¹²⁷ Cal. Code Regs., tit. 14, § 15145; FEIR, Volume 3, 3-614.

27 ¹²⁸ *Ibid.*, Cal. Code Regs., tit. 14, § 15088(c).

28 ¹²⁹ FEIR Volume 3, 3-611—612.

¹³⁰ See letters in footnote 121.

¹³¹ FEIR, Volume 3, 2-48.

¹³² *Ibid.*

1 added that is expected to further reduce the cost of individual compliance with the Order
2 requirements.¹³³

3 The response incorrectly states that agricultural stakeholders only raised cost concerns and
4 provided no additional detail. First, this statement is false as agriculture stakeholders provided two
5 economic technical memoranda from ERA Economics on June 22, 2020 as well as a technical
6 memorandum from Exponent Review; additionally, both Exponent and ERA Economics presented at
7 the September 10-11, 2020 Board meeting.¹³⁴ These comments detailed that the FEIR contained no
8 economic analyses and that such an analysis can be conducted. Other commenters also submitted
9 economic data for the Central Coast Water Board’s consideration.¹³⁵ Although not detailed here, the
10 administrative record is replete with similar examples.

11 Besides ignoring cost related comments, other substantial issues raised by commenters were
12 similarly dismissed. For example, comments submitted by Ryan R. Waterman, Brownstein Hyatt
13 Farber Schreck, LLP, on behalf of Costa Farms Inc., Costa Family Farms, and Anthony Costa & Sons
14 (June 22, 2020) raised substantial issues that were dismissed in the responses to comments.
15 Comments CH-52 through CH-82 raise concerns regarding flood safety risks, levee infrastructure,
16 and food safety issues due to riparian habitat.¹³⁶ The response to comments dismisses these concerns
17 by stating “RAO 4.0 does not include the riparian and operational setback components.”¹³⁷ Although
18 the adopted Project did remove riparian and operational setback requirements, the Project retained a
19 blanket prohibition on the disturbance and removal of native riparian vegetative cover unless
20 otherwise authorized.¹³⁸ The concerns raised in comments CH-52 through CH-82 not only apply to
21 the now deleted riparian and operational setback requirements, but also to the prohibition on riparian
22
23

24 ¹³³ RAO 4.0, Attachment A, pages 9-10, paragraph 27.

25 ¹³⁴ ERA Economics, Technical Memorandum No. 1, (FEIR, Volume 3, 3-484—502); ERA Economics, Technical
26 Memorandum No. 2, (FEIR, Volume 3, 3-504—517); Exponent, Technical Memorandum (FEIR, Volume 3, 3-518—
27 590); Presentation from Duncan MacEwan, ERA Economics, <[https://www.waterboards.ca.gov/central
28 coast/board_info/minutes/2021/ag_min.pdf](https://www.waterboards.ca.gov/central_coast/board_info/minutes/2021/ag_min.pdf)> [as of May 5, 2021].

¹³⁵ See, e.g., Letter from Norman C. Groot, Monterey County Farm Bureau (June 19, 2020) (FEIR, Volume 3, 3-217—
248).

¹³⁶ FEIR, Volume 3, 3-883—888.

¹³⁷ *Id.* at p. 3-897.

¹³⁸ Ag Order 4.0, p. 45.

1 disturbances in Part 2, Section D, ¶ 23. Disregarding these valid concerns with bare conclusions that
2 the substantial evidence raised no longer applies is contrary to CEQA.¹³⁹

3 Conclusions dismissing issues raised in public comments as “speculative” must be supported.
4 ¹⁴⁰ “Conclusory statements unsupported by factual information will not suffice.”¹⁴¹ Without support
5 and reasoning, the FEIR’s Response to Comments fell far short of the “good faith reasoned analysis”
6 mandated by CEQA for responding to significant conflicting information generated by the public.¹⁴²

7 By failing to proceed in a manner required by CEQA when responding to comments and
8 reaching factual conclusions unsupported by substantial evidence, the Central Coast Water Board
9 abused its discretion in certifying the FEIR.¹⁴³

10 **B. The FEIR Contains an Inadequate Assessment of Significant Impacts and Effects on**
11 **The Environment**

12 **i. Improper Significance Criteria To Determine Significant Effects**

13 The CEQA Guidelines define a “significant effect” as “a substantial, or potentially substantial,
14 adverse change in any of the physical conditions within the area affected by the project including
15 land, air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic
16 significance. An economic or social change by itself shall not be considered a significant effect on
17 the environment. A social or economic change related to a physical change may be considered in
18 determining whether the physical change is significant.”¹⁴⁴ According to Public Resources Code
19 section 21083 and CEQA Guidelines section 15065(a), if any of the following impacts would result
20 from a proposed project, the project is considered to have a significant effect on the environment:

- 21 (1) “The project has the potential to substantially degrade the quality of the environment; ...
22

23 ¹³⁹ *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 385–386, [The response to
24 comments and “[t]he EIR must contain facts and analysis, not just the bare conclusions of the agency.”].

25 ¹⁴⁰ *Berkeley Keep Jets Over the Bay v. Board of Port Comm’rs*, *supra*, 91 Cal.App.4th at pp. 1370-71; *Laurel Heights*
26 *II*, *supra*, 6 Cal.4th at pp. 1137-37; *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008)
43 Cal.4th 936, 954, [regarding environmental review under the Forest Practice Act, reasonably foreseeable impacts must
be reviewed rather than deemed speculative].

27 ¹⁴¹ *Towards Responsibility In Planning v. City Council* (1988) 200 Cal.App.3d 671, 683.

28 ¹⁴² *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1124; *Cleary v. County of Stanislaus*, *supra*, 118 Cal.App.3d at p. 358;
Berkeley Keep Jets Over the Bay, *supra*, 91 Cal.App.4th at p. 1371.

¹⁴³ Cal. Pub. Res. Code § 21168.5; Cal. Code Regs., tit. 14 § 15088.

¹⁴⁴ Cal. Code Regs., tit. 14, § 15382; see also Pub. Resources Code, § 21068.

1 (2) The project has the potential to achieve short-term environmental goals to the
2 disadvantage of long-term environmental goals.

3 (3) The project has possible environmental effects which are individually limited but
4 cumulatively considerable. “Cumulatively considerable” means that the incremental
5 effects of an individual project are considerable when viewed in connection with the
6 effects of past projects, the effects of other current projects and the effects of reasonably
7 foreseeable probable future projects.

8 (4) The environmental effects of a project will cause substantial adverse effects on human
9 beings, either directly or indirectly.”¹⁴⁵

10 In determining whether a project will have a significant environmental effect, the lead agency must
11 consider the “whole of the action,” which includes all discretionary approvals by governmental
12 agencies, ministerial actions as well as discretionary actions, and all constituent parts of a project.¹⁴⁶

13 The CEQA Guidelines further state, “An ironclad definition of significant effect is not
14 possible because the significance of an activity may vary with the setting. For example, an activity
15 which may not be significant in an urban area may be significant in a rural area.”¹⁴⁷ Appendix G of
16 the CEQA Guidelines describes impacts that the California Resources Agency has determined are
17 *normally considered significant*. These guidelines require that physical changes in the environment
18 be evaluated based on factual evidence, reasonable assumptions supported by facts, and expert
19 opinion based on fact.¹⁴⁸ However, potential impacts are not limited to Appendix G nor are questions
20 within Appendix G necessarily thresholds of significance.¹⁴⁹

21 For example, within the Economics sections of the FEIR, the significance criteria used to
22 determine if a significant impact would occur are flawed and narrow, limited to the following:
23 For the purposes of this analysis, the Proposed Project would result in a significant impact related to
24 economics if it would:

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26 _____
¹⁴⁵ Cal., Code Regs., tit. 14 § 15065(a).

¹⁴⁶ Cal. Code Regs., tit. 14, §§ 15003(h), 15378.

¹⁴⁷ Cal. Code Regs., tit. 14, § 15064.

¹⁴⁸ Cal. Code Regs., tit. 14, § 15064(f)(5).

¹⁴⁹ CEQA Appendix G.

- 1 A. Increase costs for growers to such a degree that it would cause or result in growers going out
2 of business, such that agricultural lands would be converted to non-agricultural uses; or
3 B. Disproportionately affect small farms or ranches due to increased implementation, monitoring,
4 or reporting costs, such that these farms would be forced to go out of business, resulting in
5 conversion of agricultural lands to non-agricultural uses.¹⁵⁰

6 By using these criteria, a significant impact can occur only if the entire farm goes out of business and
7 all agricultural lands are converted to non-agricultural uses.¹⁵¹ Significant impacts can still occur if
8 only a portion of the agricultural operation goes out of business, if crop types must be switched, if the
9 number of crop rotations must be decreased, if employees must be let go due to decreased revenue, if
10 buyers will not purchase crops due to food safety concerns, etc.¹⁵² By using such narrow criteria, the
11 FEIR improperly excludes analyzing significant impacts resulting from the Project.¹⁵³

14 ¹⁵⁰ FEIR, Volume 1, 3.5-34.

15 ¹⁵¹ *Ibid.*

16 ¹⁵² See Letter from Costa Farms (Jan. 21, 2019) regarding Ag Order 4.0 Options Tables including costs; Letter from Costa
17 Farms (Jan. 15, 2019) regarding food safety, riparian setbacks and impacts]; Letter from Huntington Farms (Jan. 21, 2019)
18 regarding costs; Letter from Berry Mist Farms, LP (Jan. 17, 2019) regarding impacts including costs; Letter from California
19 Farm Bureau Federation (Jan. 21, 2019) regarding CEQA compliance, project objectives, and alternatives; Letter from
20 California Avocado Commission (Jan. 15, 2019) regarding nitrogen application rates for avocados; Letter from University
21 of California Cooperative Extension Monterey County (Jan. 21, 2019) regarding nitrogen requirements, uptake, efficiency,
22 reasonableness; Letter from Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties (Jan. 21, 2019)
23 regarding slopes, food safety, regulatory compliance, reasonableness; Letter and Exhibits from Grower-Shipper Association
24 of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, Monterey County Farm
25 Bureau, Central Coast Groundwater Coalition, Western Growers, and California Farm Bureau Federation on behalf of
26 Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County
27 Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, and Santa Cruz County Farm Bureau
28 (Jan. 21, 2019) regarding reasonableness, legal authority, numeric limits, regulatory compliance, reasonableness, riparian
setbacks, food safety, etc; Letter from Grower-Shipper SB SLO, Grower-Shipper CC, Western Growers, SLO County Farm
Bureau, California Strawberry Commission, Central Coast Groundwater Coalition (April 30, 2018) regarding Williamson
Act, economics, alternatives, feasibility, mitigation, compliance with land use plans, policies, and regulations; Letter from
Norman C. Groot, Monterey County Farm Bureau (June 19, 2020) regarding actual reporting, monitoring, and compliance
costs, food safety impacts, general plan conflicts (FEIR, Volume 3, 3-217—248); Letter from Kay Mercer (June 22, 2020)
(FEIR, Volume 3, 3-1023—1085); Letter from Ryan R. Waterman, Brownstein Hyatt Farber Schreck, LLP, on behalf of
Costa Farms Inc., Costa Family Farms, and Anthony Costa & Sons (June 22, 2020) (FEIR, Volume 3, 3-873—896); Letter
by Jynel Gularte, Rincon Farms (June 22, 2020) (Comment CY, FEIR, Volume 3, 3-998—1005); Letter from Agricultural
Association Partners (June 22, 2020) (FEIR, Volume 3, 3-397—591); Letter from Grower-Shipper Association of Central
California (June 22, 2020) (FEIR, Volume 3, 3-978—989); Letter from Ag Partners (February 25, 2021); Agricultural
Presentations at Board Meeting on September 10—11, 2020; Agricultural Presentations at Board Meeting on April 14-15,
2021.

¹⁵³ The significance criteria used for Agricultural and Forestry Resources section is similarly flawed and narrow, thus
failing to capture and analyze significant impacts on agricultural resources. (FEIR, Volume 1, 3.1-19—20.)

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1. Inadequate Assessment of Significant Impacts and Effects

Here, the FEIR’s analysis of Ag Order 4.0 fails to fully consider many of the Project’s significant impacts on the environment, fails to provide adequate analysis of the Project’s impacts that are reviewed, and improperly fails to provide sufficient detail regarding the foreseeable and cumulative significant impacts that will arise pursuant to Ag Order 4.0’s onerous requirements on irrigated agriculture. The FEIR fails to comply with the requirements of CEQA in that it fails to adequately disclose, analyze and/or mitigate the Project’s environmental¹⁵⁴ impacts as required by law, and its conclusions regarding the Project’s environmental impacts are not supported by substantial evidence. As a result, the Project will result in significant environmental impacts that the FEIR fails to address or mitigate.

Given that many factors have to be analyzed and significant effects and impacts should be determined on a case-by-case basis, the Central Coast Water Board should have reviewed and used all data, facts, evidence, and personal knowledge presented and written and oral comments prior to determining Ag Order 4.0’s potential to significantly impact the environment. By failing to proceed in this manner, the FEIR does not contain an adequate environmental review for Ag Order 4.0.¹⁵⁵

2. The FEIR Improperly Shifts The Burden Of Proof And Determination Of Significance To The Public

When conducting an environmental review pursuant to CEQA, the burden of proof is on the lead agency to show that the project will not have an impact on the environment.¹⁵⁶ Under CEQA, if a project clearly will have an impact on the environment, its proponents, here the Central Coast Water

¹⁵⁴ CEQA defines “environment” broadly to include the agricultural environment. (CEQA Guidelines Appendix G, section II, Agriculture and Forestry Resources; Pub. Resources Code, § 21060.5.) “‘Environment’ means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The ‘environment’ includes both natural and man-made conditions.” (Cal. Code Regs., tit. 14, § 15360; see also Pub. Resources Code, § 21060.5.) In other words, the FEIR’s Environmental Analysis of Agricultural and Forestry Resources must review of the Project’s potential impacts on agricultural environment and analyze any resulting direct, indirect, and/or cumulative impacts that may impact agriculture. For example, the FEIR should have analyzed resulting impacts on irrigation management such as increased salinity of the soil. Increased salinity or sodic soils change soil chemistry and the soil structure, which can impact the ability to grow crops, soil water-holding capacity, and reduce nutrient uptake, among other things. Unfortunately, such analysis was not conducted.

¹⁵⁵ *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 385–386.

¹⁵⁶ Cal. Code Regs., tit. 14, § 15064.

1 Board, must properly identify those impacts and propose mitigations.¹⁵⁷ The burden of proof is *not*
2 on the public to show that an environmental impact may occur. Further, the public does not bear the
3 burden of determining which portions of a project will have a significant impact or effect on the
4 environment. Rather, that is the fundamental duty of the lead agency.¹⁵⁸

5 The determination of whether a project may have a significant effect on the environment is a
6 critical step in the CEQA process, and one that requires professional knowledge and judgment, as
7 described in California Code of Regulations, title 14, section 15064. The determination should be
8 based on information and evidence in the record and, to the extent feasible, on scientific and factual
9 data.¹⁵⁹ This determination is made prior to and separate from the development of mitigation
10 measures for the project. During opportunities to provide oral and written comments on both the
11 development of Ag Order 4.0 and the CEQA scoping process, members of the agricultural community
12 provided testimony and substantial evidence regarding the Ag Order 4.0's impacts on agricultural
13 resources, including, but not limited to, economic impacts, impacts to total farmland acreage and land
14 use, food safety impacts, changes in management practices, inputs, crop rotations, impacts to
15 disadvantaged communities, job losses, direct, indirect, and induced socio-economic impacts, and
16 impacts from the prohibition on disturbing riparian cover.¹⁶⁰

17 By providing oral and written comments, the public provided ample information in the form
18 of substantial evidence to make a "fair argument" that the Project may have a significant
19 environmental impact, especially on the agricultural environment.¹⁶¹ Notwithstanding those
20 comments raised, the FEIR concludes that the majority of impacts to agriculture are speculative in
21 nature, thus warranting no additional analysis and resulting in less than significant conclusions. For
22 example, the FEIR states: Regarding potential economic impacts, it is "unknown" and "speculative"

25 ¹⁵⁷ Cal. Code Regs., tit. 14, § 15002.

26 ¹⁵⁸ Cal. Code Regs., tit. 14, § 15064.

27 ¹⁵⁹ *Ibid.*

28 ¹⁶⁰ See Letters and Presentations cited in Footnote 152.

¹⁶¹ Cal. Code Regs., tit. 14, § 15384, [substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency."]

1 regarding which ranches will have increased costs and which agricultural lands will be converted out
2 of production.¹⁶²

3 Other examples include:

- 4 • “The additional costs of management practice implementation are speculative because
5 it is unknown which management practices will be implemented by which growers...”
6 (FEIR, Volume 1, p. 3.1-24.)
- 7 • “While Agricultural Order 4.0 would result in some increased costs, it is largely
8 speculative as to whether these increased costs could lead to conversion of agricultural
9 lands to non-agricultural uses.” (FEIR, Volume 1, p. 3.1-24.)
- 10 • “As a result of the speculative nature of Agricultural Order 4.0’s effects on
11 agricultural land conversion due to economic impacts, this impact would be **less than**
12 **significant.**” (FEIR, Volume 1, p. 3.1-24, emphasis in original.)
- 13 • “As a result, it cannot be determined how many acres of land may be taken out of
14 production due to implementation of management practices (other than setbacks).
15 Therefore, this impact is speculative and **less than significant.**” (FEIR, Volume 1, p.
16 3.1-25, emphasis in original.)
- 17 • “Due to all of these unknown and variable factors, it would be speculative to conclude
18 that the costs associated with Agricultural Order 4.0 would result in a physical change
19 in the environment.” (FEIR, Volume 1, p. 3.5-40.)
- 20 • “Overall, this analysis finds that the potential for agricultural lands to be converted to
21 non-agricultural uses as a result of increased costs from Agricultural Order 4.0 is
22 speculative.” (FEIR, Volume 1, p. 3.5-41.)
- 23 • “Even considering all of the potential increased costs for growers, the costs of
24 compliance for most growers would still likely comprise a relatively minor component
25 of their total cash costs per acre. These additional costs could still impact profits, but
26 specific impacts would depend on a number of factors that are impossible to predict

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¹⁶² FEIR, Volume 1, p. 3.1-19.

1 (e.g., domestic and international markets). As such, this impact is speculative, and,
2 therefore, **less than significant.**” (FEIR, Volume 1, p. 3.5-41 emphasis in original.)

3 These conclusions, as well as others within the FEIR incorrectly and improperly shifted the
4 burden of identifying significant environmental impacts from the lead agency to the public in direct
5 violation of CEQA.¹⁶³ The FEIR’s conclusions also ignore the substantial relevant evidence that is
6 contained throughout the administrative record. Such information, especially in light of the whole
7 record before the Water Board, provides evidence of significant or potentially significant impacts on
8 agricultural resources, thus changing the “less than significant” determinations.¹⁶⁴ “CEQA places the
9 burden of environmental investigation on government rather than the public.”¹⁶⁵ The agency may not
10 “hide behind its own failure to gather relevant data.”¹⁶⁶

11 By concluding that many agricultural impacts are “speculative,” the FEIR attempts to shift the
12 burden of proof to the public and thus avoiding the issue entirely, while also ignoring the record as a
13 whole.¹⁶⁷ Given this, the conclusions within the FEIR regarding agricultural resources, economic
14 impacts, and project impacts are improper and contrary to law.

15 **3. The FEIR’s Analysis of Agriculture and Forest Resources Is** 16 **Improper And Flawed**

17 To preserve agriculture and ensure a healthy farming industry, the Legislature has declared
18 that “a sound natural resource base of soils, water, and air” must be sustained, conserved, and
19 maintained.¹⁶⁸ Agriculture is one of the foundations of this state’s prosperity, employing many
20 Californians and a variety and quantity of food products that both feed the region, state, and nation,
21 and a significant source of exports.¹⁶⁹ In addition to substantially impacting the state’s and local
22 counties’ economy, agriculture also provides substantial benefits to the state’s employment force.

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24 ¹⁶³ Cal. Code Regs., tit. 14, § 15064.

25 ¹⁶⁴ Cal. Code Regs., tit. 14, § 15384; Cal. Code Regs., tit. 14, §§ 15064(c) & (f)(5).

26 ¹⁶⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

27 ¹⁶⁶ *Ibid.*

28 ¹⁶⁷ See FEIR, Volume 1, 3.5-35, 3.5-40, 3.5-41, 4-10.

¹⁶⁸ Food & Agr. Code, §§ 802(g); 821(c) see also *id.* § 12786(a), [“The continued viability of the agricultural economy is of paramount importance to the people of California.”]; *id.* at § 12786(c), [“The ability of the state to control, detect, exclude, and eradicate pest infestations is necessary to continue the preeminent position of this state as the leading farm state and is essential for the continuing supply of foodstuffs.”].

¹⁶⁹ Food & Agr. Code, § 566.

1 California agriculture provides “one out of 10 jobs in California.”¹⁷⁰ On the Central Coast, agriculture
2 and associated businesses are a leading source of employment.

3 For agriculture to remain and thrive in the Central Coast, farmers and ranchers must be able to
4 continue to be farm, especially since changes, even small ones, in agricultural production sets in
5 motion a series of “ripple effects,” which collectively cause changes in output (economic production)
6 throughout the economy. Prior to negatively impacting agricultural lands, decision-makers must
7 consider the impacts of a project on the agricultural industry, the state as a whole, and “the residents
8 of this state, each of whom is directly and indirectly affected by California agriculture.”¹⁷¹

9 Here, the FEIR fails to properly analyze the significant impacts to agricultural resources,
10 including impacts to farmable acreage. Substantial evidence exists, in light of the record as a whole,
11 that the Project will cause additional significant impacts resulting in additional agricultural lands to be
12 converted to non-agricultural use due to cost of compliance and economic infeasibility.¹⁷² The Project
13 also includes expanded requirements for irrigation and nutrient management for both surface and
14 groundwater, including prescriptive nitrogen application limits, nitrogen discharge targets, numeric
15 interim quantifiable milestones, and nitrogen discharge limits not supported by agronomic science¹⁷³,
16 expanded pesticide management for surface water and groundwater, including specified surface water
17 monitoring and threshold limits¹⁷⁴, prohibition on disturbance of riparian vegetation cover¹⁷⁵,
18 requirements for impermeable surfaces not reasonably related to threat of discharges¹⁷⁶, on-farm
19 domestic well monitoring for 1,2,3-trichloropropane (1,2,3-TCP)¹⁷⁷, ranch-level surface discharge
20 monitoring and reporting¹⁷⁸ and increased reporting and compliance requirements in surface water
21 and groundwater reporting areas with new or updated reporting forms, such as Annual Compliance
22 Form, Pesticide Management Plan, Total Nitrogen Applied, Sediment and Erosion Management Plan,
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24 ¹⁷⁰ Food & Agr. Code, § 566.

25 ¹⁷¹ Food & Agr. Code, § 803.

26 ¹⁷² ERA Economics, Technical Memorandum No. 2, pp. 2-12 (FEIR, Volume 3, 3-505—515); ERA Economics, Technical
27 Memorandum No. 1, pp. 3, 7, 13, 14, (FEIR, Volume 3, 3-486, 3-490, 3-496—497).

28 ¹⁷³ Ag Order 4.0, pp. 19-20, 31-33, 50-52

¹⁷⁴ Ag Order 4.0, pp. 34-35

¹⁷⁵ Ag Order 4.0, p. 45

¹⁷⁶ Ag Order 4.0, p. 37

¹⁷⁷ Ag Order 4.0, Attachment B, pp. 14-15, 38

¹⁷⁸ Ag Order 4.0, pp. 19, 20, 30, 39, 40

1 and Irrigation and Nutrient Management Plan.¹⁷⁹ However, these impacts were not adequately
2 addressed; impacts were either ignored or deemed speculative.¹⁸⁰

3 Of particular importance, the FEIR fails to account for loss of farmland attributable to food
4 safety buffering and/or undercounts loss of farmland due to failure to account for loss attributable to
5 food safety buffering; does not analyze conflicts with the California Leafy Greens Product Handling
6 Marketing Agreement requirements;¹⁸¹ fails to account for impacts of fallowing on small farming
7 operations; fails to account for Sustainable Groundwater Management Act, conflicts with local
8 groundwater sustainability plans, and groundwater sustainability plan-related land fallowing; fails to
9 address food safety, flood, insect vector control related to setback requirements; fails to address
10 potential impacts to human health due to imposed setbacks; fails to properly analyze impacts to
11 Williamson Act contracts and associated fees for cancellation of contracts when agricultural land in
12 production is converted to open space as well as loss of County tax revenue if that land is
13 permanently taken out of production due to impacts from the Project’s requirements; fails to analyze
14 decreases in overall land value and reductions of rental income due to loss of agricultural production
15 area; fails to take into account increased reporting management due to the overwhelming increase in
16 data collection points related to irrigated and nutrient management; fails to analyze economic
17 infeasibility; fails to analyze compliance issues for smaller farms and the need for professional
18 expertise to comply with reporting; fails to analyze substantial land fallowing and crop switching;
19 fails to analyze significant costs of meeting receiving water limits, nitrogen discharge targets, and
20 limits; fails to analyze the economic or agronomic feasibility to continue multiple crops per year on a
21 field; fails to analyze ripple or “multiplier” effects on other agricultural related businesses and
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25 ¹⁷⁹ Ag Order 4.0, pp. 19, 21, 22, 29, 31, 35, 36-42; see ERA Economics, Technical Memorandum No. 1, p. 8 (FEIR,
26 Volume 3, p. 3-491).

27 ¹⁸⁰ FEIR, Volume 1, p. 3.1-24—25.

28 ¹⁸¹ Although the FEIR contains a section on the California Leafy Greens Product Handling Marketing Agreement (LGMA)
within the Hazards and Hazardous Materials section, the information within the section simply describes LGMA Metrics.
The FEIR does not include grower evidence provided in oral and written comments regarding what a grower does on the
ground to comply with LGMA metrics and how such metrics conflict with requirements within the Project.

1 employment; and fails to analyze reductions in employment in Central Coast communities due to
2 reduced production land area, particularly for disadvantaged communities.¹⁸²¹⁸³

3 The FEIR also fails to properly quantify and analyze the impacts of nitrogen discharge limits
4 for crops. Setting aside the legality of these limits, the proposed Project’s nitrogen discharge limits
5 will be cost prohibitive for many crops.¹⁸⁴ In a study looking solely at the impacts of nitrogen
6 discharge limits on lettuce grown in Monterey County, ERA Economics concluded:

7 “Summary conclusions are as follows (again, these impacts apply to lettuce in Monterey County
8 only):

9 The loss in gross value of lettuce production in Monterey County due to the nitrogen
10 discharge limits specified in the Order is estimated at \$119.4 million per year at the
11 200 lb/ac limit and \$683 million per year at the 50 lb/ac limit.

12 Total annual job losses for these scenarios vary between 1,985 and 11,340. Most of
13 these jobs are filled by residents of economically disadvantaged communities.

14 Labor wages fall by between \$54.1 million and \$309.4 million per year.

15 Value added, which is a measure of net local economic activity, falls by between \$85.6
16 and \$489.6 million per year.

17 Losses to consumers due to higher lettuce prices are estimated between \$87.4 and
18 \$472.6 million per year.

19 Farming risk would increase substantially. The probability of covering operating and
20 overhead farming costs for a typical lettuce rotation would fall from 73% currently to
21 45% under a 50 lb/ac/yr nitrogen discharge limit. That is, in more than half of years a
22 producer would not be able to cover the cost of raising the crop. The probability of
23 generating revenue greater than total costs (i.e., making an economic profit) would fall
24 to 14% under a 50 lb/ac/yr nitrogen discharge limit. This would cause growers to leave
25 the industry, fallow land, and switch crops.

26 ¹⁸² “Impacts of changes in crop mix (i.e., impacts to labor intensive crops) and land retirement or fewer crop rotations per
27 year will be felt by all of agriculture, and likely will be disproportionately felt by farmworkers, packing house, cooler, and
28 processing plant employees. Workers filling positions in packing houses and picking crops often reside in economically
disadvantaged communities in the region, or in other regions within driving distance to the Central Coast.” “Economic
impacts felt by agriculture and other businesses reliant on the agricultural sector in this region, are likely to have a
disproportionate impact on jobs that are performed by those that reside in economically disadvantaged communities, raising
important environmental justice considerations that were not evaluated in the DEIR.” (ERA Economics, Technical
Memorandum No. 1, p. 4 (FEIR, Volume 3, 3-487).)

¹⁸³ ERA Economics, Technical Memorandum, No. 1, pp. 2-3, 4, 6, 18 (FEIR, Volume 3, 3-485—487, 3-489, 3-501);
ERA Economics, Technical Memorandum No. 2, pp. 12-13 (FEIR, Volume 3, 3-515—516).

¹⁸⁴ ERA Economics, Technical Memorandum No. 2, pp. 4-12 (FEIR, Volume 3, 3-507—515).

1 A multi-crop rotation would likely become economically infeasible under the proposed
2 nitrogen discharge limits. It would not be profitable to produce multiple crops per year
3 and stay under the proposed nitrogen discharge limits. As shown in our analysis, this
4 would likely cause a sharp reduction in land values, lease rates, local businesses, and
5 jobs.

6 Many of the farm jobs affected by the Order are in job classifications and areas that
7 would affect economically disadvantaged communities. Therefore, these losses are
8 likely to result in additional socioeconomic and social justice impacts that are not
9 quantified in our example summary.”¹⁸⁵

10 None of the significant impacts cited above are included in the environmental analysis within the
11 FEIR. Since “the costs of implementing the Order are substantial and would lead to land fallowing,
12 crop switching, and severe business and job losses,” full environmental review of these impacts is
13 required.¹⁸⁶

14 Additionally, the analysis of the environmental impacts of agricultural lands ignores the
15 legislative declarations embedded in CEQA. CEQA is a vehicle to preserve agricultural lands,
16 prevent significant impacts to agricultural lands, and prevent the conversion of agricultural lands.¹⁸⁷
17 Specifically, the legislature declared it is the policy of the state to:

18 (a) “Develop and maintain a high-quality environment now and in the future, and take all action
19 necessary to protect, rehabilitate, and enhance the environmental quality of the state.”¹⁸⁸

20 The FEIR’s environmental analysis overlooks Public Resources Code section 21001(a) because it
21 ignores that agriculture is an environmental resource of the state that should be protected and
22 enhanced “now and in the future.”¹⁸⁹ The FEIR should have recognized that Central Coast
23 agriculture provides economic, environmental, and socio-cultural benefits, as well as food and fiber,
24 and included analysis of resulting impacts to these agricultural benefits.

25 In conducting its impact analysis, the FEIR relies solely on the five significant criteria for
26 agricultural resources listed in Appendix G of the CEQA Guidelines to determine if the Project
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28 ¹⁸⁵ ERA Economics, Technical Memorandum No. 2, p. 2 (FEIR, Volume 3, 3-505).

¹⁸⁶ *Ibid.*

¹⁸⁷ *See Masonite Corp. v. Cnty. of Mendocino* (2013) 218 Cal. App. 4th 230, 238, 241, [discussing conserving agricultural land as a mitigation measure for CEQA projects]; see also Cal. Code Regs., tit. 14, § 15387 Appendix. G [listing the conversion of farmland as a potentially significant effect on the environment].

¹⁸⁸ Pub. Resources Code, § 21001(a).

¹⁸⁹ Pub. Resources Code, § 21001(a); Pub. Resources Code, § 21060.5; Cal. Code Regs., tit. 14, § 15360; CEQA Guidelines Appendix G, section II, Agriculture and Forestry Resources.

1 impacts agricultural resources.¹⁹⁰ Although the five significant criteria listed in Appendix G are
2 valuable, additional criteria should have been used to analyze impacts on agriculture.¹⁹¹ Upon a quick
3 review of the Agricultural Element of Appendix G, a “fair argument,” supported by substantial
4 evidence in the record¹⁹², can be made that the Project may result in significant environmental
5 impacts to agriculture since the Project will not only: a) covert prime farmland and unique farmland
6 to non-agricultural use, b) fails to meet policy consistency analysis by conflicting with existing
7 zoning for agricultural land use and Williamson Act contracts currently on the agricultural lands
8 throughout the Project site, and c) will involve other changes in the existing environment will could
9 result in conversion of farmland to non-agricultural use, but will also result in many other significant
10 impacts, and as such, the analysis should not be limited to the significance criteria laid out in the
11 FEIR.¹⁹³

12 Rather than conducting a thorough analysis of all potential impacts to agricultural lands,
13 agricultural vitality, agricultural production, agricultural resources, related regional economic sectors
14 including employment and wages, processing, shipping, and retail industries, and socioeconomic
15 impacts to Central Coast communities, the FEIR includes conclusory statements, such as:

- 16 • “Because Agricultural Order 4.0 would not specify the manner of compliance, it is not
17 possible to determine which ranches will implement which management practices in which
18 locations. As a result, it cannot be determined how many acres of land may be taken out of
19 production due to implementation of management practices (other than setbacks). Therefore,
20 this impact is speculative and less than significant.” (FEIR, Volume 1, p. 3.1-24—25.)
- 21 • “While Agricultural Order 4.0 would result in some increased costs, it is largely speculative as
22 to whether these increased costs could lead to conversion of agricultural lands to non-
23 agricultural uses.” (FEIR, Volume 1, p. 3.1-24.)
- 24 • “CCWB does not find that the anticipated increased costs would be large enough to
25 necessarily cause any existing agricultural operations to go out of business or otherwise

26 ¹⁹⁰ FEIR, Volume 1, p. 3.1-19.

27 ¹⁹¹ CEQA Appendix G.

28 ¹⁹² See Letters and Presentations cited in Footnotes 121 and 152.

¹⁹³ FEIR, Volume 1, p. 3.1-19; CEQA Appendix G, [“Substantial evidence of potential impacts that are not listed on this form must also be considered.”].

1 choose to abandon their operations, and thereby potentially result in farmland being converted
2 to non-agricultural uses.” (FEIR, Volume 1, p. 3.1-24.)

- 3 • “As a result of the speculative nature of Agricultural Order 4.0’s effects on agricultural land
4 conversion due to economic impacts, this impact would be less than significant.” (FEIR,
5 Volume 1, p. 3.1-24.)

6 CEQA’s informational purposes are not satisfied by an EIR that simply ignores impacts,
7 potential alternatives, and assumes only one approach is suitable for the regulation of potential
8 discharges to waters of the state from agricultural lands.¹⁹⁴ Rather, decision-makers and the public
9 must be presented with sufficient facts to evaluate the pros and cons of requirements in the form of
10 draft Ag Order 4.0.¹⁹⁵

11 Even if a full discussion leaves some uncertainty regarding actual impacts of the anticipated
12 project, CEQA requires discussion of probable impacts, project alternatives, mitigation measures, and
13 the environmental consequences of those contingencies.¹⁹⁶ Such discussion within the FEIR must
14 also be supported by substantial evidence and allow for public participation and review.¹⁹⁷

15 By not including a meaningful review of the Project’s impacts on agricultural resources, the
16 FEIR is fundamentally and basically inadequate and conclusory in nature, precluding meaningful
17 public review and comment.¹⁹⁸ By failing to identify and analyze probable impacts and merely
18 concluding that impacts are speculative or less than significant, the FEIR is improper, and the error is
19 prejudicial.

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25 ¹⁹⁴ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo*, *supra*, 172 Cal.App.3d at p. 167.
26 ¹⁹⁵ Cal. Code Regs., tit. 14, §§ 15002(a), 15121; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho*
Cordova, *supra*, 40 Cal.4th 412; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*
(2003) 160 Cal.App.4th 715.
27 ¹⁹⁶ *Vineyard Area Citizens for Responsible Growth, Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 432.
28 ¹⁹⁷ Pub. Resources Code, § 21091(d)(2); Cal. Code Regs., tit. 14, §§ 15088, 15121, 15384.
¹⁹⁸ *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, 1051; *Laurel Heights I*, *supra*, at p.
404; Cal. Code Regs., tit. 14, § 15063(c); see Cal. Code Regs., tit. 14, § 15088.5].

4. The FEIR's Economics Analysis Is Improper And Flawed

Although the FEIR contains an Economics Analysis¹⁹⁹ of the Project, the analysis is fundamentally flawed. The additional summary materials included in revised Attachment A²⁰⁰ do not remedy these flaws nor do they address any of the fundamental issues that ERA Economics raised in Technical Memorandum 1²⁰¹, Technical Memorandum 2²⁰², or in the September 11, 2020 presentation to Central Coast Water Board, or that the Ag Partners raised in its CEQA comments.²⁰³

The economic analysis developed by the CCWB and its consultants is limited and fails to capture important, quantifiable economic and associated impacts of the proposed Order. Agriculture is fundamentally an economic activity that makes use of, and affects, many aspects of the physical environment. Therefore, understanding the environmental impact of the Order requires that its economic effect on agricultural operations play an important role in the analysis. The DEIR analysis, significance determination, and associated findings for the Order did not quantify important economic impacts that can be reasonably quantified. As a result, the analysis was unable to assess potential effects of the economic impacts on the physical environment and could not incorporate these linkages into significance determinations. The Order increases monitoring and reporting requirements (e.g., Annual Compliance Forms, Total Nitrogen Applied, Riparian Area Management Plans, Irrigation Nutrient Management Plans, etc.), and would impose significant management costs for growers to comply with riparian management areas, pesticide, surface runoff, and net nitrogen targets/limits. The FEIR and Order describe the accounting cost of some example management practices, but do not evaluate how growers, the agricultural industry, and linked economy (socioeconomic impacts) would adjust in response to these substantial regulatory costs. In other words, the FEIR does not prepare any economic analysis.²⁰⁴

First, the significance criteria for the impact analysis of economic impacts are fundamentally flawed, which results in a flawed analysis of economic impacts. Criteria A improperly requires increased costs to be significant only if a grower goes out of business. (FEIR, Volume 1, 3.5-34.) The FEIR then diminishes any potential cost increase or impact as speculative because “Agricultural

¹⁹⁹ Although Chapter 3.5 is called “Economics,” the chapter does not contain an “economics analysis,” but are rather “cost considerations.”

²⁰⁰ The new costs added to Attachment A fail to contain any analyses, the new information misleading, narrow, and selective, and is an undervaluation of the direct costs of the permit.

²⁰¹ FEIR, Volume 3, 3-484—502

²⁰² FEIR, Volume 3, 3-504—517

²⁰³ Letter from Agricultural Association Partners (June 22, 2020) (FEIR, Volume 3, 3-397—591).

²⁰⁴ ERA Economics, Technical Memorandum No. 1, pp. 1-2 (FEIR, Volume 3, 3-484—485) (ERA Economics, Technical Memoranda No. 1 and No. 2 are incorporated by reference in their entirety); see Exponent Technical Memorandum, (June 22, 2020) Section 3.1.2, p. 23, [“[W]e find no evidence that the Central Coast Water Board fully considered all economic impacts or the remaining Porter-Cologne section 13241 factors in establishing the requirements of the Draft WDRs, including in applying water quality objectives as numeric effluent limitations.”] (FEIR, Volume 3, 3-545); see also Letter from Agricultural Association Partners (June 22, 2020) (FEIR, Volume 3, 3-397—591), [see specifically Section I of the Agricultural Association Partners’ Legal And Policy Responses].

1 Order 4.0 would not specify the manner of compliance,” historical “trends support the theory that the
2 regulatory compliance costs associated with CCWA Agricultural Orders have not been sufficient to
3 result in significant conversion of agricultural lands to non-agricultural use,” and “[o]verall, this
4 analysis finds that the potential for agricultural lands to be converted to non-agricultural uses as a
5 result of increased costs from Agricultural Order 4.0 is speculative.” (FEIR, Volume 1, 3.5-40, 3.5-
6 41.)

7 As the basis of its economic analysis, the majority of the FEIR’s Economics Section of the
8 Environmental Analysis discusses the costs of compliance with Ag Order 3.0.²⁰⁵ The Impacts
9 Analysis then discusses changes in regulatory costs between Ag Order 3.0 and the Project over five
10 years.²⁰⁶ The FEIR cannot compare total regulatory costs of previous Ag Orders to the adopted
11 Project as the requirements in each Order are vastly different and not analogous.²⁰⁷ This analysis is
12 limited, too narrow, and ignores the fact that regulatory costs are cumulative. “Any economic
13 assessment should acknowledge the current regulatory environment and how that is changing so that
14 the incremental cost of additional regulations can be assessed in addition to the cumulative effect on
15 the industry.”²⁰⁸ Any conclusions based on regulatory cost comparisons associated with previous Ag
16 Orders are faulty and attempt to misconstrue what the project is (Ag Order 4.0) and its impacts.

17 Additionally, previously considered costs from prior regulations (Ag Order 3.0) are not
18 directly relevant to an assessment of the economic impact of the Project since the Project includes
19 substantial new requirements not imposed under Ag Order 3.0.²⁰⁹ Further, in addition to not utilizing

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²⁰⁵ FEIR, Volume 1, 3.5-12 – 3.5-30.

21 ²⁰⁶ FEIR, Volume 1, 3.5-34—42; 3.5-36, [“Table 3.5-17 provides a summary of the potential total costs over a five-year
22 period for several new or expanded requirements and attempts to provide a sense of the per acre costs. Several new or
23 expanded requirements are not included in the table because total costs cannot be estimated and are discussed below.”];
Attachment A, p. 28, ¶94, [“This cost analysis presents estimated costs associated with implementing Ag Order 3.0 versus
24 implementing Ag Order 4.0 over five-year project periods.”]; Attachment A, p. 28, ¶95, [“Most costs discussed below are
‘total costs’ representing the cost of complying with the require over the course of five years.”].

25 ²⁰⁷ FEIR, Volume 1, 3.5-12 – 3.5-30.

26 ²⁰⁸ ERA Economics, Technical Memorandum No. 1, p. 19 (FEIR, Volume 3, 3-501).

27 ²⁰⁹ The Project includes expanded requirements for irrigation and nutrient management for both surface and groundwater,
28 including prescriptive nitrogen application limits, nitrogen discharge targets, numeric interim quantifiable milestones, and
nitrogen discharge limits not supported by agronomic science (WDRs, pp. 19-20, 31-33, 50-52), expanded pesticide
management for surface water and groundwater, including specified surface water monitoring and threshold limits, (WDRs,
pp. 34-35), prohibition on disturbance of riparian vegetation cover (WDRs, p. 45), requirements for impermeable surfaces
not reasonably related to threat of discharges (WDRs, p. 37), on-farm domestic well monitoring for 1,2,3-trichloropropane
(1,2,3-TCP) (WDRs Attachment B, pp. 14-15, 38), ranch-level surface discharge monitoring and reporting (WDRs, pp. 19,
20, 30, 39, 40 and increased reporting and compliance requirements in surface water and groundwater reporting areas with

1 reasonably available economic methods to analyze economic impacts, the FEIR’s economics analysis
2 does “not evaluate how growers, the agricultural industry, and linked economy (socioeconomic
3 impacts) would adjust in response to these substantial regulatory costs” or analyze the full range of
4 “total costs.”²¹⁰ Although the FEIR and Attachment A states that the economics analysis considers
5 “total costs” over a five-year period, this is misleading in that the DEIR only considers direct costs
6 associated with fees, assessments, and paperwork.²¹¹ The “total costs” do not include the economic
7 impacts of surface water limits, nitrogen discharge limits, riparian setbacks, or cumulative costs, and
8 therefore, are *not* total costs. Additionally, limiting the analysis to only five years (years 2021-2025)
9 grossly underestimates costs given the nature of the Project, a long-term general waste discharge
10 requirements order.

11 Although the FEIR includes estimates of some costs, mostly in the form of direct costs of fees,
12 assessments, and paperwork, most costs to agriculture were not analyzed or were analyzed
13 improperly. The FEIR presents some example accounting costs but does not use those costs to
14 quantify potential economic impacts to growers, linked industries (processing, shipping, etc.),
15 communities, and the region as a whole.²¹² Costs of nitrogen discharge requirements, compliance
16 with surface water discharge limits, prohibition on riparian disturbance, and other key substantive
17 provisions are *not* estimated within the FEIR. The FEIR failed to analyze the economic impacts on
18 jobs, land use, and agricultural resources resulting from the Project’s requirements; failed to quantify,
19 discuss, or analyze various regulatory components, such as nitrogen discharge limits, that may make
20 current rotation systems economically or agronomically infeasible, which would result in substantial
21 economic impacts (e.g., precipitous drop in land values and property taxes, and lease rates); failed to
22 analyze changing management practices, inputs, rotations, and land uses to comply with discharge
23 targets/limits; failed to analyze the ability to meet surface water discharge limits using currently
24 available pesticide chemistries; failed to adequately analyze land use changes / taking land out of

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26 new or updated reporting forms, such as Annual Compliance Form, Pesticide Management Plan, Total Nitrogen Applied,
27 Sediment and Erosion Management Plan, and Irrigation and Nutrient Management Plan. (WDRs, pp. 19, 21, 22, 29, 31, 35,
36-42.)

27 ²¹⁰ ERA Economics, Technical Memorandum No. 1, p. 2.

28 ²¹¹ FEIR, pp. 3.5-8; 3.5-27—29; ERA Economics, Technical Memorandum No. 1, pp. 12-13 (FEIR, Volume 3, 3-495—
496).

²¹² ERA Economics, Technical Memorandum No. 1, p. 2 (FEIR, Volume 3, 3-485).

1 production to comply with the prohibition on riparian disturbance; and opportunity cost of
2 management time for compliance paperwork, training, and other administration.²¹³

3 Collectively, the Project’s requirements would almost certainly result in changes in the
4 physical farming environment and the socioeconomic environment. Additionally, the economic
5 impacts of Ag Order 4.0 are likely to result in broader policy implications. “Regulatory costs affect
6 competitiveness of the California agriculture industry. This can push crop production out of the state
7 or to other countries, and with it jobs and income for the state and region.”²¹⁴ Lower production
8 values will lead to job losses, impacting communities with higher levels of unemployment and lower
9 tax revenues. These impacts will disproportionately fall on disadvantaged or severely disadvantaged
10 communities.²¹⁵ “Agriculture is a significant share of jobs and income for many Central Coast
11 communities. These communities provide the people that work the fields, factories, and equipment in
12 the Central Coast. Regulations can have the indirect effect of reducing jobs and wages in these
13 communities.”²¹⁶

14 Further, regulatory costs are cumulative.²¹⁷ In addition to Ag Order 4.0, Central Coast
15 growers are managing implementation of other regulations. For example, implementation of the
16 Sustainable Groundwater Management Act will result in changes in the availability and cost of
17 groundwater in Central Coast sub-basins. In addition, the study by Hamilton and McCullough (2018)
18 identifies other regulatory compliance costs that are increasing over time and should have been
19 appropriately considered in any economic and cumulative impact analyses for the Project.²¹⁸ For
20 example, Hamilton and McCullough found that in the past decade, regulatory compliance costs have
21 increased 795% for a typical leafy-greens grower.²¹⁹

24 ²¹³ ERA Economics, Technical Memorandum No. 1, (FEIR, Volume 3, 3-484—502); ERA Economics, Technical
25 Memorandum No. 2, (FEIR, Volume 3, 3-504—517); Exponent, Technical Memorandum (FEIR, Volume 3, 3-518—
590); Letter from Norman C. Groot, Monterey County Farm Bureau (June 19, 2020) (FEIR, Volume 3, 3-217—248).

26 ²¹⁴ ERA Economics, Technical Memorandum No. 1, p. 7 (FEIR, Volume 3, 3-490).

27 ²¹⁵ *Id.* at pp. 7, 19 (FEIR, Volume 3, 3-490, 3-502).

28 ²¹⁶ *Id.* at p. 19 (FEIR, Volume 3, 3-502).

²¹⁷ ERA Economics, Technical Memorandum No. 1, p. 7 (FEIR, Volume 3, 3-490).

²¹⁸ See Hamilton and McCullough, *A Decade of Change: A Case Study of Regulatory Compliance Costs in the Produce Industry* (Dec. 15, 2018) <https://digitalcommons.calpoly.edu/agb_fac/155/> [as of May 2, 2021].

²¹⁹ *Id.* at p. 2.

1 “The implementation costs of the Order are likely to cause land retirement, land use change,
2 and direct, indirect, and induced socioeconomic impacts to producers and ancillary businesses in the
3 Central Coast. The Order and DEIR did not prepare an economic impact analysis to quantify these
4 effects.”²²⁰ Accordingly, the FEIR’s economics impact analysis is fundamentally flawed. By relying
5 on a legally flawed analysis, the FEIR fails to satisfy CEQA’s fundamental requirements.

6 Notwithstanding these issues, the Responses to Comments fail to adequately address the
7 issues raised by commenters. Almost *every* response to comments on both ERA Economics,
8 Technical Memoranda 1 and 2, along with many of the CEQA comments raised by Ag Partners, refer
9 the reader to Master Response 2.9 or 2.10, both of which do not address the specific issues raised.²²¹
10 In an attempt to support the FEIR’s failure to conduct an economic analysis, the FEIR’s responses to
11 comments conclude that facts, expert opinion based on facts, and substantial evidence in light of the
12 whole record is speculative.²²² Further, the responses argue that “CEQA does not require a lead
13 agency to conduct every test or perform all research, study, and experimentation recommended or
14 demanded by commenters.”²²³ However, here, known and feasible accounting procedures exist to
15 conduct an economic analysis and measure impacts with the cost figures within Attachment A and the
16 FEIR.²²⁴ Additionally, when there is evidence of a standard, accepted methodology (such as the
17 expert evidence provided by ERA Economics), which can feasibly be used to assess a significant
18 impact, the lead agency must assess the impact unless it provides a clear and adequately supported
19 justification for its failure to do so. Further, the CEQA Guidelines recognize that “[d]rafting an EIR
20 ... involves some degree of forecasting. While foreseeing the unforeseeable is not possible, *an agency*
21 *must use its best efforts to find out and disclose all that it reasonably can.*”²²⁵ Here, the FEIR

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23 ²²⁰ ERA Economics, Technical Memorandum No. 1, p. 19 (FEIR, Volume 3, 3-501).

24 ²²¹ See FEIR, Volume 3, 3-625—626; See Responses to Comments AR-49-53 (FEIR, Volume 3, 3-254), BN-203—207
(FEIR, Volume 3, 3-624—626), BN-336—BN-343 (FEIR, Volume 3, 3-648—649), BN-289 through BN-415 (FEIR,
25 Volume 3, 2-641—657).

26 ²²² FEIR, Volume 3, 2-52—55; Pub. Resources Code, §§21082.2(c) & (d).

27 ²²³ CEQA Guidelines, § 15204(a); Response to Comment BN-112 (FEIR, Volume 3, 3-606—607); Response to Comment
28 BN-138 (FEIR, Volume 3, 3-611).

29 ²²⁴ ERA Economics, Technical Memorandum No. 1, pp. 14-18 (FEIR, Volume 3, 3-497—501); Cal. Code Regs., tit. 14, §
15151; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515, [“An evaluation of the environmental effects of a
proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably
feasible.”].

²²⁵ Cal. Code Regs., tit., 14, § 15144, italics added; *Berkeley Keep Jets Over the Bay Committee, supra*, 91 Cal.App.4th at
p. 1370.

1 contains no adequate justification for not using a reasonably feasible, standard, accepted methodology
2 to evaluate economic impacts from the Project. Therefore, the FEIR’s Economics Analysis is
3 improper and flawed.

4 **5. The FEIR Fails to Identify and Discuss the Project’s**
5 **Inconsistency with Relevant Local Plans**

6 “A project is consistent with the general plan if, considering all its aspects, it will further the
7 objectives and policies of the general plan and not obstruct their attainment.”²²⁶ To be consistent with
8 the general plan, the Project must be compatible with the objectives, policies, general land uses, and
9 programs specified in the applicable plan.²²⁷ Here, within the FEIR’s Environmental Analysis for
10 Agriculture and Forestry Resources, one short paragraph is included regarding general plans.²²⁸ The
11 FEIR simply refers to Appendix B but contains no analysis regarding the Project’s inconsistency with
12 each adopted county general plan. Further, Appendix B is incomplete and fails to include all relevant
13 county general plan policies and goals related to agricultural resources, land use, conservation, and
14 economics (maintaining economically viable agricultural resources). Although the FEIR does contain
15 a section on Impact AG-2: Conflict with existing zoning for agricultural use, or a Williamson Act
16 contract, the discussion is negligible, limited only to the following:

17 As described in Impact AG-1, the Proposed Project’s effects on agricultural land, including
18 Important Farmland and land that may be under a Williamson Act contract, are speculative.²²⁹

19 Given that each Central Coast county’s agricultural zoning district encourages conservation of
20 agricultural lands and continuation of agricultural uses, the FEIR should contain an analysis of each
21 agricultural related general plan policy and goal that conflicts with the Project. After all, since each
22 county recognizes agriculture as a top economic priority and prohibits the conversion and subdivision
23 of agricultural land with only very limited exceptions, a cursory statement is improper.²³⁰ The FEIR
24 may not focus only on the elements of its choosing; rather, the agency is required to show that there

25 ²²⁶ *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App. 4th 603, 637-638 [citations and
internal quotation marks omitted].

26 ²²⁷ *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal. App. 4th 357, 373, citing Gov. Code, §
66473.5.

27 ²²⁸ FEIR, Volume 1, 3.1-2.

28 ²²⁹ FEIR, Volume 1, 3.1-25.

²³⁰ Cal. Code Regs., tit. 14, § 15125(d), [“The EIR *shall discuss* any inconsistencies between the proposed project and the
applicable general plans and regional plans.” Emphasis added.].

1 be little or no probability that the project would be detrimental to or interfere with the general plan as
2 a whole. Inconsistency with simply one general plan policy is enough to scuttle a project.²³¹

3 By failing to adequately disclose each applicable general plan policy and goal, analyze
4 significant impacts and potential alternatives, and remedy and/or mitigate the Project's
5 inconsistencies with the general plans, the FEIR fails to disclose to decision-makers and the public the
6 many ways in which the Project will not meet, and in fact, may impede counties' long-standing and
7 long-term planning and preservation goals.²³² Without such analysis, the FEIR downplays the extent
8 of significant impacts and fails as an information document.

9 **6. The FEIR's Mitigation Measures Are Improper**

10 CEQA mandates a lead agency to adopt feasible alternatives or feasible mitigation measures
11 that can substantially lessen the project's significant environmental impacts.²³³ For that reason, "[t]he
12 core of an EIR is the mitigation and alternatives sections."²³⁴ Mitigation measures must be feasible,
13 legally enforceable, and consistent with constitutional standards limiting actions by public agencies,
14 including "nexus" and "rough proportionality."²³⁵ Mitigation measures must be consistent with the
15 agency's existing powers under existing law because CEQA does not grant an agency any new
16 powers.²³⁶ Here, certain of the FEIR's mitigation measures are improper.

17 The FEIR identifies mitigation measures that apply to growers who seek regulatory coverage
18 under Ag Order 4.0.²³⁷ Some of the measures logically require that any modifications of a farming
19 operation that cause impacts (such as noise impacts) be performed in accordance with existing law
20 (such as county noise ordinances).²³⁸ However, some of the identified mitigation measures are
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23 ²³¹ See *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal. App. 3d 738, 753,
24 [court held that the project was inconsistent with a general plan because it conflicted with *one policy in the conservation*
25 *element*].

26 ²³² Cal. Code Regs., tit. 14, §§ 15125(d), 15126.2; *San Bernardino Valley Audubon Society, Inc. v. County of San*
27 *Bernardino*, supra, 155 Cal. App. 3d at p. 753.

28 ²³³ Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, §§ 15002(a)(3), 15126.4; *Sierra Club v. Gilroy City Council*
(1990) 222 Cal.App.3d 30, 41.

²³⁴ *Citizens of Goleta Valley v. Board of Supervisors*, supra, 52 Cal.3d at p. 564.

²³⁵ Cal. Code Regs., tit. 14, § 15126.4(a)(4).

²³⁶ Cal. Code Regs., tit. 14, § 15040.

²³⁷ See FEIR, Chapter 3, Environmental Analysis.

²³⁸ FEIR, Volume 1, 3.10-9.

1 infeasible and exceed the Central Coast Water Board’s authority.²³⁹ First, how these measures would
2 be triggered is uncertain. The measures appear to apply to routine farming management and
3 operational decisions that normally would not involve regulatory approval by a public agency. If a
4 grower chooses to implement a farm management method for reasons independent of Ag Order 4.0,
5 the mitigation measure could still be triggered, subjecting the grower to a level of regulatory
6 approvals and expense that otherwise would not apply. Further, even if the grower chooses to
7 implement a management practice because of Ag Order 4.0, the Central Coast Water Board still
8 would not have the authority to approve that individual management decision. Yet, in this scenario,
9 the grower might be deemed in violation of Ag Order 4.0 if he or she did not implement the measure,
10 even if he or she has not actually discharged waste into water of the state.

11 Second, the measures seek to dramatically expand the Central Coast Water Board’s authority
12 over normal farming activities beyond what is otherwise required or allowed by state and federal
13 law.²⁴⁰ Growers are already required to comply with applicable federal and state laws, such as
14 endangered species laws, with certain operations on their property. Yet, various mitigation measures
15 add a new and expanded level of regulation, and potential further CEQA review, to normal
16 management activities that are not subject to discretionary public agency approvals. For example,
17 BIO-3 discusses impacts to state or federally protected wetlands but fails to mention farmlands that
18 are otherwise statutorily exempt from such regulation under the federal Clean Water Act.²⁴¹ Finally,
19 by imposing expanded regulation on normal farm management decisions, beyond what is required by
20 other federal and state environmental laws, the measures do not satisfy constitutional limitations.²⁴²
21 The excessive cost of cultural resource surveys, biology surveys, and wetlands delineation and
22 mitigation on individual fields is not roughly proportional to the likely less than the significant impact
23 from management decisions on a single farm. Nor can the Central Coast Water Board establish a
24 rational nexus between the expanded regulation and cost imposed in the measures and the as yet
25 unidentified impacts from any of these potential management practices.

26 ²³⁹ See Resolution No. R3-2021-0039, Attachment B; FEIR, Volume 1, 3.3-28 – 33, 3.8-22 – 29, 3.11-8 – 9; see Wat.
27 Code, § 13360(a).

28 ²⁴⁰ See Wat. Code, § 13360(a).

²⁴¹ See 33 C.F.R. § 328.3(a)(8).

²⁴² Cal. Code Regs., tit. 14, § 15126.4.

1 Given that the FEIR fails to adequately identify, discuss, and analyze impacts and conflicts
2 with adopted mitigation measures, the FEIR fails to satisfy CEQA’s fundamental requirements.²⁴³

3 **C. The FEIR Fails To Consider the Significance of Social And Economic Impacts And**
4 **Cumulative Effects**

5 Although impacts that are solely economic in nature do not constitute “significant effects on
6 the environment,” economic or social impacts that will or have the potential to cause a physical
7 change should be considered.²⁴⁴ The term “significant effect on the environment” is defined in
8 section 21068 of CEQA as meaning “a substantial or potentially substantial adverse change in the
9 environment.”²⁴⁵

10 Notwithstanding the definition of significant effects on the environment, CEQA does not
11 focus exclusively on physical changes, and it is not exclusively physical in concern.²⁴⁶ Thus, in
12 certain situations such as the adoption of an expansive regulatory irrigated lands discharge program,
13 economic and social effects of the project *must* be used to determine the significant effects on the
14 environment.²⁴⁷ Since such effects were raised in public comments but were not properly considered
15 in the FEIR, the document is incomplete and flawed.

16 In *Citizens Association for Sensible Development of Bishop Area v. Inyo*, the court held that
17 “economic or social change may be used to determine that a physical change shall be regarded as a
18 significant effect of the environment. Where a physical change is caused by economic or social
19 effects of a project, the physical change may be regarded as a significant effect in the same manner as
20 any other physical change resulting from the project. Alternatively, economic and social effects of a
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24 ²⁴³ See *Masonite Corp. v. Cnty. of Mendocino* (2013) 218 Cal. App. 4th 230.

25 ²⁴⁴ Cal. Code Regs., tit. 14, §§ 15064(e), 15131, 15382.

26 ²⁴⁵ Pub. Resources Code, § 21068.

27 ²⁴⁶ Cal. Code Regs., tit. 14, § 15064(e), [“Where a physical change is caused by economic or social effects of a project, the
28 physical change may be regarded as a significant effect in the same manner as any other physical change resulting from
the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical
change is a significant effect on the environment. If the physical change causes adverse economic or social effects on
people, those adverse effects may be used as a factor in determining whether the physical change is significant.”].

²⁴⁷ *Citizens Assn. for Sensible Development of Bishop Area, supra*, at p. 170, [“The lead agency shall consider the
secondary or indirect environmental consequences of economic and social changes.”].

1 physical change may be used to determine that the physical change is a significant effect on the
2 environment.”²⁴⁸²⁴⁹

3 Once implemented, Ag Order 4.0’s requirements will result in dramatic and severe impacts on
4 the agricultural industry, which will have a significant effect on the economic and social environment
5 of the region. Such impacts include negative economic consequences, the possibility of eliminating
6 agricultural crops produced in the area, possible elimination of multi cropping cycles, loss of jobs,
7 loss of food supply, loss of agricultural lands, economic collapse of local communities, changes to the
8 landscape and land uses, loss of wildlife habitat, loss of groundwater recharge areas, disproportionate
9 impacts to disadvantaged communities and severely disadvantaged communities, as well as other
10 social and economic impacts.²⁵⁰ In addition to direct impacts, and indirect impacts and consequences,
11 these cumulative²⁵¹ social and economic consequences are reasonably foreseeable and must be
12 analyzed.

13 As indicated during public testimony and written comments, the Ag Order 4.0 will have an
14 adverse effect on the agricultural community in many ways.²⁵² These economic and social impacts
15 will adversely affect people within the Central Coast and the state.

16 Notwithstanding substantial evidence pointing to significant impacts, the FEIR contains no
17 cumulative impacts analysis on social and economic resources impacted by the Project. The FEIR’s

18 ²⁴⁸ See also *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205.

19 ²⁴⁹ *Ibid.*

20 ²⁵⁰ ERA Economics, Technical Memorandum, No. 1, pp. 2-3, 4, 6, 7, 18, 19 (FEIR, Volume 3, 3-486—488, 3-489—490,
3-501—501).

21 ²⁵¹ “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.)

22 ²⁵² See, e.g., Letter from Huntington Farms (Jan. 21, 2019) regarding costs,
23 <[https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/
ag_order4_public/21jan2019_huntingtonfarms_letter.pdf](https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order4_public/21jan2019_huntingtonfarms_letter.pdf)> [as of June 18, 2020], [“Therefore, it can only be assumed that
24 costs associated with both draft options will not only exceed the current Tier 3 compliance costs; but will be substantially
higher. It might not be unreasonable to estimate the costs could be double current Tier 3 costs, once all of the compliance
25 requirements are revealed and adopted.”]; Letter from Berry Mist Farms, LP (Jan. 17, 2019) regarding impacts including
26 costs, <[https://www.waterboards.ca.gov/centralcoast/
water_issues/programs/ag_waivers/docs/ag_order4_public/21jan2019_berrymistfarms_letter.pdf](https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order4_public/21jan2019_berrymistfarms_letter.pdf)> [as of May 2, 2021],
27 [“My strawberry operation is about 50 acres of a 100 acre ranch our family owns....With the increased reporting
requirements, well testing, water trend monitoring and erosion management, plus the potential set-back because of our
28 proximity to the Pajaro River, I think these regulations could cost \$2,500 per acre.”]; Letter from Costa Farms (Jan. 21,
2019) regarding Ag Order 4.0 Options Tables including costs, <[https://www.waterboards.ca.gov
/centralcoast/water_issues/programs/ag_waivers/docs/ag_order4_public/21jan2019_costafarms_letter2.pdf](https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order4_public/21jan2019_costafarms_letter2.pdf)> [as of May 2,
2021]; ERA Economics, Technical Memorandum No. 2, pp. 2-12 (FEIR, Volume 3, 3-505--515); ERA Economics,
Technical Memorandum No. 1, pp. 2, 3, 7, 13, 14 (FEIR, Volume 3, 3-486--487, 3-490, 3-496--497).

1 Responses to Comments fail to adequately substantiate the lack of analysis on this issue. This is an
2 error. Accordingly, the FEIR’s failure to include an evaluation of the resulting social and economic
3 effects from the Project is improper.

4 **III. CEQA CONCLUSION**

5 CEQA’s statutory framework sets forth a series of analytical steps intended to promote the
6 fundamental goals and purposes of environmental review—information, public participation,
7 mitigation, and governmental agency accountability.²⁵³ Specifically, the basic purposes of CEQA
8 review include: informing governmental decision-makers and the public about the potentially
9 significant environmental effects of proposed activities; identifying ways that environmental damage
10 can be avoided or significantly reduced; requiring changes in projects through the use of alternatives
11 or mitigation measures when feasible; and disclosing to the public the reasons why a project was
12 approved if significant environmental effects are involved.²⁵⁴ Adopting a project without complying
13 with the above requirements violates CEQA.

14 Based on the numerous violations contained within the FEIR discussed herein as well as the
15 evidence in the record, Petitioners respectfully request that the State Board amend or revise the FEIR
16 as necessary and to incorporate the revised to Ag Order 4.0 as requested in Part 1 of this Statement of
17 Points and Authorities.

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28 ²⁵³ Cal. Code Regs., tit. 14, § 15002.

²⁵⁴ See Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.


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CONCLUSION

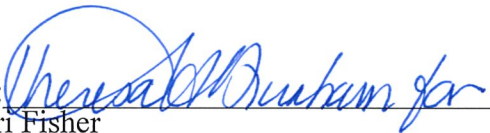
Based on this Petition and the evidence in the record, Petitioners respectfully request that the State Board grant the remedies as requested.

Dated: May 17, 2021

KAHN, SOARES & CONWAY, LLP

By: 
Theresa A. Dunham
Attorneys for Grower-Shipper Association of
Central California, Grower-Shipper Association
of Santa Barbara and San Luis Obispo Counties,
Western Growers Association and Western
Plant Health Association

CALIFORNIA FARM BUREAU
FEDERATION

By: 
Kari Fisher
Attorneys for California Farm Bureau
Federation, Monterey County Farm Bureau, San
Benito County Farm Bureau, San Luis Obispo
County Farm Bureau, San Mateo County Farm
Bureau, Santa Barbara County Farm Bureau,
Santa Clara County Farm Bureau, and Santa
Cruz County Farm Bureau

SPALETTA LAW PC

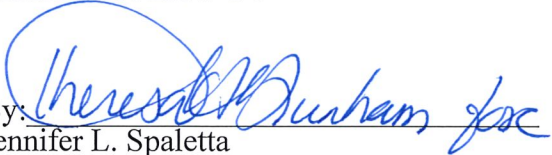
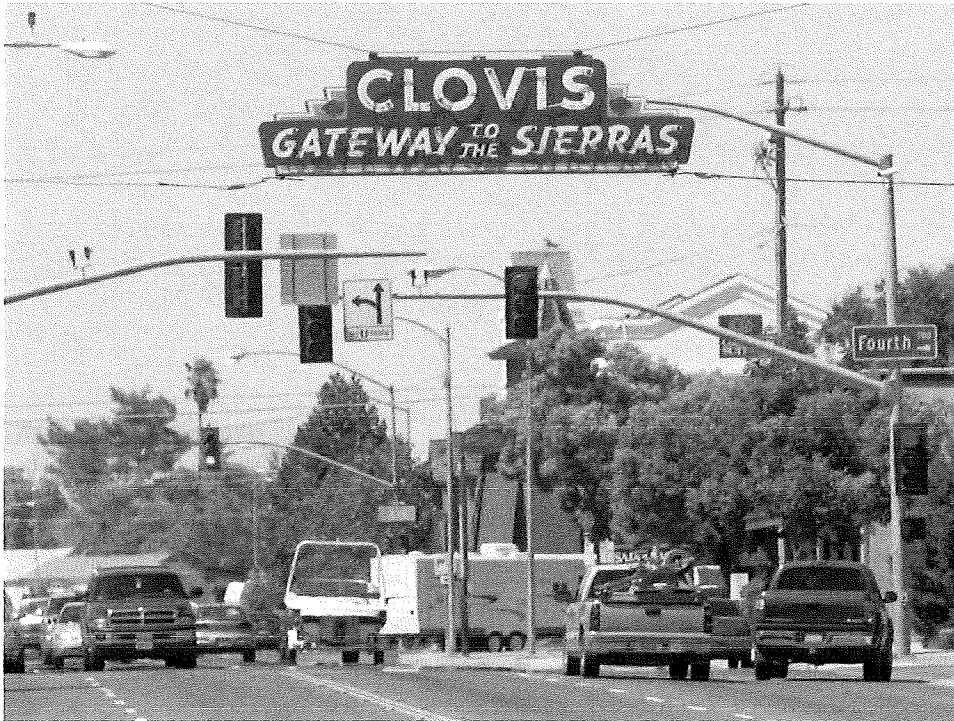
By: 
Jennifer L. Spaletta
Attorneys for California Strawberry
Commission

Exhibit 1

LOCAL DECEMBER 21, 2016 12:55 PM

Clovis wins \$22 million against Shell Oil over toxic drinking water



BY ANDREA CASTILLO
acastillo@fresnobee.com

The City of Clovis won its more than three-month civil trial against the chemical manufacturing giant Shell Oil Company over the cleanup of a toxic chemical found in drinking-water wells around the city of 108,000 people.

The chemical is 1, 2, 3-Trichloropropane, or TCP, which is a waste product from making plastic. TCP was in farm fumigants last used in the 1980s, which were injected into the ground to kill tiny worms called nematodes. A jury awarded the city nearly \$22 million, finding that the Clovis residents were harmed by the design of the fumigant, that Shell did not prove the benefits of its product outweighed the risks and that those risks were known at the time it was sold.

Clean-water advocates say the unregulated chemical, which has been linked to cancer and liver and kidney damage in animals, has been in wells throughout the region for decades. TCP is considered unsafe to drink over a lifetime at levels lower than what can currently be detected. It was added to the state's list of chemicals known to cause cancer in 1999.

Clovis argued that Shell acted intentionally and maliciously by including TCP in its fumigant and failing to warn people about its harms. Shell argued that Clovis water is safe to drink, that its product helped California agriculture and that its labels adequately warned of risks.

TCP is most prevalent in Valley water, especially in Fresno, Kern and Tulare counties, but is also found elsewhere in the state, including Los Angeles County. The Clovis case is one of at least 40 legal actions filed against Shell and Dow Chemical Company in California since the mid-2000s.

The California Department of Public Health has a goal of keeping TCP to 0.7 parts per trillion, which is 1,000 times lower than the limit set for many other chemicals. The goal is intended to limit the lifetime cancer risk to one in a million people.

A recent effort to regulate the chemical is underway. State officials in July proposed a drinking water standard that would require water systems to start removing TCP from tap water by 2018. The State Water Resources Control Board proposed a limit of 5 ppt – the lowest level detectable by certified filtration methods. The limit would pose a cancer risk of less than 1 in 143,000 people and filtration could cost more than \$34 million annually statewide.

Clovis' arguments

The Clovis lawsuit was originally filed in in 2005. The city sued Shell, Dow, Occidental Petroleum Corporation and Wilbur-Ellis Company. According to the complaint, the city first detected TCP in its water supplies three years before filing the lawsuit.

Clovis attorney David Wolfe said the city settled with Dow for \$7.5 million and with Occidental for \$300,000. He said the case against Wilbur-Ellis was dismissed. Of the total, nearly \$3 million went to legal fees and other costs.

The city sought more than \$70 million in damages from Shell to treat contaminated water, secure alternative water supplies and remove the TCP from 10 of its 40 wells. The complaint states that the chemical companies disposed of TCP by adding it to their pesticides. It says TCP is an unnecessary ingredient that has no effect on nematodes.

Clovis' attorney, Duane Miller of Sacramento, said the highest amount of TCP ever detected in the city's wells was 32 ppt in 2002. He said the contaminant has spread out as the city added more water capacity.

The complaint alleged that the chemical companies knew or should have known that TCP is a hazardous waste that should be disposed of properly. Instead, the complaint states, the companies mixed the chemical in other products to avoid disposal costs. It goes on to say that the chemical companies then told people to apply products containing TCP to agricultural fields, where they the companies knew or should have known that it "would inevitably contaminate groundwater."

The complaint also states that the companies failed to provide sufficient warnings about risks of groundwater contamination, and didn't test TCP as thoroughly as they could have "in order to avoid discovering evidence of TCP's harmful effects on the environment and human health."

"It's not the city's fault that TCP is in its wells," Miller told jurors. "And it is the city's responsibility to protect its citizens."

Shell's arguments

Clovis argued Shell's fumigant was the most popular on the market and contained more TCP than Dow's product. Shell argued farmers had many fumigant choices and that Clovis' science was flawed.

Shell attorney Cal Burnton told jurors that Clovis residents have not been harmed by the TCP in their water. Burnton argued that TCP has never been declared a human carcinogen; scientific studies show it caused cancer in laboratory animals including rats. So when Miller linked TCP to cancer, Burnton said, "that's fear mongering."

Burnton said the public health goal of 0.7 ppt is a conservative factor that regulators based on a mathematical equation rather than scientific toxicity data. He said the amounts of TCP in Clovis' water are too miniscule to cause harm. If Clovis' wells were so contaminated, Burnton said, the city would have removed them from service or labeled them as safe for non-potable use only. He said the city has 17 water treatment tanks but has never used them for TCP.

Burnton argued Shell's fumigant was not used in Clovis to the extent that Miller claimed. And he said rates of TCP in Clovis water are decreasing.

Tracie Renfroe, another attorney for Shell, argued that the remaining TCP in Clovis' water is most likely from Dow's product because it was applied in later years - and to more acres in Clovis - than Shell's product.

Renfroe said the benefits of the product outweighed the risks known at the time, otherwise the federal Environmental Protection Agency wouldn't have approved its use.

She also said there was sufficient warning. The labels warned of kidney and liver damage but not cancer because the animal studies weren't done until 1985, she said. Labels also didn't warn about groundwater risks because she said no one recognized that was possible until 1983.

"Shell could not warn of what it did not know," she said.

Other cases

Miller is also representing Fresno in its case against the chemical companies. Miller represented the city of Redlands in San Bernardino County - the only other California city to go to trial over TCP. Redlands lost its \$46 million claim against Shell in 2010.

Several other cases have settled but most are still in process. Wolfe, the Clovis city attorney, said the city took its case to trial because Shell wasn't willing to settle. He said Shell finally submitted an offer last Thursday. The City Council contemplated the offer in a closed session on Monday.

Todd Robins, a San Francisco attorney who represents most of the smaller Valley communities between Manteca and Arvin, said 30 or so are in limbo waiting for the courts to schedule them. Robins consolidated four Fresno County cases - Del Rey, Parlier, Reedley Kingsburg - and may add another, which are moving toward possible resolution within the next year. Grouping cases has helped move them quicker, he said.

Robins said that in most cases, communities can't afford to remove wells with TCP from service. "Because we're in a terrible drought, you can't just walk away from a productive well," he said, adding that some communities have TCP in every well. "Where communities can afford, based on their supply system, they have minimized the use of a well, pending treatment. But often there's not enough water to allow that to happen."

A substantial part of Shell's defense against Clovis hinged on the fact that the drinking water standard for TCP has not yet been set. Had the regulation process taken place a year ago, Robins said, "perhaps this case would not have needed to be tried."

Andrea Castillo: 559-441-6279, @andreamcastillo



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